

**THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON PUBLIC SECTOR
EXECUTIVE APPOINTMENTS MET IN COMMITTEE ROOM 1, PARLIAMENT
HOUSE, HOBART, ON TUESDAY 11 NOVEMBER 2008.**

Mr STEVEN KONS, WAS CALLED AND WAS EXAMINED.

CHAIR (Mr Harriss) - Members and Steve, I declare this continuation of the hearing formally convened. Can I just indicate to everybody here that in respect of Armistice Day we will be moving from this room and everybody is welcome to join us at the front of the building to mark Remembrance Day. We will be leaving here at 10.50 a.m. so that we have time to assemble at the front of the building. It is a mark of respect that we accord on this day every year so that is our intention.

Steve, welcome to this hearing. You are aware, as a sworn member of parliament, that you do not need to make a statutory declaration in front of this committee whereas other witnesses do, of course, so you are already sworn to that extent and you are well aware of the processes of select committees and particularly select committees of the Parliament and the protection that is continually afforded you as a member of parliament as though you were in the House, so you are protected by that privilege.

Steve, it is our intention to go through the same sort of process as we have with other witnesses. We have a range of questions we want to ask you. If there are times when you feel a need to request that we resolve in camera to hear any evidence of yours, you are welcome to make that submission to the committee. We would then deliberate on that and decide as to whether there has been a sufficiently compelling case put by you for us to move in camera and there may be a time at the end of our public deliberations where we would want to resolve in camera of our own choice to further lead questions for you.

We thank you for being here before time. Are you clear with the process? Are you happy to go straight into questions from us?

Mr KONS - Yes. I would like to actually start off with a statement about some of these issues.

CHAIR - That is fine.

Mr KONS - I thank you for your kind invitation to be here today. I have spoken to Colin about the terms of reference and I understand the terms of reference and what 'incidental' means, the strict meaning of that. I think I would like to comment firstly on the magistrate and then the Solicitor-General appointment process, which I believe are the two areas that you are interested in.

In mid-2007 I became aware that one of our magistrates intended to retire and a new one was to be appointed. I consulted with my departmental secretary to identify a suitable and appropriate process by which a candidate could be nominated to Cabinet. My secretary intended to advertise the position to attract candidates and I agreed with such a

process even though there was no strict written-down process to be followed in these circumstances. Cabinet would receive a recommendation and if it agreed to that nominee that nomination would go to Governor-in-Council to formalise such appointment. Because of delays in the selection process, Magistrate Willee was asked to delay his retirement and he did so. The position was advertised and my secretary and the department together with the Chief Magistrate collated the expressions of interest and examined them. There were 25 applicants and I was provided with a short list of three.

In relation to one applicant, Mr Cooper, he was already employed by Justice as chairperson of RMPAT and was doing a good job but as a result of the vacancy in the position of Executive Commissioner of RPDC and on advice from the department I arranged for Mr Cooper to temporarily vacate the RMPAT role so he could cover the RPDC function of Executive Commissioner on a temporary basis.

Mr Cooper was not deterred from applying for the magistrate's job. Although I had no reservations about his ability to be a magistrate I had concerns that if he should be nominated there would be a perception that he had been personally associated with the former Premier, having represented him as his lawyer. His appointment to RMPAT was criticised by the Opposition even though he was doing a sterling job there and was open to the idea of making RMPAT less of a battleground and more of a forum for achieving consensus between parties appearing there, and it was a direction I was looking for that organisation to be going in.

The other concern other than the above I had was that he had not been practising strictly as a lawyer, and by that I mean in legal practice as a solicitor for the past five years, a judgment value that I thought would keep the legal profession happy, that a current practitioner was going to be appointed, but of little importance in the scheme of things.

I was getting a clear message, not by words but by people's actions, that Mr Cooper would be a preferred candidate to be nominated for the position but at all times it was my decision whose name would go forward to Cabinet. I did express my concerns to the Premier and his departmental secretary as to why Mr Cooper should not be appointed and I stress these were not because of his capacity or ability but because of community and political perceptions of my feeling that the nomination of Mr Cooper would get a smooth run through Cabinet.

I cannot confirm why he was the preferred candidate and I would only be speculating if I did so. I believe, at the end of the day, that my continual suggestions on the issue of perception changed the advice provided to me by the Secretary of DPAC. Prior to nominating a magistrate I had a meal with Mr Cooper at Maldini's with one of my staff and on another occasion I telephoned him and we talked generally about the vacancy and I believe when he was on vacation I also spoke to him again. I do not recall the exact conversation but I may have indicated to him that he had a good chance of appointment and told him to get ready, meaning tidy up your work, so if it happened your replacement would not have to sort out loose ends at the RPDC.

On the other occasion whilst Mr Cooper was on holidays I spoke to him and it may have been in relation to the appointment of the magistrate's job, but as we both had a passion for the planning process in the State the reasons for my call may have been planning

issues as generally we met in my office or his with others present to discuss planning matters.

In August 2007, I was handed a document in my Burnie office that I believe was e-mailed to me relating to the magistrate's vacancy with Mr Cooper's name on it for signing. I placed a notation on that minute stating that I was signing the document on advice from my department, which reflected the nature of the document. I was determined that the appointment be now done urgently as it had dragged on for a considerable period of time.

I received a call on the same day, either from Ms Hornsey or Ms Hutton, but I have been advised that it was Ms Hornsey, advising me that I should shred the document, namely the document relating to Mr Cooper. As we did not have a security bin, shredding it was better than putting it in a normal waste bin where rats and rodents could get to it.

I was aware a new one would be prepared and a further reason for shredding it was that I did not want two documents relating to the same issue circulating as this may have created confusion if it was in a mailbag and came to the Hobart office. I believe that, as Attorney-General, the choice of nominee was at all times mine, but as I did not know two of the three short-listed candidates, or many of the other candidates, I was happy to receive advice and guidance from any one of the senior public servants with experience, and that is what happened.

In April 2008 a media report appeared in the *Mercury* relating to the appointment of Mr Cooper. I spoke to a government media person about the response and one was prepared refuting the claim that I had signed a letter to Mr Cooper appointing him. The media response was to quash the allegation and a letter had gone out to Mr Cooper. Looking at the *Mercury* article some time after it was published, and in response, I would say that the response prepared for me did not address the substance of the article. But when you read an article sitting in your car and then someone else prepares a response for you some time afterwards and you do not cross-check the two, it is easy to make a fundamental unintended error in your response.

On 8 April in Parliament the Greens member questioned me in relation to the signing and subsequent shredding of the document referred to earlier. I was asked in Parliament about events that occurred some 10 months earlier and I simply did not recall the specifics about the events on the day in question, such a long time ago. If I had remembered those events at the time I would have relayed them accurately at the time of questioning in Parliament.

I did not anticipate the question from Mr Booth, as he has a skill of layering questions and what occurred was I made inaccurate statements not deliberately to mislead the House. I reiterate and confirm that the statement was inaccurate but not deliberate. I would say that I inadvertently, or even perhaps negligently, provided information that was inaccurate and as soon as I became aware that the information provided by me was capable of misleading the House, at the next available opportunity I took steps to correct it.

I became aware that my statements were inaccurate as soon as I was given the opportunity to examine the documents Mr Booth was asking questions about and I

remedied that record. At no time since I made those inaccurate statements has anyone asked me whether my answers were made to deliberately mislead the House, or whether they inadvertently did.

I believe the question that needs to be asked in future if similar circumstances arise is whether the member did it deliberately to mislead, or is there a reasonable doubt that they forgot about something that happened, say, as in my circumstances, 10 months prior. As my former secretary has said, and from what I have read in the media, the appointment of a magistrate in the scheme of running a department was of a medium-level importance - the expectation to recall detail about it is not something that is front and centre at all times 10 months after it happened.

Decisions are made, and you move on. There was plenty going on in planning, workplace standards, industrial relations, prisons, justice, consumer affairs and coronial inquiries - you name it, we were dealing with it within a small office and a small department. We made two good appointments to senior positions, namely magistrates and the Solicitor-General, and perhaps other parties who may have had a chance of getting those positions have missed out because of the media and the opposition parties that find it so easy to throw labels as 'corrupt', 'improper' and 'mates' so easily without accountability.

We need to mature and reflect on the ultimate decisions to appoint and to see whether the best person gets the job and how they perform in it rather than preparing in parliament, the coward's castle, to cast aspersions on motives and intentions of others.

I and the key people, such as Mr Cooper and Mrs Hornsey, have not said much about the decisions or about my resigning six months ago and I have never defended myself by stating the facts in Parliament where the other side finds it very easy to throw comments like 'corrupt', 'rewriting history' et cetera, and it gives little opportunity for you to defend yourself.

I believe this committee, with due respect, is part of that process of being judges and, as a witness appearing before you, I have little chance to counter your allegations and comments made under parliamentary privilege, but I do urge the committee to stick to its terms of reference, of which I have been given a copy.

As far as the Solicitor-General is concerned, I have a further statement in relation to that one. In early 2007 Mr Bill Bale had signalled his intention to the Department of Justice to retire later in 2007, a fact that was common knowledge throughout the department. Such appointment is, due to its nature, rare as the incumbent can hold the position up until the age of 72.

There is no strict process for appointing a new solicitor-general, but by convention any recommendation to Cabinet would be undertaken by the Attorney-General. I was Attorney-General at the time and held discussions with my departmental secretary in relation to identifying a suitable selection and nomination process. The secretary and I were inclined to advertise the position nationally and call for expressions of interest, a short list I presumed would be compiled and a suitably qualified person recommended to Cabinet for appointment by the Executive Council.

Initially I had contact with the Premier and his office in relation to the process of nominating an appropriate person as Solicitor-General, firstly to the Premier and then to his departmental secretary. There was no concurrence to my view of advertising the position and from that point forward the process was handled more or less by the Premier's office. Input from the Premier's office to this very senior appointment was welcome and common practice, as I did not know many of the senior practitioners in this State. A senior barrister had expressed interest in the position and I did not know him personally. On reflection, there were approaches to me on his behalf, but there is nothing untoward in people putting their hand up early. I did not know how some of these parties were aware of the pending vacancy, but if it was known within department one can presume it was known widely. I received an unsolicited e-mail containing a CV and expression of interest in relation to that opportunity and that e-mail and communications went to my department anyway.

The person applying for the job had written to me on a previous occasion in relation to Labor turning a decision to the DPP, meaning I would intervene in the decision of the DPP. I referred that to the department and I was advised that I could but should not, and I followed that advice. The current Solicitor-General's name was canvassed by my secretary as a potential candidate. I did not know him personally but I was aware he was a partner in Piggott Wood and Baker and had acted honourably by personally compensating individuals affected by the solicitors' mortgage fund. My departmental secretary made inquiries regarding an investigation surrounding the solicitors' mortgage funds issue and I believe, on advice -

CHAIR - Steve, can I interrupt there? There are matters which this committee is very conscious of which are still to be considered by the DPP in a prosecution which has not yet been brought before the court. My judgment would be that where you are going now, in my understanding of where the DPP might be situated, would concern matters which you could testify to this committee in camera because you would be well aware that this committee has to be very conscious of any prejudice which may contribute to the prosecution which the DPP is yet to bring. I am concerned. I have been listening carefully. You have gone to matters related to background prior to the appointment of the Solicitor-General. They are matters, in my judgment, that are germane to where the DPP might be going with regard to a prosecution. If you understand clearly what I am saying then it is not appropriate for you to continue with that component of your evidence to the committee unless in camera.

Mr KONS - Thank you, Mr Chairman, I will accede to your request even though I believe when the committee was established it should have had thoughts at the back of its mind that it was probably going to be overlapping with investigations by the DPP. You made a choice in continuing with your committee, so making a mockery of saying that there is a case on, but I am quite happy to read these comments into committee if you like.

CHAIR - Steve, it does not make any mockery of the process at all. You are well aware that select committees are at liberty to take evidence in camera, that the Parliament -

Mr KONS - That is fine.

CHAIR - I will just conclude - that the Parliament is pre-eminent, but that we have at all times on this committee exercised our judgment judiciously so that in no way could we

be criticised for prejudicing a prosecution which the DPP is yet to bring. There is no mockery being made of the process whatsoever in taking evidence in camera. We were conscious of what was before the DPP. We were clearly conscious that there was a police investigation which had not concluded at that stage. Subsequently we have become clearly aware that the DPP has found insufficient evidence to proceed to a prosecution on certain matters but on others he has.

Mr KONS - I am prepared to do the rest of this in camera if you like.

CHAIR - Okay. We will do that at the end so that we do not interrupt the proceedings of the deliberations. If there are other matters that you feel that you would like to share with the committee in open session let us proceed to that.

Mr KONS - Possibly just one other matter as far as the magistrate's appointment.

CHAIR - Certainly.

Mr KONS - I think I have read the DPP's letter and had a look at his interpretation of case law. I would just like to read into the record that it was held in the case of Green, Nicholson and White, that argument, persuasion or lobbying does not interfere with the free exercise of duty or authority. Interference within the meaning of section 69 only arises if the minister's freedom is diminished in any manner. When Ms Hornsey suggested to me that the document be shredded that amounted to no more than argument, persuasion or lobbying as far as I was concerned and at all times I could have nominated anyone I wanted to that position, so there was no coercion to stop me nominating anyone. That is it.

CHAIR - Thank you. There are matters, Steve, in terms of our getting some chronology to the process that the committee has investigated with other witnesses and we will go down a similar path. There are matters related to the pulp mill approval process. You are well aware of some allegations that it was the desire of some to get Mr Cooper out of the RPDC process, therefore the assessment process. It would have been convenient therefore to appoint him a magistrate. The committee certainly does have some questions in that area so that we can satisfy ourselves about what processes might have unfolded for the appointment of a magistrate.

Mr KONS - Well in response to getting Cooper out of the pulp mill process, I have read articles in the newspapers and seen all the media comments. I scratch my head to try to work out where that presumption can come from because I think it is completely preposterous that something like that can be concocted by people outside that process.

As I said, I think that Cooper was doing a very good job in RMPAT and RPDC. It was a passion that I had with the Planning portfolio and he was moving in a direction where people would be able to resolve their issues, mediation was a big part of what he was doing. He was doing a great job and I was quite happy for him to continue in that role and he showed his interest in the area when I suggested to him early in the piece that he might produce a recommendation on his views on where the planning process should go. Within about a fortnight I had a four or five-page document giving his views on planning. I thought, 'This bloke has really got it in him to do something good for

planning' and I think that his expertise in RMPAT certainly changed the nature of that organisation which was pretty well rudderless at the time I took over the portfolio.

To move him on because of the pulp mill is one of those fantasies that has overtaken the State that everything revolves around building a pulp mill. I unfortunately do not think that the centre of the universe is this pulp mill where others believe it is and within parliament our political opponents.

CHAIR - You have indicated that in mid-2007 you became aware of the vacancy for a magistrate. Can we take you back to February 2007 and did your then ministerial driver, Mike Hawkes, drive you to a meeting with the then Premier at the then Premier's home?

Mr KONS - Yes.

CHAIR - Can you recall the exact date of that?

Mr KONS - I can't recall the exact date but it would have been about February. I think we overlapped taking leave - whether I went first or the Premier went first, I can't recall but one had left and the other one had come back. I headed off on a Sunday to Hobart. I have a keen interest in heritage and heritage buildings. The opportunity arose, and I had not been to the Premier's house. I thought I would have a look at the house, have a look at the work that he did on it and have a chat, have a beer, and that is what happened. He showed me through the house. I was very happy to have been given that opportunity to have a look at his place.

CHAIR - At whose request was the meeting convened?

Mr KONS - I can't recall. It was probably me ringing him or him ringing me, one or the other. I usually came down on a Sunday, for Cabinet on a Monday, so I left a few hours earlier, like lunch time.

CHAIR - What was the nature of the discussion at the meeting?

Mr KONS - As I said, we generally talked about things related to work and this would have been just another one of those meetings; the fact that I'd gone on holiday or he'd gone on holiday. We hadn't seen each other for about three or four weeks. I thought before we went back to Cabinet it'd be a good idea to catch up.

CHAIR - You would have read the media coverage; Mr Hawkes' recall of that meeting that you had been required by Mr Lennon to attend his house for the meeting. That's not your recollection?

Mr KONS - No. As I said, it was either a phone call from one or the other - normal run of business. I had a discussion with the Premier. We'd been away since probably the first week of December or the second week of December. We hadn't had a cabinet meeting - three or four weeks without discussing any general issues. Regarding the opportunity of my coming down here, I might as well go to his house rather than wait for a Monday morning meeting.

CHAIR - Do you recall that you were concerned that you might have been given a grilling by the Premier because of what was going on with regard the pulp mill process?

Mr KONS - Paul was pretty passionate about his job and it was always go, go, go so at the back of my mind I thought, 'Something may be wrong, we'd better have a chat', and that's what it was. As far as getting a grilling or being told off is concerned, I was never told off by Paul about anything. He'd given me some substantial responsibilities in the portfolios I held. It mightn't appear much to the committee but the portfolios I had were quite expansive and quite important in my view of what we were doing. We were making some fantastic changes to the processes of where the State was heading as far as developments were concerned but Paul Lennon was never a bloke that would get you in and get stuck into you - at least with me.

CHAIR - Did the pulp mill approval process come up in that meeting which you had with Mr Lennon?

Mr KONS - I don't think so because at the end of the day there was a process going on. I was minister for RPDC and RMPAT. He was minister for major projects. If there was an issue about it, it would have come up but at the end of the day we kept the two roles and functions separate. He had his projects of State significance; I was more involved in the smooth running of RPDC and RMPAT and as far as I was concerned it was going okay, other than dragging on and not having time limits, which was one of my concerns - that RPDC in the processes that they'd established, in terms of reference and things it was dealing with, never set down time frames for when things were to be done. Everyone knows with legal processes that there has to be a point in time where a decision is made. There was nothing and it was open ended.

CHAIR - Are you indicating to the committee that the pulp mill approval process clearly was not discussed in that meeting?

Mr KONS - Not from the stuff that I've read in the paper about it being pulled and a different process being taken on and it would be approved by May. We don't control the upper House as a government so for someone to make a comment that it would be through by May would be very presumptuous. Lennon was good at doing numbers and organising, getting a project and something happening but to presume that he would - I don't know if the honourable member, Mr Martin, was still a member of the Labor Party; he probably was at that point in time -

Mr MARTIN - I was.

Mr KONS - convince 11 members out of 15 to vote for it was something that he could pull out of a hat -

CHAIR - Why would the 11 members be required to vote for it at that stage?

Mr KONS - Well, you're saying that the Premier suggested in the stuff that I've seen in the media that the pulp mill would be approved by then. I would have presumed a similar thing. Legislatively it would have to be done. We would need the support of both Houses; we have the numbers in the lower House but in the upper House we would need

seven members to approve a change in the process and we only had four at that point in time.

CHAIR - But, Steve, at this stage in February there's no suggestion of a change of process.

Mr KONS - No.

CHAIR - So why are you indicating to the committee that you'd have to convince a sufficient number of members of the upper House to approve the process?

Mr KONS - Well, that's -

CHAIR - Just a second. We've still got the original Project of State Significance on track in February and you're suggesting to us that there might have been some change of process.

Mr KONS - I'm referring to the arguments that have come out through some of your witnesses that at that meeting a decision was made that the pulp mill would be approved by then. I knew that the RPDC process was open ended; it was a concern that I had that it could have gone on for 10 years and not be forced into making a decision. So I'm saying the comments that came out that a process or the pulp mill would be approved by May is simply ridiculous.

Mr MARTIN - You're referring, obviously, to the comments made by your driver at the time, Mike Hawkes?

Mr KONS - That's right.

Mr MARTIN - And you would have read in the media his comment that you came out of that meeting with the Premier and - I haven't got the quote in front of me - the fact that the pulp mill would be approved by May. Are you saying the driver's completely made that up?

Mr KONS - Well, you forget, with due respect, what he said to you last week. What I'm saying is that this guy's talking about what was said over a year ago. I find that hard to -

Mr MARTIN - I'm not forgetting what he said last week. I haven't got the exact words but I certainly can't forget what he said last week.

Mr KONS - Look, I'm refuting that. I'm refuting that I said those words to him.

Mr MARTIN - So he's completely made that up? He's committed perjury?

Mr KONS - I'm not going to call the guy a liar because you're asking me to. I'm just saying I refute that the Premier would have said that to me or that my recollection of that meeting was that the pulp mill would be approved by May. As I said, the concern that I had with RPDC was, as it was with other processes that were involving projects of State Significance, that it was open ended. You can't have legal processes open ended.

Mr MARTIN - Steve, at that time, given the speculation in the media and given the fact that Parliament was sitting that week and, as you said, you hadn't seen each other for a month

or so, are you seriously suggesting to me that the Premier, given that we both know that this pulp mill was his legacy to Tasmania, didn't even raise the subject of the pulp mill with you in this meeting at his house?

Mr KONS - As I said, I was the minister for RPDC and RMPAT and if he had said to me something about the pulp mill or the processes of the RPDC or RMPAT or how they were working, I simply cannot recall those comments, so I'm saying the fact that I can't recall them means they probably were not discussed and that's it. As I said, the reason I went out there is that I was very interested in having a look at his house. I have a real passion for heritage. I'd never been out there and I was happy to be out there. I had a couple of beers, a chat in the house; we probably talked about Cabinet or what was going on with the world.

Mr MARTIN - You couldn't talk about Cabinet at that time without talking about the pulp mill, surely?

Mr KONS - Sorry?

Mr MARTIN - You couldn't have had a conversation with the Premier at that time without talking about the pulp mill.

Mr KONS - No, I didn't. I don't think I talked about the pulp mill with him. It was his interest, not necessarily mine. My interests lay elsewhere. My interests lay in -

Computer malfunction.

Mr KONS - As I said, my serious concern in the process, and always has been with the RPDC, is that when they received terms of references they were never given specific time frames to make the decisions by and I'm surprised people with legal expertise there didn't say that in law you need certainty of time. That was the only concern I had with RMPAT and RPDC.

Mr HALL - Steve, do you think, regarding Mr Hawkes' comment regarding that allegedly you said to him that the Premier wanted the process completed by a certain time, that in your conversations with him at a later stage it might have come up?

Mr KONS - Greg, as I said, the concern I've always had is about the time frames. If the former Premier had said that it would be done by May, I wouldn't have agreed with that, if he did say that, because I knew that these guys could have been going forever. I have a sceptical view of some of these committees and organisations that run these processes. It is like consultants, sometimes it is great, you get an open-ended brief no time to report on so you might as well milk the process. This was going to go on forever.

Mr MARTIN - Steve, just before we leave this, you have completely contradicted the evidence given under oath by the driver.

Mr KONS - I do not know what evidence he gave you. I am only going on what I read in the newspapers.

Mr MARTIN - Basically he said that you came out of the meeting with the Premier and said that the Premier had said the pulp mill would be approved by May.

CHAIR - And that is what has been reported.

Mr KONS - I do not recall that discussion with the Premier. The fact that I do not recall it, I refute it because he had no way of being in control of that process of changing it. It was beyond his control to say that. There is a legislative path undertaking a project of State significance going in this direction. For him to say it is going to end up there is extraordinary. He never knew the final point of it anyway.

Mr MARTIN - So what was your relationship with Mr Hawkes like?

Mr KONS - It was good.

Mr MARTIN - Right through? Did you have a falling-out at some stage?

Mr KONS - No, never.

Mr MARTIN - I am just wondering why Mr Hawkes would say what he said if -

Mr KONS - I have to say there were two relationships going in parallel. One was with me, the other one was with Mr Burch. The one that he had with Mr Burch I believe was much closer than the one he had with me. I did not have breakfast virtually every day he was in Burnie or lunch or go around and stay at Mike Hawkes' place overnight - those sorts of things.

Mr MARTIN - So you think Mr Burch might have influenced -

Mr KONS - I cannot say. I did not interfere - I did not abuse the fact that Mr Hawkes was my driver. He drove me down here, drove me around. Most of the time in my electorate I drive myself. Even down here I did not impinge on his time. He had another job that he worked at in a restaurant down in Sandy Bay at nights. So it was on a very rare occasion that I would use him out of hours. We had a good relationship. And with the background that I come from - you forge good relationships with your employees.

Mr MARTIN - At any time prior to March 2007 did the then Premier ever indicate to you either directly or indirectly that he personally wanted the pulp mill approval process completed by a certain time?

Mr KONS - I do not think so. As I said, he had no control in that process. I had probably expressed to him the view that I have in Parliament that any legal process needs a time line. This did not have it. That was a fatal flaw. I think there were other processes that the RPDC is involved in that have fatal flaws, because they can go on forever without a decision being made.

Mr MARTIN - You had the discussion with the Premier about those 'fatal flaws' and discussed it -

Mr KONS - I have always expressed that. I have always said that of any of the projects - whether it was Basslink or whatever - I do not think they ever had a final date where a decision had to be made.

Mr MARTIN - So in relation to the Premier's pet project, the pulp mill, and his seeming frustration that it was taking forever and that there was no strict time line, before March 2007 did you ever have this conversation with Mr Lennon about his frustrations over the timetable and whether there were alternative ways or any means of bringing it to a conclusion?

Mr KONS - I think it was probably common knowledge around the place that that was a fatal flaw. I presume that my departmental secretary was aware that this thing could have dragged on forever.

Mr MARTIN - Did you ever have that conversation with the Premier about that though?

Mr KONS - I had many conversations with the Premier - many, many conversations. To get the details of each one would be something that you are asking me to go through every conversation I had. There were many conversations. It was one of those conversations. As a lawyer, I know time lines are important. I would have certainly expressed that view. I have said it in the Parliament as well.

Mr MARTIN - All I am asking is whether it -

Mr KONS - I probably would have told him that that was a fatal flaw in the process, that there was no time frame and it was beyond our control.

Mr MARTIN - I am sure you would remember if the Premier then had a conversation with you about whether -

Mr KONS - Why are you sure? How can you be sure?

Mr MARTIN - Because you were Deputy Premier, he was the Premier, this was the biggest project, it was his legacy to the State and you were Planning Minister. It was your body. I know it is under the control of the Premier in relation to this project but, as you said, you had a passionate interest in the planning and the RPDC. You would surely remember whether you had a conversation with the Premier about how you could bring the pulp mill assessment to a -

Mr KONS - No.

Mr MARTIN - quicker conclusion.

Mr KONS - No.

Mr MARTIN - You can't remember that?

Mr KONS - No. As I said I knew that there was no timeframe and that this thing could have dragged on forever.

Mr MARTIN - Did the Premier ever ask you to come up with ways -

Mr KONS - No.

Mr MARTIN - of short circuiting things?

Mr KONS - No, no.

Mr MARTIN - You are saying he never asked you to do that?

Mr KONS - No.

Mr MARTIN - And you never had a conversation with him about that?

Mr KONS - No. There is no way that I could have come up, I mean if he wanted a different process he could have gone to his department and they could have gone that way and that is the way it appears to have happened. He asked his departmental secretary how we could change this process. I believe that that is what I would have done if I was minister: if I wasn't happy with the process, I would ask my departmental secretary how I could change this process and they would go and get advice.

There was never a direct or indirect request to me on how to change the process. I mean I was just as surprised as the next man when this thing came up in Parliament and I sat back and I thought, 'Well, jeez this is going to get a rough ride through the upper House' and it didn't. It got approved by the upper House.

CHAIR - Terry has investigated the matters of whether you did or did not have conversations with the former Premier about all of this. When did you first become aware that Gunns intended to withdraw from the RPDC process?

Mr KONS - It would have been, I am not too sure when, but when the Premier would have advised the other ministers or within a relatively short period of time therefrom.

CHAIR - Can you recall -

Mr KONS - No.

CHAIR - the environment -

Mr KONS - I can't.

CHAIR - in which the Premier advised the other ministers?

Mr KONS - No, I-

CHAIR - Was it a cabinet meeting?

Mr KONS - I can't recall. You would have to go back and maybe question some other witnesses who had recollections. As I said it was a busy portfolio. We had plenty on. My responsibility was to make sure that RPDC and RMPAT as organisations were

performing adequately. I felt that they were performing adequately. Unfortunately the time frame got in the way and they weren't able to do their job properly.

CHAIR - You would acknowledge that this is the single biggest private sector investment in the State?

Mr KONS - Yes.

CHAIR - In the State's history?

Mr KONS - Yes.

CHAIR - As Planning Minister, what was your take on that particular project in terms of its significance to the State?

Mr KONS - I was sceptical about the initial estimates of job numbers when they first came out. I think there was a number mentioned of about 12 000 people being involved directly or indirectly in this project. I found that hard to consume.

I knew there would be a number of jobs but if the formula is one job per \$150 000 of capital expenditure you do the numbers from there. That is probably going on economic modelling from about five, 10 years ago so I just would have divided the project's costs by 150 000 and worked out an approximate number. I mean, you know, I don't think any politician on our side or the Opposition - or even the Greens - ever questioned some of these numbers that were flying around. I believed a couple of thousand, yes.

CHAIR - Given that it was a significant project, what interest did you take in the fact that the Premier advised you as a minister and other ministers at some time that Gunns was withdrawing from the RPDC process? Did you consider then that the project was dead or did the Premier indicate to you that there was going to be a new process developed?

Mr KONS - I could understand Gunns pulling out of that project like any other developer pulling out with the frustrations that they would have developed.

CHAIR - Hydro suffered the same frustration with Basslink, I might add.

Mr KONS - Yes well, you know, what do you do? You sit back, you think well they are pulling out of the process, well that is the end of it. It wasn't.

CHAIR - Did you think it was the end? You are the Planning Minister.

Mr KONS - As I said, I mean as far as a project is concerned I looked at some of the pulp mills in the world on a trip that I went on and anywhere else these things get a guernsey. Everyone believes in science and science being able to overcome problems. In this country unfortunately we pay lip service to science.

Everyone says great but when you put these projects up for scrutiny everyone runs a million miles away. I thought that a company like that would certainly be frustrated with our planning processes but possibly the fault lay in the fact that it did not have time frames within it.

They probably went in as proponents with an expectation that they would get a good outcome within a reasonable period of time, whether yes or no. The fatal flaw was that as a proponent they were expecting a time frame and there was no time frame.

CHAIR - Back to the question. When the Premier advised you and other ministers that Gunns were withdrawing, did you as Planning Minister believe then that the project was dead - finished- because they were withdrawing? Or did the Premier advise you and other ministers at that time that there would be a new process developed?

Mr KONS - I cannot recall the specific time but it would have been done within a relatively short period of time of their withdrawing and a new process being put in place.

Mr MARTIN - Same day?

Mr KONS - I cannot recall. I asked the question of people they say how can you forget and I say to people what did you have for breakfast last Monday? It is the same sort of thing.

Mr MARTIN - With due respect what I had for breakfast last Monday is not quite as important as the pulp mill, is it?

Mr KONS - I am not fixated on the pulp mill like you may be.

Mr MARTIN - You were not at the time?

Mr KONS - No.

Mr MARTIN - As Deputy Premier and Minister for Planning.

Mr KONS - No. It was in the hands of Minister for Economic Development and the Premier's project. My responsibilities were to see that RPDC and RMPAT were doing their job as best they could and that people that were going before it were not getting held up inordinately. I have a bigger life than one project or one thing being the centre of my universe. Others may be fixated on the pulp mill, I am not.

As a project I would like to see it get up because I have taken the time and effort to have a look at pulp mills around the world and to see that they do work efficiently and effectively, but for me to hate the pulp mill because I hate one person, no. There are bigger things in this world than Gunns pulp mill. For two, three, four, five years now this State has been fixed on one project.

It shows a level of immaturity. There are plenty of other things, there is poverty, education, planning, jobs and I do not want to see us return to the late 1980s when I returned to Tasmania or the mid-1990s when people were suffering and unemployment in this State was 14 per cent. Anything that brought economic development to this State was welcome if it was done in an orderly proper process.

CHAIR - It was a major project. As Planning Minister, did you give any instructions to your department in terms of keeping you informed as to the progress of the application?

Mr KONS - I did have a couple of meetings with the Julian Green. I think it was two or three meetings but I believed that if I continually got Julian Green to come and talk to me about that process when it was meant to be an arm's length process with an independent body having a look at it, it might have been misconstrued. So I think two meetings at the most attended once with Peter Pearce my planning advisor and possibly another one and it was left at arm's length from there.

If I had had a number of meetings with Julian Green I would have been judged and it would have been labelled as 'Kons interfering with an independent process'. So they were doing their thing and my only reservation was, as I have said many times, time frames. I am a stickler for time frames, because certainty is something that needed in this process and it was not happening.

CHAIR - You have indicated that, as Deputy Premier, you and the then Premier, Paul Lennon, communicated regularly and hence the meeting at his house and so on.

Mr KONS - Regularly as in office to office not on a personal level. It was the only time I met with him at his place during my entire term.

CHAIR - Yes, in the work environment. Did Mr Lennon ever convey to you any instructions which he expected you to carry out through other people?

Mr KONS - Like?

CHAIR - Can you recall any instances of significance where other people were acting on Mr Lennon's instructions and who conveyed those instructions to you?

Mr KONS - If you can narrow something down.

CHAIR - It is just a general question. There is nothing specific that I am trying to narrow down at all.

Mr KONS - Plenty of people tell you things or request things of you.

CHAIR - Significant things?

Mr KONS - What is significant to you may not be significant to me. I am not trying to avoid your question but I would like it narrowed down a little bit. It is just like saying anything. You are leaving it too open.

CHAIR - Linda Hornsey was the Secretary of DPAC and therefore close to Mr Lennon and no doubt carried out lots of his instructions. Were there any significant matters which she was requested to convey to you?

Mr KONS - Like what?

CHAIR - Regarding the pulp mill, regarding the appointment of a magistrate, regarding the appointment of a Solicitor-General.

Mr KONS - We did discuss the magistrate. As I said, I made my statement about the process of a magistrate and this is well known and of shredding the document so if you have a specific question you want to ask about something I am quite happy to answer, but did he ask you to do something or did she ask you to do something without having it narrowed down a little bit is a little unfair on me. If you have a specific allegation or concern I am not going to hold back, but fair is fair to make it easy on me to answer your question. I can say no, and then you can say, 'But what about this incident' and these things happen over a long period of time.

CHAIR - The telephone call which came to your office with regard to the Simon Cooper recommendation, which you had endorsed with a phrase before you signed it - you subsequently got a telephone call, you have been advised that it was Ms Hornsey and you could not before at an earlier time say that it was her or Lisa Hutton.

Mr KONS - There were two people that may have called me on that day and I stated both of those people.

CHAIR - Yes, you did.

Mr KONS - I was advised that it was Ms Hornsey that rang me at that approximate time and I said, 'Well, if that is the advice we are giving, not a problem with it at all'.

CHAIR - What was the advice?

Mr KONS - To shred it.

CHAIR - Was that advice or was it a request?

Mr KONS - It was advice. I had some reservations. Mine was the perception, as I have said, the perception in my mind simply because of the fact that Mr Cooper was attacked by the Opposition over his appointment to RMPAT, and the other one which I had a good working relationship with the Law Society. They would have liked to see someone as a full-time practising lawyer in that position and the fact that I did not know the other two preferred candidates I was pretty open to it. I had not practised law, I had been out of the State, I had been in other ventures since I came back and of those 25 candidates that appeared on the list I probably knew about three or four so anyone that was prepared to give me advice or someone I could go to I was quite happy to take advice. She was one of the senior public servants whose advice and savvy I trusted and I was comfortable in seeking her advice on other occasions about other issues.

CHAIR - In your opening statement you indicated that at all times you could have nominated anyone.

Mr KONS - Yes, not even on that list.

CHAIR - That is true.

Mr KONS - Anyone, even not one of those three.

CHAIR - How was it then that Simon Cooper was the nominee?

Mr KONS - You could ask the Chief Magistrate, Mr Shott, and Lisa, my departmental secretary. There were candidates from interstate. There was one candidate on that list that I went to uni with and who came and saw me in my office. I specifically said to him that the fact that he was outside the State was certainly a no-go zone as far as I was concerned and the fact that his boss had spoken to me about how his application was going was another factor that excluded him. We needed someone who was Tasmanian and the list came forward with those three names endorsed by Arnold Shott, and I have full respect for Arnold Shott in his judgment. Cooper's name was on it, as were Mr Willee's and another gentleman's.

CHAIR - Not Mr Willee because he was retiring.

Mr KONS - Sorry, Mr Hay.

CHAIR - Yes, and Mr Daly. So you have no idea as to how it was that the document which arrived in your office via e-mail actually had Simon Cooper as the nominated person?

Mr KONS - I do. The process was that there was a short list provided by the Chief Magistrate and my departmental secretary. I have said this and I don't know if you were listening when I was doing the statement.

CHAIR - Yes, I was.

Mr KONS - I said that there was a short list provided by the Chief Magistrate and my departmental secretary - I don't know if my departmental secretary went to others - but they provided a short list of names and those three names were on it. I had a choice of picking one of those three, otherwise I would have had a choice of picking one out of 25. A short list, make a decision.

CHAIR - But in response to my first question, you said that you do not know how it was that Simon Cooper was the nominee and that 'I'd have to go and ask Lisa Hutton and Arnold Shott'. You are now telling the committee that you made the decision about Simon Cooper.

Mr KONS - No, being on the short list?

CHAIR - Yes, the short list.

Mr KONS - The short list was prepared by them.

CHAIR - Yes, the short list of three. How did Simon Cooper become the nominee?

Mr KONS - I would have said, 'Okay, give it to Cooper'.

CHAIR - You would have said, 'Okay, give it to him'? On whose recommendation?

Mr KONS - On the short list of three.

CHAIR - So you just looked at the short list and you said, 'Okay, give it to Cooper'?

Mr KONS - Yes. I thought giving it to Cooper would get a smooth run through Cabinet, but I still had those reservations about the perceptions. When Linda Hornsey contacted me about it and said, 'Those perceptions are real', I said, 'Okay, well wipe him off'. It didn't worry me which one of those three got it. They were all suitably qualified and I would have been able to say to the public, 'x, y and z were shortlisted, x, y or z got the job'.

CHAIR - In what context did you endorse the document on advice provided by the department?

Mr KONS - I wasn't happy with the wording of the minute and it was on advice that came from my department, the three names. I think I have it here. 'You have since indicated that it is your wish to appoint one of these three' - and I changed that to say 'You have since indicated on advice the department has provided to you'. So we are just clarifying that sentence. Advice came to me on those three. It wasn't me picking anyone out of the hat. The department provided three names and I wanted to clarify that that was the process. It was not me saying one of the 25. There was a process in between applications and choice, the department providing advice.

CHAIR - But you made the decision that Simon Cooper would be the next magistrate?

Mr KONS - Yes. I was open to taking advice and it wasn't necessarily so that it would go to Cabinet and be approved. Until it had gone through the Cabinet process and Executive Council the appointment wouldn't have been concrete.

CHAIR - So when did you make that decision that Mr Cooper would be the magistrate?

Mr KONS - On that day. As I have said, along the process I was quite happy for a senior bureaucrat to provide me advice. I did not know any of these candidates personally, other than Mr Cooper in his role in RMPAT and RPDC, and I was quite happy and willing to take advice, which was always my right. I think that is one of the issues that I am currently concerned about, that ministers will find it difficult to exercise independent judgment simply because of the process and what has gone on with this appointment. You will tend to have ministers accept the advice of departments rather than exercising independent judgment.

Mr MARTIN - Steve, I am a little confused. You just said that you made the decision to appoint Cooper on that day in August, yet in your statement, which agrees with what has been said by other people, you said that you told Cooper back in June that he had the job.

Mr KONS - I told him along the processes of knowing that RPDC and RMPAT were important functions within the portfolio, very important to me, and to make sure that he had all loose ends tied just in case, indicating that his getting it was a possibility. At no point in time could I have presumed that this thing would go to Cabinet, would be approved and that would be the end of the day.

Mr MARTIN - Really.

Mr KONS - We were very concerned, as was my departmental secretary, that we had a number of vacancies. We had RMPAT without a person, RPDC with Simon in an acting

capacity. If he were to move out as the Chair of the body we would have two positions vacant at the same time, and trying to find qualified people to act in those two positions would have been difficult. My intention was to tell him that if he did get the guernsey he must make sure he tidied it up. It was forewarning someone that they are in with a very good chance of getting the job.

Mr MARTIN - What you are saying is that in June you told Cooper?

Mr KONS - I could not and would not have told anyone that they were going to get the job until it had gone through Cabinet, because something could have intervened between then and whenever the appointment was made. The Executive Council makes the ultimate decision. I put a recommendation forward to Cabinet. It is not a case of putting a person's name forward and everyone saying, 'Okay, we will give him the job'. You have to convince your colleagues that that is the best and most appropriate person. Some of my colleagues may have had reservations about these perceptions if his name had gone forward.

Mr MARTIN - Did you not tell Cooper on 7 June that he had the job?

Mr KONS - The way I would have told Cooper, and the way I recall it was that I told him he was in with a very good chance, that there was high probability that he would get this job. As I said, on his performance and what I had seen of the work and the way he fronted up to his obligations in RPDC and RMPAT, he was really good, so I was giving him a highly flagged invitation that he may be the next magistrate. I did not want him to go into a job, leave loose ends everywhere by appointing him as a magistrate and then we would have a planning system in disarray because the Chairman was involving himself in too many decisions so the planning system hits a bottleneck.

CHAIR - It might be important, members, to go down this path because Steve wanted clarification of my question regarding who might have provided the instructions and so on, so we investigated that matter of Linda Hornsey. With the concurrence of members, I think we will try to go back into the chronology of what might have unfolded, so we will go back to March 2007.

Mr KONS - This is still on the terms of reference being the best practice for an appointment of a magistrate.

CHAIR - Absolutely.

Mr KONS - Would you like me to tell you what I think is best practice for appointment?

CHAIR - We will get to that because that is going to be an important deliberation for the committee when we -

Mr KONS - Certainly, because I am really looking forward to seeing the recommendation s that come out.

CHAIR - Let us go back to March 2007, which was prior to Christopher Wright's resignation from his role of chairman of the assessment panel for the pulp mill. At that time, Steve,

were you aware of the concerns that Mr Wright had about the critical non-compliance of Gunns' submission to the RPDC for the pulp mill approval?

Mr KONS - He did make some statements in public about non-compliance with those conditions and I think he, as a senior legal person in this State, saw that the panel that he was heading had a problem without defined time lines and wanted to get out. There was no end to this process and it would have been better for him, in my view, to have come out and said that the panel needed to go back to the minister, or to seek Parliament's approval - to put a time frame, a line in the sand as you may call it - on when this process has to finish. He took the easy way out and resigned from that process. The fatal flaw was not in compliance or non-compliance. If there were fatal flaws, they should have handed down a report that said this thing is flawed, we are not recommending it.

CHAIR - You said that you became aware of that through media coverage.

Mr KONS - I had no direct involvement with Justice Wright.

CHAIR - Or with anybody else? Did anybody else alert you to the problems that were foreseen with the critical non-compliance?

Mr KONS - As soon as Julian Green left RPDC the involvement literally waned simply because of the fact that the process is the minister is here, you have an independent authority there that makes the decision. If the minister goes in and tries to introduce his thinking into their processes you have a brawl and nothing gets resolved and all it is is a brawl that never ends. I would like to see that the minister and the RPDC have a better working relationship and the RPDC actually receive some instruction, not on making decisions, but on processes of making decisions. For the minister, that relationship was not there. That was an issue that we have had and we do have with the RPDC. That is the basis of the current review that Greg Alomes is undertaking on how we can create a closer synergy between the minister, the government planning division and the RPDC. We will not move forward as far as planning is concerned unless those three parties and local government - four parties - are working together to resolve issues.

CHAIR - Okay, so it is clear by your evidence then that you were not made aware by anybody that Mr Wright had these concerns.

Mr KONS - No.

CHAIR - Were you aware then on 9 March 2007 Linda Hornsey had rung Simon Cooper and required or asked him to desist from writing to Gunns about their critical non-compliance?

Mr KONS - On the 9th of that month, no.

CHAIR - When did you become aware of that?

Mr KONS - When it flared up in the media, in Parliament - Parliament and media, same time.

CHAIR - So do you have any recollection of when that was?

Mr KONS - No.

CHAIR - You did not do any research to prepare for that, some time lines to share that with the committee?

Mr KONS - If the Secretary of the Department of Premier and Cabinet has an issue with Christopher Wright that is her issue, not mine. It is a project of State significance. It is separate from my role as minister for Planning and the minister for RPDC and RMPAT.

Mr HALL - I suppose I should simply follow on then from the Chair's question there as far as Steve being the responsible minister for planning at the time. You would think it would have been incumbent on Gunns to actually ring you and tell you that they were pulling out of the process.

Mr KONS - One of the hallmarks when I was a minister was the fact that I was down here and there was never a minute lost for anyone that wanted to have a meeting with me that could not have one. They could ring up and have a meeting within 10 minutes if there was time available.

Mr HALL - Do you think, in hindsight, it would have been more appropriate for John Gay to have contacted you?

Mr KONS - I still could not have intervened because they were independent of me. It was a planning application they were dealing with. I would have found it very difficult to get involved in that because then they could have been saying - you know. And as I said, in this environment, anyone who talks to anyone in this State is considered as nobbling or being a mate or exerting pressure - those sorts of things. I kept that role separate. We were looking at the legislation of the RPDC, not the internal functions of a panel that was considering a project. That is the way I approached it. Maybe I should have got more involved. Maybe I should have been directing them and telling them what to do, and then I would have been in trouble like others who people said were exerting undue pressure on the RPDC.

CHAIR - It is just on 10 50 a.m. so I think we will vacate the room. For those who want to join with us at the front of the building, the door will be locked so everything here will be secure.

Committee suspended.

CHAIR - Members and Steve, the hearing is reconvened. We were at the stage of discussing the matter of Linda Hornsey phoning Simon Cooper to ask him to not send the letter to Gunns. Greg, had you finished your area there? You were asking a question of Steve at that time and if you had finished I wanted to come in with a situation there if I may.

Mr HALL - Yes, do that, while I gather my thoughts.

Mr KONS - I had no foreknowledge of that letter until it became a public issue in the general domain.

CHAIR - When it became a public issue did you raise any questions with anybody as to how it was that Ms Hornsey became aware that the letter was in existence?

Mr KONS - Oh yes. It came in Parliament. You're there, sitting in Parliament for a day, you do your parliamentary duties and you move around. It was a project of State significance. They had a role within their department in that and I presume that what they did was their business, not mine. I was certainly at arm's length from the panel at all times.

CHAIR - But it was your department - the RPDC - which, in an independent way quite rightly, was going to send out the letter to Gunns advising them that their submission was critically non-compliant. Did you -

Mr KONS - I had no knowledge of that letter going out.

CHAIR - No; it didn't go.

Mr KONS - Well, whether it did or didn't I wouldn't have expected them to say to me that they're going to be sending out a letter to someone.

CHAIR - No, but were you concerned that supposedly somewhere from within your department, Ms Hornsey became aware that the letter was in existence? Surely, it would have been a confidential-type process. Arm's length?

Mr KONS - Yes. I don't know where she found out that from. I certainly was not aware there was a letter being prepared to be sent.

CHAIR - Were you concerned that Ms Hornsey found out that a letter was to go out?

Mr KONS - I was concerned. As I said, I stayed away simply because of the fact that an independent process is an independent process and a minister does not get involved in it. I didn't get involved with Julian Green, as I said, when he was running the process. All I wanted to know was, 'Can you give me some brief idea of what issues are confronting you?' For example, one that he gave me was getting approvals from local government for things that had to be done in the public good that took six months. That sort of stuff - process.

CHAIR - Let us focus on this issue. Linda Hornsey phones Simon Cooper to intervene in an independent process, which he is about to embark upon. He is operating in your department. Did you express your dismay at Linda Hornsey's intervention to anybody?

Mr KONS - Well I was surprised that something like that would have happened.

CHAIR - You were surprised. Did you express that surprise and dismay to anybody?

Mr KONS - No.

CHAIR - You just kept it to yourself?

Mr KONS - Yes.

CHAIR - You did not ask anybody to make any investigations as to how it got into Ms Hornsey's knowledge?

Mr KONS - If it happened it happened and it became public knowledge so, you know. I would have presumed that someone like Mr Cooper, in whom I had full confidence over the way that he was running RPDC, would tell someone who had tried to intervene or asked them to do something to go away. There is no law saying you can't try to influence someone to do something that at the end of the day -

CHAIR - If you are entitled to know about it.

Mr KONS - Yes. No, I didn't know that she knew.

CHAIR - So you were concerned -

Mr KONS - Yes.

CHAIR - she could come into possession of that -

Mr KONS - When I found out about it in parliament I mean I was concerned, yes.

CHAIR - You took no action to mention that concern to anybody?

Mr KONS - It had happened.

CHAIR - Lots of things happen and ministers follow up with specific instructions to determine what the process is.

Mr KONS - Well I believed, the process was more a project of State significance and lay in that realm rather than my stuff. My stuff was more dealing with local government planning applications and the general run of things which account for 99.9 per cent of the functioning of the RPDC and RMPAT. Those are my concerns. If it is one project - and that is probably the difficulty of projects of State significance being in another department and under the authority of another minister - where do you find the overlap between the two?

Mr MARTIN - Steve, even given that it was, in this particular case, under the responsibility of the Premier, not the Minister, as a member of Cabinet and as a member of the pre-cabinet group of four - so one of the senior decision makers in the Government - are you saying you didn't take an interest in other matters before Cabinet from other portfolios?

Mr KONS - Yes I did. I take an interest. I don't actively intervene in everything that happens. As I said this project, Terry, was different from the normal planning stuff. Ideally I think projects of State significance should be with the Minister for Planning. To have this separation where one deals with one planning issue and another one deals with another may not work and that is probably where, if you are trying to find out where the boundaries of one minister's responsibility lie as opposed to another's, there is possibly a failing. I have my views on how I would like planning matters dealt with. Another

minister, another portfolio dealing with projects of State significance, may have his views. Where you overlap -

Mr MARTIN - I suppose where we are having some difficulty is that you are kind of washing your hands of it a little bit and saying it was the -

Mr KONS - Yes.

Mr MARTIN - Premier's responsibility rather than yours. Yet you were a member of Cabinet. All of these issues, I presume, were discussed by Cabinet?

Mr KONS - Well no - I think the way I am trying to explain it is that we have an independent body making an assessment process. It is not in my purview to ring up Mr Wright or Simon Cooper to say there is a bit of an issue here.

Mr MARTIN - That is exactly right and that is a really good definition of ministerial responsibility -- members of parliament should not interfere in statutory independent processes. But the issue the Chairman is questioning you about is exactly where that has happened. Where the Secretary of the Department of Premier and Cabinet -

Mr KONS - As I said, I found out-

Mr MARTIN - -seems to have unilaterally decided to interfere in the process.

Mr KONS - I found out about it I think when it was raised in Parliament by one of the opposition parties that that process had happened. That is when I found out about it. It was too late to sort of say, well, you know leave them alone. I expected that everyone would stay away from the panel.

Mr MARTIN - With hindsight and now knowing that that transpired, although you didn't know at the time, you're obviously very critical of the fact that the Secretary of the Department of Premier and Cabinet -

Mr KONS - I am not happy. I think they were charged as an independent body to make an assessment of a project. They should have been left to make a decision - with that proviso, as I said, about a time frame. The rest of it should have been in their ballpark. If they determined that the application was critically deficient, they should have owned up and said, 'It's deficient; we're going to knock it off here and now or you must provide further information.' It was always - I mean, for me to contact them about a specific planning application that they were dealing with was something that I generally would not do. I mean, you leave it to them. With your council experience, you know that you don't ring up the planning manager and say that you're dealing with Mr X's house. You leave it to them to provide advice to you as minister -

Mr MARTIN - Absolutely.

Mr KONS - or alderman, otherwise you could be seen to be pre-judging a project.

Mr MARTIN - Yes. So, given that on 14 March, which is the day that Gunns pulled out at 1 o'clock, there was a Cabinet meeting that night followed by a caucus meeting, had you

known of the interference with the RPDC process a week earlier, would that have altered your view on your consideration before PLP and Cabinet that night?

Mr KONS - I think my view was always influenced by the fact that there was no time frame. It was like a runaway train. A process was going on that neither the committee, the proponent nor the objectors knew when a decision would be made, so -

Mr MARTIN - There were time lines in place, though.

Mr KONS - Pardon?

Mr MARTIN - There had been time lines put in place by the RPDC.

Mr KONS - I don't think there was as far as making a decision. They should have, in the ideal world, said to a proponent that you have to provide this information by that date and we will be providing a determination -

Mr MARTIN - Well, I think that happened and I think there's a document that -

Mr KONS - It was a roving feast. It was a pretty unprofessional process as far as the committee was concerned - as far as me viewing the committee running their deliberations.

Mr MARTIN - We're probably moving away from the Chairman's line of questioning.

Mr HALL - So, then the pulp mill assessment process, Steve, was that drawn up by your department or by the Premier?

Mr KONS - I think it would have been DPAC, I'd say.

Mr HALL - Was it?

Mr KONS - Yes. We've got - Justice is a small department that does about half the legislation in the State with only a small number of people. People don't realise the amount of work that the Department does and the resources it has.

Mr HALL - So, you think it was appropriate that that department -

Mr KONS - Well, if anyone was prepared to draft legislation on my department's behalf - if they had to do it, I was quite happy to hand all legislation drafting to other departments if they were prepared to put the resources into it. I think we only had about two-and-a-half FTEs doing things and the legal profession bill of 700 or 800 pages of legislation was being dealt with by our department, so DPAC said they would do it and I said 'great'.

Mr HALL - In your opinion, given the changed assessment process, or if you like to call it the derailed assessment process, did that affect Mr Cooper's standing with the Government, in your view?

Mr KONS - Well, I can only talk about my dealings with Simon and I couldn't have been happier with him and the way he approached RMPAT and RPDC. If other people had issues with him they certainly didn't express those issues to me about his performance.

Mr HALL - Were you aware that the Premier was, perhaps, disappointed or angry with Mr Cooper at the time? Was that ever relayed to you?

Mr KONS - No. I think there was probably more disappointment with the way Justice Wright carried on.

Mr MARTIN - Can you expand on that?

Mr KONS - Well, I think Wright was nominated by Cooper to take over the role and, you know, I would have expected him to grapple with the issue much better than what he did. I thought he gave up and walked away from it. He didn't want to deal with it; thought it was too difficult.

Mr MARTIN - What?

Mr KONS - Well, you're asking me my view.

Mr MARTIN - Yes. You mentioned before that he 'resigned and walked away'.

Mr KONS - Yes. That's the way I perceive it; it became too difficult. He realised there was no end in sight to this, so he might as well handball it and blame somebody else and he walked away from it.

Mr MARTIN - Do you recall him actually resigning before -

Mr KONS - He walked away from it.

Mr MARTIN - That was because Gunns had pulled out of the process.

Mr HALL - Did you talk about his resignation, Steve, with the Premier or Ms Hornsey?

Mr KONS - Wright walking away?

Mr HALL - Yes.

Mr KONS - I saw things that Wright had put in. I saw his bills that he had put in, his claims and all those sorts of things. I saw some petty claims arising from him to get reimbursed, those sorts of things. I thought, 'Not interested in this process, it's a money-making exercise'.

Mr HALL - Did that put pressure on you as a planning minister at the time, the fact that he had walked away?

Mr KONS - No. It was a project of State significance in the realm of another minister and, as I said, I always thought this thing would find problems in the fact that no-one was told when it would be completed.

CHAIR - Steve, following on from what Terry and Greg have just investigated with you, are you aware that Mr Wright, by his public announcements, felt that there was pressure being brought to bear against the independent process to which you have just subscribed, and which was absolutely fundamental in the RPDC structure? Are you aware that he felt, after a visit from Mr Lennon, that unreasonable requests were being made of him to define the time within which the assessment of the pulp mill could be concluded? Further to that, that the only way that could be achieved and the process could be truncated and a defined time delivered would be to dispense with public hearings and that he felt compromised?

Mr KONS - Personally, I think that someone in a very senior position such as that gets paid the big bucks to cope with pressure that may be applied to them and that is why they get paid the big money to make independent decisions and to stand up to people who they think are bullying them.

CHAIR - What should he have done then?

Mr KONS - He should have said, 'Go away'.

CHAIR - Do you think Mr Lennon was bullying him?

Mr KONS - No.

CHAIR - They were your words - he should stand up to somebody who he thinks might be bullying.

Mr KONS - That was my view. I do not know whether I expressed it to the Premier or not. That is why you pay judges and senior bureaucrats big money. They have to deal with issues such as this. If he was not up to dealing with issues such as this, he should have just resigned and walked away. He wanted to make his announcements public and he did, and if he chose to go that way that was his choice but if I were in his position and someone pressured me into doing something, I would have said, 'Well, I can advise you that I'm not interested in your views' and go and do my own thing.

CHAIR - In essence, he communicated that that was what he was going to do.

Mr KONS - He publicly communicated that to the press.

CHAIR - So he did stand up.

Mr KONS - And walked away as well.

CHAIR - As Mr Martin has indicated to you, that is not quite the case because there was no pulp mill to consider subsequent to Gunns' announcement on 14 March.

Mr KONS - That is the way I saw it. My view was - can't stand up to the pressure of it, make public announcements. If he thought it was not the right project to be going ahead and that public consultation should have happened, he had the option of knocking it off. He had plenty of options open to him.

Mr MARTIN - A letter had been drafted to Gunns telling that there was critical non-compliance -

Mr KONS - Wright, I think.

Mr MARTIN - Yes, Wright had drafted that letter and that was not sent because of the interference from the Premier's department.

Mr KONS - I did not know about that letter, Terry, so I have no comment on the letter. And, as I said earlier, I cannot comment on how Linda Hornsey found out about it. I cannot comment on the fact that she spoke to Simon about it or any other discussions that Linda Hornsey had with Simon because I did not know about them.

Mr MARTIN - But, in hindsight, do you think they were wrong actions?

Mr KONS - I would have to place myself in the situation they were in at that point in time and have a look at the context.

CHAIR - Following all of that, you would be aware, Steve, that on 6 June Nick McKim tabled a copy of a letter dated 23 March which Mr Cooper had written to Paul Lennon, and that was obtained by Mr McKim under freedom of information.

Mr KONS - Which letter was that?

CHAIR - Where Mr Cooper wrote to the then Premier expressing his concerns about the intervention, if you like, of Ms Hornsey on 9 March. He penned that letter on 23 March. You have probably seen it at some stage, particularly because it was tabled in the House. Is it a reasonable assessment that that letter is levelling criticism at the Government for Ms Hornsey's intervention on 9 March?

Mr KONS - If it says that I am not going to say no. It is someone's view of the circumstance at that point in time. If Simon believed that other people had interfered in the process and he should be critical of them, it is his call and I respect him for making that call. As I said, I had full confidence in Cooper and I cannot comment beyond saying that. Being his minister, I was happy with the stuff he was doing for me.

CHAIR - Nick McKim tabled that document in Parliament on 6 June. You have indicated that some time in early June you had a conversation with Simon Cooper to indicate to him that he had a chance.

Mr KONS - To prepare himself and that he had a chance.

CHAIR - Did you say to him that he would be the next magistrate and, 'only you, Paul, and I know about this'?

Mr KONS - It would have to go through Cabinet so I could not say that someone definitively gets a job, a promotion or a position.

CHAIR - Were you confident of your ability to convince Cabinet, given his impeccable credentials, as you indicated to the committee earlier?

Mr KONS - As I said, the only stumbling blocks that Simon Cooper had were the self-imposed one of mine, which was only a trivial matter - that he hadn't practised law in a legal office in the State - and generally the way that the Law Society would have viewed it plus the fact that the Opposition had attacked him about his RMPAT role. They were the two critical things that worked against him.

CHAIR - Were you sensitive to the attacks about guarding the RMPAT issue?

Mr KONS - Most definitely.

CHAIR - What was the significance of that?

Mr KONS - I do not know if it was the Greens or the Liberals - one of them made comments that Cooper had got a job with RMPAT, not on merit but on close links as far as being a friend or supporter of the party. That was the reservation I had.

CHAIR - As you said, you were sensitive about that matter, but in your earlier evidence regarding people like Christopher Wright you indicated that in whatever role you have in life you have to be prepared to stand up to people who might seek to impose their view. Were you prepared to stand up and be supportive of your recommendation in Cabinet?

Mr KONS - As I said, I would have put those reservations in. I would have voiced those reservations if it had gone to Cabinet - that this might be a sensitive issue. Although the Cabinet minute came from my department is a standard response in those things - someone, not necessarily political, prepares a document that goes to Cabinet saying that this will not be controversial. I thought it would be controversial, so if it did go to Cabinet either myself or one of my colleagues would have said that this could get an airing if he did get that job. That is plain. There is more being read into the fact that the submission to Cabinet has the stock-standard statement that there would be no criticism about this appointment. That is the advice of an independent person within a department.

CHAIR - You have indicated that the recommendation would have to go through the Cabinet process. I ask you the question again, did you say to Mr Cooper that, 'only you, Paul, and I know about this'?

Mr KONS - I do not think that Lennon ever said to me that Simon was going to be appointed, not directly like that. It had not gone to Cabinet. It had not been prepared. I had not seen the recommendation for Cooper in a Cabinet minute or recommendation until the day it was e-mailed to my office with the three short lists and then I said Cooper, then I spoke to Hornsey, who said this might have the perception issues.

CHAIR - Okay, let us come back to the question. From your best recall can I ask you the question again: did you say, 'Only you, Paul and I know about this', and did you further then instruct or require Mr Cooper to tell nobody?

Mr KONS - What I recall was that I would have told him to get ready, tidy up everything in RPDC because he may be vacating that position and going on to become a magistrate. That is what I recall.

CHAIR - So at no stage your recall -

Mr KONS - That is what I recall

CHAIR - brings to your mind the fact that you had mentioned to him -

Mr KONS - No, it still had to go through the cabinet process and Executive Council. Things do get knocked off in Cabinet because of perceptions, flaws - you find something that another member of Cabinet knows about someone that could knock them out of the process.

CHAIR - I wrote down when you were making your opening contribution that Mr Cooper had represented Paul Lennon as his lawyer - that caused you some concern as well. Can you recall when that was?

Mr KONS - Sorry?

CHAIR - When was it that he represented Mr Lennon?

Mr KONS - I am not sure - that was it, and Simon's father I think is known in Labor circles from what I gather, but that is just stuff I have read through the press.

CHAIR - So they were reservations that you had. Nonetheless, in your own evidence, you made the decision to appoint Simon Cooper?

Mr KONS - I did not appoint him.

CHAIR - But there was a cabinet minute produced.

Mr KONS - Which could lead to an appointment - that cabinet minute never went forward.

CHAIR - It was your recommendation?

Mr KONS - Yes, which was changed.

CHAIR - So what was the content of the telephone conversation from Linda Hornsey to you when you had the document?

Mr KONS - She more or less reinforced my view that this was a very serious concern and it would flare up, which gave me relief, if Simon was appointed, that I would not have to go out and bat the argument that had been raised earlier about RMPAT. I think he was appointed head of RMPAT prior to my being planning minister, and someone else would have had to bat for his credentials - that appointment. So there was relief from trying to explain why this guy was given the job when he had those close links. There was nothing sinister in the fact that he did have those close links because on credentials he was up there with the best of them.

Mr MARTIN - The two or three months leading up to that - at least back in June - whatever words you used to Mr Cooper in a phone conversation and the face-to-face meeting at Maldini's, you were clearly of the opinion that he was the best person for the job?

Mr KONS - I was given indications that he would be a preferred candidate to get that job.

Mr MARTIN - Clearly from the evidence and what you have said today, it must have been in your mind that he was your preferred person to get the job despite the reservations.

Mr KONS - I still had not received the vetting of the Chief Magistrate in my department.

Mr MARTIN - Yes

Mr KONS - So if that was not part of the process I probably would have given it to him and then had to think about how I would bat off the allegations about him being close to the Labor Party.

Mr MARTIN - But even on that day in August, when you had the cabinet minute and had signed it, even at that moment you must have seen Cooper as the best person for the job?

Mr KONS - The best person for the job, but there would be an issue with perception.

Mr MARTIN - I think from what you have said that you would have wanted the best person in the job, wouldn't you?

Mr KONS - Yes, it wavered over that, but for a magistrate's position you do not want a magistrate walking in day one and someone banging on about the fact that he only got the job because he was a lackey of the Labor Party.

Mr MARTIN - But despite those reservations, you had still got to the point of signing the minute.

Mr KONS - Yes, three people on that list.

Mr MARTIN - And you still signed the minute with Cooper as your preferred recommendation.

Mr KONS - Yes.

Mr MARTIN - So right up until that minute you thought he was the best person for the job?

Mr KONS - Yes.

CHAIR - Did you communicate your view of that to Lisa Hutton, your departmental secretary?

Mr KONS - Yes, I think I did.

CHAIR - You told her that Simon Cooper was going to be your recommendation?

Mr KONS - Yes. I would have had discussions with Lisa about the fact that this would be an issue with Cooper, the close links to the Labor Party, but whether that was the thing that put it over this side or that side, I was still wavering on that. If he was not -

Mr MARTIN - You were not wavering, with all due respect, you signed the minute.

Mr KONS - I still had that reservation in my mind, that it was not going to be an easy one - I announce it, put out a press release, he gets annoyed, he goes to the bench and it is sweet sailing from there on. I still thought that if he got it I would still have a bit of work after that because someone would raise in Parliament the fact that he got the job. I cannot recall the argument that happened when he got the RMPAT thing but it probably would have been a couple days of ranting about 'Cooper's a Labor mate and that is why he got the job'.

Mr MARTIN - I understand those concerns, yet despite those concerns and despite the toing-and-froing either way, the pros and cons either way, you cannot say you were still wavering when you actually got to the point of signing the minute.

Mr KONS - It did not go forward so the thing could have been withdrawn up until 10.30 Monday morning of Cabinet. It still had some days to go before it was produced as something that people had to decide on. It never got to that stage.

Mr HALL - If we could just go back, Steve, to the date that Mr McKim I think tabled the letter on 6 June and the next day I think you had the dinner at Maldinis with Mr Cooper and one of your staff members and you advised Mr Cooper that the appointment would be delayed. How did he respond to that?

Mr KONS - I am not too sure with those dates.

CHAIR - Yes, 6 June.

Mr KONS - I will not go into dates but I think at that meeting I kept on reinforcing that message, to be prepared because something might happen. If I told him that it was going to be delayed, quite rightly, he would have been upset because -

Mr HALL - At that stage Mr Willee was then told that he would have to stay on for an indeterminate amount of time.

Mr KONS - For some time after that. I think it is a travesty that people miss out on these positions because of public perceptions about them.

Mr HALL - Yes. I suppose it leads to the question that I wanted to ask then. Have you any sort of idea why or how the media would have contacted Mr Cooper, which apparently they did, indicating that he was going to be removed?

Mr KONS - No idea, Greg.

CHAIR - Maybe if I could just help there, Greg. You had indicated that the day after Nick McKim had tabled this letter, by Steve's evidence, that there was this meeting at

Maldini's. That, I understand, came at a later time and the next day on the 7th is when you phoned Simon Cooper and he was on annual leave. I think you indicated that in your earlier -

Mr KONS - I might have mentioned something, yes.

CHAIR - Yes, he was on annual leave. Were you aware that he was on annual leave from RMPAT?

Mr KONS - I am not too sure but I have his mobile number and I rang him on his mobile because I did not make a practice of picking up the phone and ringing people like Simon like that. I always did these sorts of things through the office. When we were there I would get Peter Pearce or someone and tell him there was an issue and could he contact him to come in and have a meeting or discuss this matter or that. We were developing a really professional relationship along the lines of him doing a very good job and I was very impressed with the fact that on instruction he would provide me advice on how to make one organisation better within a fortnight - a comprehensive analysis on how to make it better was produced.

CHAIR - Okay, so you phone him because you feel quite satisfied with your decision to recommend him as the magistrate. You tell Lisa Hutton of that as well.

Mr KONS - I'm not too sure of the time frame. It was probably after that; it was closer to 8 August.

CHAIR - Did you say 8 August?

Mr KONS - I'm not too sure. It was closer to the time of signing. I got the short list and picked his name out of the short list which would have been a relatively short period of time. That's all I can recall.

CHAIR - Okay. That process unfolded, Greg indicated to you that it was the day after that letter, which is critical of the Premier, was tabled in Parliament.

Mr KONS - I had heard in news about Simon talking about his involvement and whether that knocked him out of the process. I don't think the pulp mill really had anything to do with his missing out on the opportunity of being a magistrate. That's my view of it. I think the critical factor was the public perception.

CHAIR - And you weren't prepared to defend that?

Mr KONS - It would have been hard.

CHAIR - Did you know about his relationships when you made your recommendation?

Mr KONS - Yes.

CHAIR - What was particularly compelling about what Ms Hornsey said to you to convince you to go in a different direction? I will add to that to get the context. Was it that

telephone call alone which changed your decision? Was it on that day that you changed your decision?

Mr KONS - Yes, it was on that day that I changed my decision. As I said, I still believed that I had until a later period in time. You can always get these things under the line and get these things to Cabinet at a later point in time. I still had a few days before that document would get to Cabinet to get it under the line in that process. My decision process didn't end with my signing that paper. My decision process ended with my taking it into Cabinet and formally getting my colleagues to have a look at it, a decision being made around the table by all the colleagues. The end of the process isn't me signing that paper. There are further processes that it has to go through.

CHAIR - We understand that but it was consequential to that telephone call that you changed your mind about recommending Mr Cooper. What was the compelling substance of Ms Hornsey's communication with you? Was there anything more than the perceived closeness to Labor?

Mr KONS - The perceived closeness to Labor was the compelling reason. I cannot recall at any time anyone saying to me - Linda or anyone - that the way he's handled himself with the pulp mill was a factor that should be considered for him not getting the appointment.

CHAIR - You advised Ms Hutton that the appointment would proceed. You indicated earlier in your submission that Arnold Shott was part of the process. Where did he loop into this now, if at all?

Mr KONS - Which?

CHAIR - He's helped make some assessments.

Mr KONS - He helped nail it down to three people who, on his assessment in consultation with my departmental secretary - I don't know if other parties were involved in that process, but the recommendation came forward that if I picked any of these three they would be satisfactory. They don't go into considerations about the political expectations or whether he would get attacked, or I would get attacked, for making that recommendation on any political leanings. They just go through the candidates, have a look at the qualifications and say that, on the balance of their judgment any of these three people could be put forward with confidence. They're not going to get into the process of saying to me that politically he may get attacked. I don't think that is their role.

CHAIR - Did Arnold Shott need to be involved after you'd made your decision to recommend Simon Cooper?

Mr KONS - No, I don't think so. He's there as an expert to have a look at the qualifications, in my view, of the people and at the resumes, make an assessment -

CHAIR - He's the Chief Magistrate. Would it be prudent for him to be advised that his new magistrate is going to be a certain person?

Mr KONS - I do not know. Probably after Cabinet makes a decision.

CHAIR - Greg asked you about the delay in appointing and that Mr Willee had been asked to stay on. Is it true also that, at that time, you made a temporary appointment?

Mr KONS - Yes.

CHAIR - Who was that person?

Mr KONS - I cannot recall who it was now but I am a firm believer of sharing the magistrate of the city around, if we can give people short-term appointments. We have done it on the north-west coast to build up a pool of talent by appointing the people there. For example, the Burnie courts have been used on a number of occasions to give people time off for long service leave, holidays, those sorts of things and temporary magistrates are a good way of giving people within the profession the ability to experience what is on the other side of the fence.

CHAIR - It seems you take a keen interest in matters related to the appointment of magistrates and the opportunities for them to advance their experience in the law.

Mr KONS - We have a number of magistrates in this State who are national leaders. I think that Mr Hill is one about certain aspects in my view. In appointing magistrates I would have liked to see each of our magistrates have an area of expertise, that they can talk about a specific area of law on a national footing. It was welcomed. It was good to get reports on magistrates from conferences, that they can apply the knowledge that they have received to make policy.

CHAIR - I can conclude that you do take a significant interest.

Mr KONS - Yes, but it is not -

CHAIR - Is Cath Rheinberger a person you appointed as a temporary magistrate?

Mr KONS - No, I was thinking about appointing her as a temporary magistrate. I do not think that that went ahead because I felt that it would be good to have someone out of the DPP's office obtain some experience. I suggested to my secretary that we got someone out of the DPP's office rather than leaving them prosecuting people to find out what it is like on the other side of the fence. Her name was mentioned as a good prosecutor.

CHAIR - Why was Mr Willee asked to delay his retirement to a later time?

Mr KONS - Probably because we had not made the appointment.

CHAIR - Was it because Simon Cooper was needed to tidy up, in your words, things back at RMPAT?

Mr KONS - We had the same problem with the appointment of the Solicitor-General; that dragged on for a bit as well. There is no set process for these appointments which is probably one of the difficult things we have. You can have two processes, one which is overbearing and involves consultation from everybody to narrowing the process right down to a small number of people. There is no perfect way of doing it. It dragged on. I think we wanted to make a good appointment so, although I felt time was dragging on, it

was a matter of getting someone onto the bench who would be eventually doing their job to the best of their ability. You have to balance whether to ask a magistrate. Mr Willee could have said 'No, I am not going to' and we would have had a bigger workload for the rest of the magistracy.

CHAIR - Given that it is important to you to get the right person for the job, time lines do not seem to matter now whereas you were very concerned about time lines regarding RPDC processes, and that you ought to be truncating them.

Mr KONS - Yes, certainly in law. You have other parties out there. I do not think the criminals are too concerned when a magistrate is going to appointed, or to people appearing before a magistrate. There are 12 magistrates, about 47 per cent of the matters they deal with are minor traffic offences. There was a blow-out in times and that has been alleviated with the Monetary Penalties Enforcement Act coming into place. Magistrates can move around the State.

CHAIR - Regarding the document which came to your office via e-mail and you subsequently shredded, did you request the document from your department or did that just arrive?

Mr KONS - I think it just came. I got a phone call that it was coming.

CHAIR - Subsequent to you advising your department that Mr Cooper was your preferred candidate?

Mr KONS - Yes. I am not too sure whether I was in Hobart or Launceston the day before or that day and I was going through to Burnie so it arrived there. Normally we didn't send stuff up by e-mail. Generally cabinet things do not get sent up by e-mail. This one did but it was a matter of me being there and available rather than having to come back down here, sign something, get it through.

CHAIR - Prior to signing the document, did you discuss it, the document, with anybody-else?

Mr KONS - It came to the front of our office; it is a very small office. The document was there. I would have spoken to Nigel about it and concluded that I add those words in there about advice from the department.

CHAIR - You concluded? Was that his advice to you?

Mr KONS - Well, they were my words and my writing so I thought it would be an appropriate terminology. I re-read that part of the minute and it didn't accurately reflect what I believed was the process. It was my decision but on advice from my department. I don't know if it added any more to the actual cabinet minute or not but that is the way it was - my opinion on advice from the department. It was more of a clarification than anything else.

CHAIR - So everything happened fairly quickly after that?

Mr KONS - Yes.

CHAIR - You signed the document and soon thereafter Ms Hornsey phoned you -

Mr KONS - Yes.

CHAIR - and informed you that in her judgment there was too much sensitivity -

Mr KONS - Yes.

CHAIR - so scrap that appointment?

Mr KONS - In her judgment it would be prudent for it to be scrapped. I can't recollect the exact nature of the conversation word for word but I thought, 'Thanks for the advice. I agree with it. I will get rid of it'. I have not got a security bin in the office. Firstly I didn't want to return it back in the overnight bag because I would have one with one appointment and one with another. Secondly we have not got a security bin and we were just screwing it up and throwing it there. I didn't want to send something through the mailbag so I thought, 'Okay, I'll put it in the shredder'. Under normal circumstances I would have had a security bin and it would have gone in there and I would have been satisfied it didn't end up on the streets.

CHAIR - Because in your own words in your submission earlier, shredding it was more secure than throwing it into a waste bin where rats and rodents could get at it?

Mr KONS - Yes, and they did.

CHAIR - Oh!

Mr KONS - I am only having a joke.

CHAIR - So you are referring to human rats and rodents, not the ones -

Mr KONS - I would have guessed you would have worked that one out. You are a veteran.

CHAIR - I was wondering whether it might have been a euphemism. When was it then that subsequently you put forward another recommendation - that of Mr Hay?

Mr KONS - I think it was that day.

CHAIR - The same day?

Mr KONS - Yes.

CHAIR - It is your recommendation?

Mr KONS - Yes.

CHAIR - How did you go about that?

Mr KONS - I communicated it to my secretary, I believe.

CHAIR - To Ms Hutton?

Mr KONS - Yes, or she rang me, I am not too sure of that process. The name was changed, the document was changed slightly. Mr Hay's name was replaced.

CHAIR - I think it might be reasonably significant if we can determine whether it was she who phoned you or you that phoned her bearing in mind here it is you dealing with a judicial appointment, you negotiating with your department and yet Ms Hornsey intervenes.

Mr KONS - I would have to chase up my phone records to see whether it was me ringing Lisa or Lisa ringing me and I don't know. What did Lisa say to you?

CHAIR - I do not have it in front of me but let us construct this.

Mr KONS - Look, I can't recall. I am not going to say something that could be wrong.

CHAIR - It is appropriate that you don't do that. Did Linda Hornsey indicate to you in that telephone conversation whether she was acting on anybody else's instructions?

Mr KONS - No. I don't think so.

CHAIR - Did you ask?

Mr KONS - I was just satisfied that someone agreed with me that it might be a bit of a problem. I wanted this thing to get a smooth run through Cabinet. You don't put something up that goes to Cabinet and gets knocked back because other members say, 'This is going to be played out. This bloke is going to get a hard time. The magistracy is going to be problematic because of this issue', so the fact that it was gone was a relief. And I come back not on the basis of the applicant's qualifications but on this perception thing that keeps running about any appointment. People miss out on these jobs because of these perceptions.

CHAIR - The same media criticism was levelled at the appointment of Chris Webster but the Government went ahead with that because he was the right person for the job.

Mr KONS - I was not Attorney-General at that point in time, someone else dealing with it may have said, 'Yes, it's easy to defend'. People had been reading more into these things, as I said, about pulp mills and things like that and why these appointments did not go ahead.

Mr MARTIN - Chairman, can I go back to the Linda Hornsey phone call. Steve, you have given a pretty good description of what went on in that phone call yet I think in your statement at the start you said you were not sure, you could not remember exactly whether it was Linda Hornsey or Lisa Hutton and you now believe it was Linda Hornsey. Given the details you have just given of the conversation, how would you not remember who it was?

Mr KONS - I do not.

Mr MARTIN - So if Lisa Hutton had rung you, if it had been Lisa Hutton who made the phone call -

Mr KONS - The only statement I made when I made it to the police was that it was one or the other. I did not deny that a conversation happened. I said it was one or the other and they said that they would check the phone records. They checked the phone records and they said, 'At that time Ms Hornsey rang you up'. I said, 'If that's what you're telling me happened, that's what happened'. I did not say neither of them did and I did not say one did and the other did not.

Mr MARTIN - I understand that.

Mr KONS - I was preparing my answer along the lines of being honest and open and accountable about it by saying, 'Here are the two options of people that could have contacted me' and they came back and they said, 'From what we found out, it would have been Linda' and I said, 'Okay, I am happy with that'.

Mr MARTIN - So if it had been Lisa it would have had the same impact on you?

Mr KONS - Yes.

Mr MARTIN - And you would have changed your mind against your best candidate?

Mr KONS - Yes.

Mr MARTIN - After signing the minute you would have followed her instructions and shredded it?

Mr KONS - Yes.

CHAIR - Steve, can I challenge you re your memory - and this really is important. You have indicated that you had misgivings, if you like, or concerns - my words, not yours - about appointing or recommending Mr Cooper because of the possibility or likelihood of criticism yet you still went ahead and recommended and it took a phone call from Linda Hornsey, as you have just indicated to the committee, somebody who shared your view that there was some concern about that and then based on that you ditched the document. Was there ever a time when prior to you making your decision to recommend Mr Cooper that there was any intervention whatsoever, any communication to you from the Premier's office, either from the Premier directly or from Ms Hornsey or in meetings which you had with the two of them?

Mr KONS - I cannot recollect but if someone said something to you, tell me and I can try to refresh my memory.

CHAIR - I will have to have a look at the highlighted part.

Mr KONS - The clear message, the context in here is by actions and those sorts of things and not specifically being told.

CHAIR - Do you want to elaborate on that? What messages were you getting from whom?

Mr KONS - I will give you one sort of thing just as an example. Regarding your committee I do not have to tell you that I think this is just trawling over old ground, a nonsense, that sort of thing, but I think you can gauge that is my view because I read the terms of reference and you are trying to work out a good process of appointing magistrates and senior executives here and from what we have been discussing for most of the morning, I do not think you will be able to say to me that the next Attorney-General will get a recommendation from your Committee that says you interview this person, that person, and develop a process. I do not have to categorically tell you that I think it is a nonsense but you can gauge that clear message.

CHAIR - So you were getting clear messages, were you, from the Premier's office that -

Mr KONS - When I say Premier's office, I mean departmental secretary, people around there like that, chief of staff you know; I don't mean a specific person, I mean the general office. Can I have a break for about two minutes?

CHAIR - Certainly so the hearing is adjourned.

Committee suspended.

CHAIR - Okay, we reconvene.

Steve, you had just indicated to the Committee that it was from other people. Can I ask you to have a look at the words underlined, this time not highlighted in pink.

Mr KONS - Yes, same thing. Not directly being told you appoint this person - you could sense that a direction was Cooper would be looked upon favourably.

CHAIR - That suggestion was coming from the Premier as well as from Ms Hornsey if you refer to that document?

Mr KONS - Yes, I think there would not be a rejection of his name being put forward. His name would have been mentioned by me but at all times until it hit Cabinet the decision was mine to put forward.

CHAIR - But were you getting in your own words the clear message that the Premier's office -

Mr KONS - Would look favourably upon an appointment of Cooper.

CHAIR - The Premier's office wanted Cooper as the nominee, not 'look favourably'.

Mr KONS - Would not reject him as a nominee. I would get support if it went through the Cabinet stage.

CHAIR - But nonetheless you were getting a clear message, were you not?

Mr KONS - Yes.

CHAIR - From the Premier as well as from others?

Mr KONS - I would just to clarify there was no 'Steve, you appoint Simon Cooper' or 'Simon Cooper is a great bloke' or 'Simon Cooper has the talent' you know if we'd mentioned names about potential appointees and it wouldn't be discounted. So that is what I mean by clear message, no direct literal communication.

CHAIR - So earlier in this line of inquiry you'd indicated to the Committee that you hadn't got any communication from the Premier's office. You have now confirmed that in fact you did -

Mr KONS - Communication as in being told.

CHAIR - Oh well I think -

Mr KONS - And I just explained that in the last sentence. There's a difference between being told 'You appoint Cooper' or 'Cooper is a good guy, you go for him' and someone saying, 'We're looking at appointing a magistrate, Cooper, oh yeah.'

CHAIR - You actually said to the Committee earlier that Mr Lennon never told you to do anything.

Mr KONS - No.

CHAIR - Nonetheless, he's entitled to give you a clear message however he chooses -

Mr KONS - That's right.

CHAIR - that it'd be a good appointment to make.

Mr KONS - Yes. At no time, everything in my portfolio, what I was doing - can I say that people would say to me that you're not going to do that, but you get it up to the stage where you think you might have to take up the fight.

CHAIR - Okay, you've confirmed that you were getting clear messages from the Premier and from Ms Hornsey that Mr Cooper would be a -

Mr KONS - Clear messages, but not in spoken word or written word.

CHAIR - Not in spoken word?

Mr KONS - No.

CHAIR - So you read their mind?

Mr KONS - Yes. That's like now, I mean, I'm here and I can gauge an expectation of what you want me to say or what you want me to do. I think I've repeated that a number of times. From people's actions, by their acceptance of what you're telling them, you can presume that the appointment you're going to make is acceptable. If I say I'm going to

appoint Cooper and I don't get a response from you, it doesn't mean you're against it. It could mean that you probably accept it.

CHAIR - So, is it true then, that neither the Premier nor Ms Hornsey reflected back on the suggestions which you were making to them that you might be going to recommend Mr Cooper; they just were mute and you derived from that, that they weren't opposed to it?

Mr KONS - That it would be a reasonable appointment. But then, as I said, I had a conversation with Linda; the view that I had about perceptions. She agreed with that and I place plenty of confidence in her ability to provide advice, as I do with Lisa Hutton. They're two smart, capable people advising me. Same thing with every stakeholder group that I meet with - I meet with lots of them - in the building industry, like Mr Diprose. Other people may discount Mr Diprose. I'd listen to his views; whether I agree with him or not was a different story but I don't relegate any one's opinions or views if they want to express them to me.

CHAIR - Okay. Following the call from or at the same time you had the telephone conversation with Linda Hornsey, did she suggest to you who your next recommendation should be?

Mr KONS - I don't think so. I mean, it was down to two.

CHAIR - Down to two?

Mr KONS - Yes.

CHAIR - What process did you use to determine that Mr Hay would be your next recommendation?

Mr KONS - I think Mr Daley had acted on behalf of another member of parliament so I put the same process there - take the safe option and appoint the other equally accepted, highly-regarded person by the Secretary and the Chief Magistrate.

CHAIR - At any time, did either Ms Hornsey or Ms Hutton indicate to you that it would be better for you to go forward to Cabinet with a list of three recommendations and let the Cabinet decide?

Mr KONS - I don't think so. I doubt it because you don't go in with a list of names. You make your ultimate decision and put it forward to Cabinet and you have to bat for it. This way it's absolving your responsibility and passing on the buck; handballing it onto someone else to make a decision. It may have been a better process. Maybe that could be one of your recommendations.

CHAIR - You are quite clear that that was never communicated to you by either of those two people.

Mr KONS - I don't think so.

CHAIR - So, you used your own processes to then conclude that Mr Daley should be excluded -

Mr KONS - Yes.

CHAIR - Because of him acting for -

Mr KONS - I think he was involved in the Compliance Corporation case. I don't know what level but - you know, I think he's been appointed to the magistracy since.

CHAIR - Yes, he has, just last week. How do you feel about that?

Mr KONS - Well, I've read it in the paper. Well, it was down to two. He got the second one; great.

CHAIR - Are you aware as to whether Ms Hornsey ever met with Mr Cooper -

Mr KONS - No.

CHAIR - after the aborted position.

Mr KONS - I saw the stuff on the news last night and it comes as a surprise to me.

CHAIR - Did she never communicate back with you after convincing you to discontinue?

Mr KONS - Not about meetings with Simon Cooper, no.

CHAIR - Given that you had had a telephone conversation and a dinner meeting with Simon Cooper?

Mr KONS - And other conversations with him in my office with other staff attending on planning matters, and lunch at Parliament House.

CHAIR - Let us focus specifically on the matters related to the appointment of the magistrate. You made a telephone call -

Mr KONS - Yes, I think it was on two occasions, one was the telephone call to White Beach - I think he has a shack out there or he was out there - and Maldini's. I cannot recall any other.

CHAIR - He, as you will recall from the media coverage of that last night, clearly believed that the communications from you were to the extent that he was to be the next magistrate.

Mr KONS - That would have been a strong indication to him but not to the extent that the decision has been made that he was going to get it. I could not make that promise and I could not give that undertaking.

CHAIR - Following that, did you ever contact him to let him know that you would not be proceeding with your recommendation?

Mr KONS - I do not recall but I do not think so. When all this stuff flared up I stayed pretty well away.

Mr MARTIN - It did not flare up until some time later.

Mr KONS - August was when it flared up, if you want to call it 'flared up'. I do not think I have spoken to Simon since then.

Mr MARTIN - I just find it a little bit surprising given you had, whatever words you used - as you just admitted, he had rightly got the impression that he was going to get the job.

Mr KONS - I will tell you why, Terry, I did not bother ringing up Simon because someone like you could turn around in Parliament or here and make up some allegation that I was speaking to him off the record about this or about that and -

Mr MARTIN - How would someone like me know about that?

Mr KONS - I do not know but you may find out about it so I closed that chapter in my life and moved on.

Mr MARTIN - You did not think you owed him a personal explanation as to why you changed your mind at the last minute?

Mr KONS - I probably did, but what has happened in this State, as I have said, if you are seen having lunch with someone it becomes a conspiracy. That is the way it has gone - committees, inquiries, media speculation, stuff that happens in Parliament - you can say anything and that has occurred on a number of occasions. I cannot remember who it was but I met with someone last week down at Salamanca and they said, 'You know what will happen, someone will see us here and they'll start getting one and one together and they will say there is a conspiracy going on'. That is what it is escalating into.

Mr MARTIN - I do not think every lunch meeting that a politician has in Salamanca reaches -

Mr KONS - Not necessarily, some might and some do. It is scary stuff. If businesses were conducted the way Parliament is conducted, nothing would get done in the State.

Mr MARTIN - That is the only reason - because you thought someone would find out about the phone call - that you did not ring Mr Cooper to explain to him why you had changed your mind.

Mr KONS - Yes, someone would apply a sinister motive to my ringing Simon.

Mr MARTIN - How would anyone ever know if you made a phone call?

Mr KONS - I do not know.

CHAIR - But if you and Mr Cooper had been the only two participants in a telephone conversation he would not go and trumpet the fact that he had not getting the gig, would he?

Mr KONS - Well, a decision was made. I resigned and moved on. I feel aggrieved for him, as I said in my statement - a great bloke, great potential, great qualifications, fantastic I must say, because I think that someone like Simon would be good for the magistracy because he is into conflict resolution and people getting together and airing their views rather than going through the legal processes. He would have brought an additional element to our magistracy. Unfortunately, what has gone on in the processes of this and other committees and the media speculation have probably ruined this bloke's chances of getting a magistracy. I hope it has not. He is a victim of Parliament and politics.

CHAIR - He does not have to be of course. The minister can stand beside the recommendation if the person is well credentialled and ride with it.

Mr KONS - I hope it has not.

CHAIR - You chose not to ride with it.

Mr KONS - Yes.

CHAIR - Following the shredding of the document, did you ask for replacement paperwork to be sent to you?

Mr KONS - It would have been communicated and replacement paperwork would have come up.

CHAIR - Did you ask for it?

Mr KONS - As I said, I can't remember whether I rang Lisa or Lisa rang me.

CHAIR - It doesn't matter who rang whom but did you ask for it to be provided to you?

Mr KONS - If there is nothing there you presume that whether I asked for it or it was sent up the communication would have gone back to my secretary that the previous document wasn't going to be used, a new nominee was going to be appointed so the stuff would be sent; the new paperwork would be sent.

CHAIR - But you've decided that Glenn Hay is going to be the nominee.

Mr KONS - Yes.

CHAIR - That being the case -

Mr KONS - I would have communicated that, but I am saying whether I rang Lisa up to say Glenn Hay or Lisa rang me up to say what's going on, one of us would have rung the other up and communicated that the new appointment would be Mr Hay.

CHAIR - It is conceivable isn't it that she would have only rang you -

Mr KONS - If someone else told her, yes.

CHAIR - if somebody had told her that you had shredded the document?

Mr KONS - Yes.

CHAIR - Otherwise it is conceivable that you would have phoned her.

Mr KONS - Yes very conceivable. Factual actually.

CHAIR - Did you subsequently discuss the events of that day with the Premier?

Mr KONS - I can't remember. It sounds coy to say I can't recall as if I am avoiding the answer, but I can't remember.

CHAIR - Given that it was Ms Hornsey who phoned you -

Mr KONS - We probably would have discussed it on Monday. We would have probably -

CHAIR - she's the Department of Premier and Cabinet Secretary, the right-hand person to the Premier if I could put it that way in terms of departmental processes, she has phoned you to intervene. Are you indicating to the committee that you can't recall that you spoke to the Premier and raised your concerns with him?

Mr KONS - Well put it this way. On Monday when we met for Cabinet I probably would have said that I've appointed Hay -

CHAIR - You were recommending Hay.

Mr KONS - Recommending Hay to Cabinet and if he knew about what happened before then, fine, but that conversation is not something that stands out right and centre. Specific issues within a portfolio of someone's life don't stand out when there is a multitude of other things happening. As I said, busy portfolio, plenty of things happening, not just one issue. If you can remember everything you've done and said that's great for you but I had three full portfolios, I put a lot into each one of those and it was a middle-order or lower-level thing that would occupy me. I had a passion for other bits of the portfolio and we had other issues going on throughout the portfolio that would probably take up more time thinking about than appointing a magistrate.

CHAIR - Okay.

Subsequent to all of this and the *Mercury* on a Saturday, and I can't recall the exact date, disclosing the fact that there was a shredded document, did you prepare a media release to refute that *Mercury* assertion?

Mr KONS - I contacted one of the media advisers and they prepared a response for me.

CHAIR - Can you recall who that media adviser was?

Mr KONS - Yes.

CHAIR - You might just mention that please.

Mr KONS - Yes I can.

CHAIR - So who was the person that you contacted?

Mr KONS - Rohan Wade.

CHAIR - What was the content of your instructions to Mr Wade?

Mr KONS - It wasn't instructions, it was that I'd just read an article in the paper that said x y and z; he was aware of it. Generally if you see a story like that someone prepares a response. Rohan prepared the response. There was an allegation in there that I'd written a letter to him and we focused on that part of it. I read the article I think in the car, he prepared the response, it came back, I said it sounds all right, send it off, it went off focusing on that part of the article. There were other issues in that article and that response didn't focus on the other issues. I probably didn't see the release; that was read to me probably over the phone because it was a weekend. I said okay, good, send it off. It got sent off -

CHAIR - It was a pretty significant allegation that you had shredded the document.

Mr KONS - I've got the thing here.

CHAIR - Refresh your memory by all means if you wish.

Mr KONS - It says, 'immediately be destroyed, not shredded'.

CHAIR - Is there anything in there that you want to -

Mr KONS - No, as I said, the response was prepared on my behalf and focused on the month before her ministerial confidential letter. I can't see it right now but it says that a letter was sent to Cooper advising him of his nomination.

CHAIR - I am just looking at the media release from the government web site and the words used are 'There was no letter to Mr Cooper. This is *Mercury* myth'.

Mr KONS - Yes. There was no letter to Mr Cooper, just that the response was prepared.

CHAIR - Was that a play on words?

Mr KONS - Looking back, probably yes.

CHAIR - Did anybody else assist Mr Wade and you in preparing that media release?

Mr KONS - I don't know, maybe Lisa Hutton. It depends on whom Rohan contacted. I think he may have contacted Lisa Hutton, but I left it up to him.

CHAIR - Did you seek not to clear that up at a subsequent time before rising in the House to make your statement?

Mr KONS - No. The article came in, it was about a letter to Cooper, end of story. There was no letter to Cooper, move on.

CHAIR - So when Parliament convened on the Tuesday following that weekend and you were asked a question in the House as to certain documents, did you make your response in the House consequential to a question time brief, as is the usual process?

Mr KONS - No, I don't think there was a brief prepared for me on that basis. I didn't think it would come up in the House. I wasn't expecting that. There was a layer of questions, I think three, four or five questions in the one question. As I said in my statement earlier on, Booth has the ability to do that and I have confronted that with legislation, where he asks you a question and you say no and he says, 'So by saying no you mean yes?' and he puts a spin on it that you don't necessarily say. It was there, it was inadvertent, it wasn't something I was focused on at that time. It was a quick response, sit down, no time to think about it. I got clarification and saw the letter and it jolted my memory and I thought, 'Yes, I do recall that being shredded'. Move on. The *Mercury* article talks about a letter being 'destroyed'. I make the subtle difference between 'destroyed' and 'shredding' in my mind. What does destroy mean? It does mean shred. I just blotted the thing out.

CHAIR - And this was the first time that you had been given the opportunity to appoint a magistrate in your role as Attorney-General?

Mr KONS - Yes.

CHAIR - Was it a momentous time for you? A magistrate appointment is pretty significant.

Mr KONS - As far as that small part of the portfolio is concerned, yes.

CHAIR - Regarding the media release again, did Lisa Hutton ever communicate with you over that weekend as to the content of that media release?

Mr KONS - I can't remember. I generally didn't talk to Lisa over the mobile. She may have.

Mr MARTIN - On this media release, I know you have already said there were semantics relating to Mr Cooper, but I read the article in the *Mercury* and read your media release

Mr KONS - A media release prepared for me.

Mr MARTIN - But signed off by you. Media releases aren't sent off by your advisers without your approval.

Mr KONS - That's right, you're on the ball today.

Mr MARTIN - Absolutely.

You say:

'The Deputy Premier today dismissed speculation by the *Mercury* newspaper about the appointment of Magistrate Glenn Hay as pure fantasy.

Once again we see the *Mercury* inventing a story without any regard to the facts' -

and something about a cabinet reshuffle and then go on and say about the *Mercury* myth and so on. When you read through the article it was pretty accurate, wasn't it? Your media release just beggars belief.

Mr KONS - I passed on the fact that I was aware of it. I think the media person was aware of the story as well, had a look at it, prepared a response. You do not sit there and labour about a media response for hours. You are not going to cross the t's and dot the i's or whatever. It came in, a response went out, it was done in a blasé fashion by me. I should have sat there and said, 'Send me up or e-mail me or fax me a copy of the release', sat there, had a look at one and had a look at the other and said, 'Fix this up, fix that up'. It was done over the phone, I believe, and that is it. It answered one of the allegations. A letter did not go to Simon Cooper. I thought, 'Right, that's it' - the next chapter in life, just move on.

Mr MARTIN - It was not a good chapter.

Mr KONS - No, it was huge.

Mr MARTIN - With hindsight, the media release probably was not right.

CHAIR - Steve, subsequent to all of that of course you have indicated your resignation from the Cabinet. I am looking now at the media release from the government web site headed by you, 'Resignation statement' and there is a paragraph here which says and I quote - and this is quoting you:

'I reiterate that at no stage of my decision to recommend Glenn Hay to be appointed as a magistrate was I instructed by the Premier or the Premier's office not to recommend Simon Cooper.'

Can you tell the committee how that is not inconsistent with what you have already indicated to us regarding Ms Hornsey's intervention?

Mr KONS - There is a difference between being instructed and having the ability to follow that instruction or not. I was never curtailed or put on notice that if you do not do this the consequences are there. The option was always mine. I could have put anybody up, even people not on the short list. The short list was an aid to assist in making a decision. If the department had put up a short list of three and I picked someone else it would have been acceptable provided I was able to go and bat for it. The way I look at it is curtailing someone in their ability to make a decision or offer a choice. I was not curtailed in the offer put up. The magistrate from Victoria had applied.

CHAIR - Any further questions? We will ask the people in the room to vacate so that we can proceed in camera.