

CITATION: *Brennan v Davies* [2005] NTMC 075

PARTIES: MICHAEL DAVID BRENNAN

v

WILLIAM PATRICK DAVIES

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Justices Act

FILE NO(s): 20326452

DELIVERED ON: 28 November 2005

DELIVERED AT: Darwin

HEARING DATE(s): 27, 28, 29 June; 24, 25, 26 August; 31 October
2005

JUDGMENT OF: Ms Jenny Blokland S.M.

CATCHWORDS:

CRIMINAL LAW – Deception – Mental Element – *Criminal Code* NT ss233(b),
227(i)(a).

REPRESENTATION:

Counsel:

Informant: Ms Ratcliffe; Mr Geary
Defendant: Mr Berkeley

Solicitors:

Informant: Office of the Director of Public Prosecutions
Defendant: Halfpennys

Judgment category classification: C
Judgment ID number: [2005] NTMC 075
Number of paragraphs: 104

IN THE COURT OF SUMMARY JURISDICTION
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20326452

BETWEEN:

Michael David Brennan
Informant

AND:

William Patrick Davies
Defendant

REASONS FOR JUDGMENT

(Delivered 28 November 2005)

Jenny Blokland SM:

Introduction

1. The defendant Mr William Patrick Davies is charged with two counts against the *Criminal Code*. First, that on or about the 31st July 2001 with a view to gain for himself, furnished a set of documents made for an accounting purpose, namely, staff leave summary, termination payment calculation, cheque requisition and written cheque that contained information that was deceptive in a material particular contrary to section 233(b) of the *Criminal Code*. The particulars relating to that charge read as follows:

“You submitted the said documents purporting that you were entitled to payment in respect of 80.08 days of unused leave plus leave loading when you are actually entitled to payment of 11.08 days of unused leave plus leave loading.”

2. The second count charged is that on or about the 31st July 2001 by deception, obtained property, namely \$17,195.90 cash of another, namely Northern Territory Rugby Union Incorporated; contrary to section 227(1)(a) of the Criminal Code. The particulars of that charge read as follows:

“You claimed 69 days of unused holiday pay to the value of \$14,632.28 and leave loading to the value of \$2,563.62 totalling \$17,195.90 to which you were not lawfully entitled.”

3. The defendant pleaded not guilty to both counts. The prosecution of course bear the onus to prove both the physical and mental elements beyond reasonable doubt.
4. In essence the prosecution case is that the defendant worked as the general manager of the Northern Territory Rugby Union Incorporated (“NTRU”) between the 30 April 1997 through to 31 July 2001. The prosecution alleges that during that period of employment the defendant took 91 days of paid leave with leave loading. It is alleged that at the time of the termination of his employment (31 July 2001) the defendant presented the Northern Territory Rugby Union treasurer Mr Mark Brosnan with a set of documents comprising a staff leave summary record, termination payment calculation and a cheque requisition made out to \$19,463.17; a cheque drawn to the amount \$19,463.17 on the NTRU account was also included in those documents. The prosecution alleges that in those documents the defendant had asserted that he had taken only 22 days of paid leave during the period of his employment as opposed to the 91 days of paid leave that the prosecution assert is the true state of affairs. The prosecution case is that the various documents contain a deception in that they claim that the defendant was entitled to 69 days leave and leave loading in excess of what he was entitled. The prosecution allege that by virtue of the deception he obtained \$17,195.90 which he was not entitled to. The prosecution argues that by reason of the defendant’s responsibilities as general manager he must have

been aware that he had taken far in excess of the leave days that he claimed to have taken in the documents he presented upon his termination.

Evidence of Mr Fred Finch

5. Mr Finch gave evidence that he had been involved with NTRU since about 1998 as an executive member; initially his role concerned development and he was requested later to become involved with the preparation of budgets; after a meeting on the 15 August 2001 he was appointed the Treasurer of NTRU; he said at some time prior to him becoming treasurer the general manager was responsible for the keeping of books and accounts; (the defendant's employment had terminated prior to Mr Finch's appointment). Mr Finch explained certain aspects of the management of NTRU; he said the management was answerable to the president. He said that after the departure of Mr Davies, no General Manager was appointed for some time and NTRU was run by the president, vice president and treasurer in the interim period. He said there were always two signatories to approve the day to day expenditure.
6. Mr Finch explained that during the relevant period when the defendant was general manager, payments were made by use of a cheque requisition that was prepared and the documents endorsed by the two required signatories; he said he thought that during that period the general manager, the president and two vice presidents were signatories. He explained that NTRU used the Mind Your Own Business ("MYOB") accounting package and NTRU held accounts at the National and ANZ bank. Mr Finch told the court he thought Mr Davies employment ended at the end of July 2001 and included three months notice. Mr Finch said he accepted from the defendant's termination calculation that the defendant commenced employment in 1997 with NTRU; he said that he could not find an employment file with contract dates in it: (Exhibit P3 being Mr Davies calculation of outstanding leave notes the commencement date of the 30 April 1997.) By reference to documents in

exhibit P4 prepared by the defendant, Mr Finch was able to tell the court that the defendant's salary was \$55,200 per annum.

7. Essentially as I understand the situation, when Mr Finch was asked to be honorary treasurer, he conducted an investigation into the financial situation of the NTRU. During the course of this investigation Mr Finch answered a number of enquiries that came from the Australian Rugby Union and as a result of one of the questions from the Australian Rugby Union Mr Finch needed to forward a copy of the defendant's termination pay calculations. As a result of questions that arose, he examined a number of financial records that lead him to check back through pay slips to determine what leave had been paid for by examination of the leave loading that had been paid. Mr Finch said that he ascertained that was a small amount of leave that had been taken according to P4. Mr Finch then sought to explain how he examined the leave records.

8. He said that:

“As far as I could find them I examined the leave records for periods coinciding with the dates that Bill had recorded as when he would take some leave”.

Mr Finch said he located pay periods for all the periods that had been recorded and ascertained that leave in greater blocks had been recorded on his payslips including leave loading and that he had come across some other leave periods in between those periods that had “zero” or no indication that leave had been taken. He said there were various other periods of leave that had been paid for including leave loading. He said these were in addition to the periods outlined in Exhibit P4. He said the payslips were generated from MYOB; he said that he had determined from the leave where leave loading was paid, that a total of 90 days leave had been paid; Mr Finch said he assumed that that leave had been taken; Mr Finch explained he assumed the leave had been taken because Mr Davies had been paid the leave loading and there was no indication that the leave had been cancelled or not taken.

Mr Finch said that from examining the defendant's calculations of termination pay, the defendant's leave accrual rate was five weeks or twenty five days per annum. He said that from the MYOB records the total accrual of paid leave at the time that Mr Davies left would have been approximately nine days. Mr Finch calculated that Mr Davies had been employed for a period of four years and three months at the cessation of his employment. Mr Finch said that he agreed that 102.08 days was "close to" the amount of leave Mr Davies was entitled to over the 4 year and 3 month period. Mr Finch said that upon termination Mr Davies was entitled to his unused leave, excluding "used leave" that Mr Finch considered to be leave applied for, paid for and taken. Mr Finch identified the cheque requisition and cheque made out to Mr Davies for the sum of \$19,463.70 (Exhibit P5).

In terms of the periods of leave noted by the defendant in P4, Mr Finch said he could find no evidence of leave loading being paid for the April 1998 period. He said he was concerned because that period indicated the Masters Games and the Masters Games was actually in October, not April. Mr Finch said he thought Mr Davies may have been mistaken about that lot of leave and he therefore checked October 1998 and found that another lot of leave and leave loading had been paid for; he said he found that in the pay slip record; he said that record indicates 10 days or 75 hours: (Exhibit P6 – payslip record). Mr Finch said the initials on P6 and almost all payslips were initials of the defendant. Mr Finch said that the payslips for the period either side of the fortnight of 15 October 1998 were examined; the periods ending 7 October 1998 and 21 October 1998 showed a normal fortnightly pay. Mr Finch said that the pay period that coincided with the Alice Springs Masters Games in 1998 (payment on 15 October 1998), was not shown in the document P4.

9. Mr Finch said he discovered another period of leave taken by the defendant in December 1998 for 10 days in the pay period ending 16 December 1998 that was not included in the list of leave on P4; it had Mr Davies initial on

the relevant payslip: (Exhibit P9). Mr Finch said that there were normal pays before and after that period ending 16 December 1998. Those relevant payslips became exhibit P10 and exhibit P11 for the six weeks up to 30 December 1998, Mr Finch said there were four weeks normal pay and two weeks of holiday pay.

10. Mr Finch also noted the periods asserted in P4 being June 1999 (eight days) and July 2000 (four days). Mr Finch agreed that the payslip for the period ending 30 June 1999 was 30 days. He said leave loading was also paid during that period (see exhibit P12 – June 1999 payslip). In relation to the payslip for the period 16 June 1999 (exhibit P14) Mr Finch said that was a normal pay period. Mr Finch said he was unable to locate the payslip for 14 July 1999; however he said that the payslip for the period ending 28 July 1999 shows a payment of base salary for a fortnightly period; he said that between the periods 30 June 1999 and 12 August 1999 that that period comprised 12 weeks in total with pay and with leave pay; he said that six weeks of that period was paid in holiday leave and 20 days or 4 weeks paid in normal pay; he said that was a ten week payment for a six week period: (Exhibit P15).
11. Mr Finch said he looked at the July 2000 period that on Exhibit P4 indicates four days in Queensland; he said that he found a three week period of leave and leave loading being 15 days for that period. In relation to that period Mr Finch said he would have been able to access the MYOB records but he could not be absolutely sure; he said the MYOB records for the previous/prior years were held on disk and some of those disks were “corrupted”, he said he could not remember which ones were corrupted and which ones he could access. He said he found a handwritten note, (became Exhibit P16 in these proceedings) that was in Mr Davies’ handwriting; he said that document shows 112.5 hours of leave that equates to 15 days plus the leave loading at roughly 17.5 %; he then identified a further document being a cheque voucher dated 26 June for the amount of \$2,599.62 that was

the same as that noted in Exhibit P16. In terms of the payslip for the period ending the 28 June 2000, Mr Finch said it showed a normal pay and that the payslip ending 26 July 2000 shows a normal fortnightly pay; he said that between the period of the fortnight ending the 28 June 2000 and the period ending the 26 July 2000 there was three weeks of leave loading and one extra week's salary; he agreed with Ms Ratcliff this period showed one week in excess.

12. Referring to Exhibit P4 again, Mr Finch then gave evidence concerning the period noted on that document as August 2000 – five days in Bali. Mr Finch said that he found the pay records for leave taken in August 2000; the amount of leave showing on the records was four weeks or twenty days; he said it showed a base salary of \$923.00 for another two weeks pay making it four weeks and six weeks altogether; he said he searched the following fortnight being the fortnight ending the 23 August 2000 and the relevant payslip for that period showed one week's base salary; he said that for the period ending 9 August 2000 through to 6 September 2000 that period involved four weeks holiday pay and fifteen days additional pay. He agreed that between the entire period of 28 June 2000 to 23 August 2000 that was an eight week period, there was twelve weeks of combined pay being both holiday and normal pay and that of those, seven weeks were holiday pay with leave loading. Relevant payslips were tendered for these periods: (Exhibit P18, P19, P20 and P21).

13. When asked about the conditions of employment of Mr Davies, Mr Finch said that he didn't have specific conditions of employment; he considered generally that conditions of employment would include an early return to work and a re-crediting of leave and repayment of leave loading paid. In relation to whether normal pay would be taken at the same time as holiday pay, Mr Finch said:

“you wouldn't normally do it you would not normally sorry – unless it's for a separate period. But you wouldn't normally get holiday pay

at normal pay overlapping on top each other – in addition to each other.”

Mr Finch agreed that the total payment for the leave that he had calculated from the records and from the information that he had understood had been provided by Mr Davies at the cessation of employment was 90 days. He said this represented a considerable difference from the 22 days that was represented on Exhibit P1; he said on the basis of his calculations Mr Davies would have been overpaid 68 days and leave loading. Mr Finch said that on his calculations there would have been about 12.8 days owing to Mr Davies at the end of his employment. Mr Finch referred to earlier calculations of overpayment as being \$14, 436.94 and leave loading of \$2,546.46.

14. On the discovery of those discrepancies and anomalies Mr Finch said he was requested by NTRU to raise the issues with Mr Davies to get an explanation on the records and to move towards NTRU being recompensed for those that were in error. In relation to the correspondence, tendered through Mr Finch was Exhibit P24 (letter from Mr Finch to Mr Davies headed “Financial Issues to 18/12/01”), letter from Cridlands to the President of NTRU dated 5 June 2002 (Exhibit P22) and letter from the defendant Mr Davies to the President of the NTRU dated 8 August 2002 (Exhibit P23). In his letter (Exhibit P24) to Mr Davies, Mr Finch notes:

“As you would be aware I have considerable difficulty locating adequate documentation to adequately reconcile the NTRU’s financial situation. Whilst much of the records have now been located, they indicate some abnormal practices and procedures which have now been discontinued. Examination of some of these procedures highlighted a number of apparent anomalies as contained in the attached report. However there are still a number of historic matters which should be investigated when outstanding documentation can be located and accounting resources are available. In order to facilitate this work, you might advise where we might locate any of the remaining missing records, as identified in the report.”

Mr Finch then asks for urgent comment on the items in his report that is attached to the letter and advises Mr Davies that NTRU are seeking agreement to reimburse all attached overpayments for which there are no acceptable alternative explanations. Part of the report is of relevance to these proceedings; under the various calculations of leave taken, it was stated under “issue two” to be an overpayment of 64 days or \$15,964.96; Mr Finch explained in evidence that for various reasons, partly on advice from Mr Davies concerning leave over Christmas in 1998 and then on further discovery of additional leave that he said he hadn’t found in September, he found further pay periods and readjusted the calculation overall to 68 days: (see transcript page 35 -36).

15. The letter from Cridlands to the President of NTRU dated 5 June 2002 (exhibit 22) states, (amongst other matters):

“Mr Davies wishes to resolve all claims for reimbursement (both by NTRU and Mr Davies) on a settled amount however he does not accept that he owes NTRU \$23,549.00. He is prepared to compromise all claims for a total of \$15,314.00 on a repayment schedule.

This figure is arrived at as follows:

Item 2 – If the records support the claim of 49 days, then Mr Davies agrees the amount is \$12,223.

Item 3 – This claim is rejected.

Item 4 – A claim of \$2,442.00 is agreed.

Item 5 – This claim is not accepted. NTRU’s claim arises because there was a period when the bookkeeping was done manually and was subsequently transferred to MYOB. Mr Davies believes the pay entries have been duplicated but that the payments have not stopped please arrange for bank statements to be produced for the relevant period, as Mr Davies is confident that the bank records will disclose that he has not been overpaid at all.

Item 6 – This claim of \$649 is agreed.”

A Repayment Schedule is then suggested.

16. It is item 2 that is of most relevance to the proceedings here. The issues mentioned in item 5 are also of relevance to these proceedings. I note as far as can be ascertained from that letter that the defendant's attitude is that he will agree to repay if the records support the claims, in the alternative in relation to some items he has expressed a belief essentially that the entries are wrong and payments have not been duplicated. The defendant's own letter to the NTRU offers a full and final settlement in total \$18439.90. He notes that this is still not the amount in total that Mr Finch has stated is owed. That amount would appear to include \$12,223.70 incorrect leave. I note that the defendant offered to raise a cheque for \$14,000 and send it within seven days and consider scheduling the remaining amount. The letter refers to the defendant making an analysis concerning an over payment of four weeks salary but not eight as indicated in earlier correspondence. He also states:

"In making this offer I have accepted your comments in your letter dated 17 May 2002 that the NTRU has made no allegation of misappropriation against me and was not contemplating legal action."

He also states:

"I would also like to thank the NTRU for your patience as it has taken me a longer period than expected to secure a loan to reimburse the union the alleged overpayments."

17. In cross examination Mr Finch advised the court that concerning the payslips, they were on the computer but they were already in hard copies in bundles; there were several bundles per year in the store room except for one bundle in the main office; he said that he thought the business of NTRU was conducted from a demountable in 1997; he said that he was not aware of how long the NTRU had had the MYOB system but he said the MYOB system goes back to 1997.
18. Mr Finch explained that prior to becoming treasurer for the NTRU he was on the executive and as part of the executive was advised of the bad state of

the NTRU financial position; he said the treasurer of that time (1999 -2000), Mr Mark Brosnan was asked to investigate the accounts and see what was wrong. When asked whether the MYOB accounting system had been installed later than 1997 Mr Finch said:

“I was taking from the existence of ‘97 records on something which I mentioned earlier copies of which were non – openable, corrupted that the system existed from that time though.”

He said there were floppy disks that can corrupt over time and were not able to be opened; he said they were stored in an open office which was air conditioned while people were there; he said he assumes it was late 2000 Mr Brosnan took over as treasurer and that it would have been sometime after August 2001 when he discovered corrupted records; Mr Finch agreed that he knew the accounts were not in good shape when he became treasurer; he agreed the former treasurer Mr Mark Brosnan was charged with assisting or getting the accounts into shape; he agreed that book keepers were employed by NTRU from time to time for financial purposes; he said these were part time people, he was not sure if they were charged with any specific duties; in relation to Horwath accountants Mr Finch said they were auditors for NTRU and provided some additional financial services to NTRU; Mr Finch said he did not have Horwath look at the accounts when he was an executive member, however he did ask Horwath for their professional input into verifying or quantifying the anomalies that he had found on becoming treasurer; he said it was part of the way through his investigations that he referred matters to the auditors.

19. Mr Finch agreed that it was possible there were accounting documents relevant to staff entitlements that he did not have access to; Mr Finch agreed he was looking mainly for the payslips when he started his investigation; Mr Finch said he was not privy to any agreement that amounted to a variation of the defendant’s employment or salary; he reiterated that there were no contractual documents that he could find although he said that Mr Dennis

Bree, (the former president), wrote a brief note verifying his memory to a change to conditions of employment. I note Mr Finch had not seen the Horwath document which later became exhibit 26 in these proceedings. Mr Finch agreed he had seen the report from Horwath sent to him (exhibit 27).

20. Mr Finch said he recalled Mr Brosnan took over as treasurer for most of the year 1999 – 2000; Mr Finch said there was a gap of a month or so before he became treasurer as there was no direct successor after Mr Brosnan. Mr Finch said he knew Tanya Gamble who was on the committee but not a treasurer; he knew Mr Dan Panapa who was vice president for a number of years; he knew Jennifer Austin was a book keeper recommended by Horwaths to assist the general manager in keeping the books; he knew of Peta Buckman as she was employed at NTRU, he thought as a book keeper or administrative person; he said he knew of Michelle Grass, Jessica Holmes, Amelia Horvart, Jonelle Tyson as being people whose names he had come across during the course of his searches and he said some of them were employed from time to time as part time in the office.
21. Mr Finch agreed that the financial situation in 1999 showed NTRU was in surplus and later when Mr Brosnan left as treasurer there was a significant deficit; Mr Finch said the deficit turned out to be much more after the review he conducted but he agreed that the preceeding year showed a profit; he agreed Mr Davies was general manager when a profit was shown.
22. On viewing exhibit 26, (that clearly Mr Finch had not seen prior to the court proceedings), he agreed that the document said that Mr Davies was entitled to 400 hours, the 400 with a line through it “ as at 31 May 2000”; Mr Finch said that on a quick calculation that would mean approximately 14 days with 30 days accrued in the next 14 months; on his calculation he said it would mean 53.3 days; Mr Finch said that document probably would not have affected his determinations because he said it was not an authoritative document; he said he would want to follow and find out the basis of the 400

hours; he would have wanted to find out if it came from the “MYOB rolling record” which he says it may have; he concluded this part of his evidence by saying:

“And so I certainly would have taken it as a contributor to the possible numbers of options, varying from Mr Davies summary to the MYOB print out to this, which are probably all different hours.”
Paragraph transcript p44.

He agreed that he did not know whether Mr Davies took holiday pay in lieu of leave in any given period; Mr Finch said he was not sure about the period but in his discussions with Mr Davies, Mr Davies claimed that from time to time he went back to work early which, as Mr Finch told the court, was “a different thing to taking leave in lieu”; in relation to whether there was a facility to “cash up” leave, Mr Finch said that he was aware it was a facility under some awards but not the majority of awards and he did not know whether it was part of Mr Davies condition of employment; he agreed he was not aware whether that happened in this case; Mr Finch thought that would have to be done with the consent of Mr Bree.

23. In relation to exhibit 4 Mr Finch said that the Masters Games were conducted in October 1998; he was there himself and that Mr Davies was there possibly playing in the “golden oldies” rugby; he said it was a possibility Mr Davies conducted business while in Alice Springs for NTRU; he agreed there was no claim for leave taken in October 1998.
24. In relation to the cheque for \$19463 Mr Finch said he thought the signatures were Mark Brosnan, Danny Panapa and Mr Norris; he agreed that Mr Brosnan was the treasurer at the time of drawing the cheque; Mr Finch agreed he did not recognise the writing on the cheque that became exhibit D 28. Mr Finch agreed that he could see that leave was taken by Mr Davies and leave loading taken for a period that roughly corresponded with the Masters Games; he said it was an overlapping ten day period, five days overlapping with the Masters Games; he said that he would expect such

leave to be shown on his payslips as Mr Finch said that the payslips is all he had to go on as to whether it was or wasn't taken; Mr Finch agreed that no payslips were destroyed; he said the payslips were generally in sequence; he said there was probably one bundle which was in disarray or out of order; he said he didn't recall having assumed or discovered there were payslips missing.

25. Mr Finch agreed he was not aware of any agreements whereby the defendant could cash his leave in; he said he was not aware of whether there was any agreement on whether Mr Davies might do any work that he was paid for at the Masters Games in October; in relation to the five weeks annual leave that he based his calculations on Mr Finch said he relied on what Mr Davies had told him and what Mr Davies had used on his own calculations; Mr Finch agreed after looking at documents that the base rate of pay around the period of December 1998 was \$1,923.08 per fortnight; he agreed that exhibit P14 showed the base salary \$1,723.08 at the 16 June 1999; Mr Finch explained that there was a salary sacrifice of \$200 paid in various ways and that Mr Davies had explained accountants advised him he should put salary sacrifice back into his gross salary; Mr Finch said he was not aware of any direction given to any person by Mr Brosnan to alter financial arrangements that Mr Davies had with Northern Territory Rugby Union; Mr Finch said he was not aware of Mr Brosnan prohibiting Mr Davies from operating the MYOB system; Mr Finch said he was not aware of anyone checking Mr Davie's calculations for his final payment in terms of an examining sense; Mr Finch said he would have expected that the signatories would have requested how the cheque was calculated; Mr Finch said that in his investigation of the accounts of NTRU that was rarely done.
26. Mr Finch was asked questions concerning what he knew of the relationship between the defendant and Mr Brosnan; Mr Finch said "I would put it as certainly late in the piece as strained"; Mr Finch said he was unaware of an allegation made by Mr Davies against Mr Brosnan to the NTRU concerning

physical assault. Mr Finch agreed that although the NTRU had a manager, ultimately the responsibility for the accounts was the treasurer's responsibility; Mr Finch said he didn't ever see Mr Davies or Mr Brosnan work together on the accounts.

27. Mr Finch agreed there had been a meeting between Mr Davies, himself and Mr Norris at the Sailing Club and there had been a request from Mr Davies to tape the interview; Mr Finch said although not at that time but at some stage NTRU sought advice from their honorary legal officer Mr Riley; Mr Finch agreed an insurance claim was made to The Territory Insurance Office in respect of losses associated with Mr Davies. In relation to whether any enquiries had been made of Mr Brosnan as to his supervision over the accounts in the last six months of him being treasurer Mr Finch said that he attempted to meet with Mr Brosnan on a number of occasions but was successful only once with meeting with him; Mr Finch agreed that Mr Brosnan was employed by KPMG as an accountant and at some stage he was invoicing some of his time to the NTRU; Mr Finch said he was not aware of any engagement of Mr Brosnan in a professional fashion nor of his company; Mr Finch said that he spoke to KPMG and subsequently came to an amicable agreement about that; Mr Finch said that he had spoken to Mr Brosnan on three or four occasions soon after he (Mr Finch) took over as treasurer; Mr Finch said he met with him once and Mr Brosnan failed to turn up for subsequent meetings and he has not spoken to him since that time; Mr Finch said that Mr Brosnan was still in Darwin for a period after he had left being treasurer as he was aware of that from his discussions from KPMG; Mr Finch told the court that he was aware of a employee file note dated 5 November 1997 signed by Mr Davies and Mr Bree that increased Mr Davies salary by payment of a performance bonus; Mr Finch said he was aware of blunders in a file note but he said he was certainly aware that it was confirmed by Mr Bree that Mr Davies was due for a performance bonus and that was subsequently reflected in the payslips. Mr Finch said that at the

time he became treasurer Horwaths were the auditors, they had been providing financial advice as part of a sponsorship package. Mr Finch agreed that Mr Davies had always said in earlier meetings where it could be demonstrated he had been overpaid or reimbursed excessively he would pay that back; essentially acceptance of the amount was the issue; he said that it was the case right through that there was an intention for final settlement between the parties. Mr Finch said that it was a June 2002 executive meeting when it was decided to approach police; he said the earlier meetings discussed the procedure of trying to recover what NTRU thought was owed; Mr Finch was aware of the claim on the insurance.

Daniel Panapa

28. Mr Panapa gave evidence that he had been involved with the NTRU for approximately 18 years; he had been on the executive and at the time of giving evidence was vice president; Mr Panapa lives at Optus Park as the caretaker and lives on part of the home base of the NTRU. He was aware of the cheque account at the National Bank between April 1997 and July 2001; he said he understood the requirement before signing a cheque was that a slip would come through to identify the purpose of the cheque, a record sheet and that two signatories were required on each cheque; he said that he was one of the signatories called to sign cheques; he said being on the grounds he was the easiest person to find to be the second signature; he said he would normally receive a call from the office and would go up and sign a cheque or cheques; he said the call could come from the general manager or one of the office staff; he said he would read the requisition that would come with each cheque; he said he took this at face value.
29. Mr Panapa identified a number of cheques before the court that were for salary and noted the correspondence between a number of them and the payslip (e.g. exhibit P6) he also noted various cheques with his own and Bill Davies signature on them (exhibit 29) and noted its correspondence with the

payslip exhibit P9. He noted a number of other cheques with his own and Mr Davies signature: (Exhibit P31); cheques in exhibit P32 and cheques comprising exhibit P33. Mr Panapa was shown exhibit P5 being the termination cheque and he agreed his own and Mark Brosnan's signature was on that cheque: he said Mark Brosnan was the treasurer at that time. He identified exhibit P3 as being the document with the requisition and cheque; Mr Panapa said he did not know what annual leave was actually owing to Mr Davies at the time; he said that given the treasurer Mark Brosnan had already signed it and it just needed a second person to sign, he signed it on the basis that he signed most cheques and requisitions.

30. Mr Panapa was asked about the former treasurer Mr Mark Brosnan; he said he was aware that he was an accountant and that he had worked for KPMG; he said he recalls Mr Brosnan tendering accounts to NTRU; he said Mr Brosnan took over as treasurer from about January 2000; he said Mr Brosnan took the position as treasurer about 18 months prior to the departure of Mr Davies; Mr Panapa said that Mr Brosnan had found some anomalies in the accounts when he took over as treasurer.
31. Mr Panapa said that he knew Mr Davies well; he was competent at putting on games and the organisation of competition; he was competent at obtaining sponsorship for the Northern Territory Rugby Union. He said that the administration the Northern Territory Rugby Union moved from the demountable into the mezzanine level at the grandstand; he said he was often called to the office; he said he knew the personnel well; he said he was often in the NTRU office; Mr Panapa wasn't sure that he could recognise the handwriting of different persons on various cheques apart from his own; he said he would sign a bundle of cheques with wage cheques often being marked "please pay cash"; Mr Panapa reiterated that he very rarely queried any of the background to the accounts and cheques beyond looking at the requisition and direct supporting documentation.

32. Mr Panapa said that after Bill Davies resigned as general manager Mr Brosnan was doing a lot more with the accounts, Mr Panapa wasn't involved with that side of things anymore. Mr Panapa said that he could not recollect seeing exhibit P4 previously; he said he had not seen exhibit P6 previously; he agreed he had seen the requisition and cheque comprising exhibit P5 previously; he said he signed the requisition and the cheque because Mr Brosnan's signature was already on it; he did not know the other signatures on the requisition were.
33. Mr Panapa agreed that he had recommended Mr Davies for employment at the Darwin Sailing Club; Mr Panapa said that other than in relation to the accounts he thought Mr Davies was a good general manager concerning organising functions and day to day running of rugby union; Mr Panapa said he didn't recall a physical incident between Mr Brosnan and Mr Davies but he had heard of one. Mr Panapa said he could recall Mr Brosnan taking over the management of the accounts when he was treasurer; he said that was prior to Mr Davies leaving but he didn't know exactly when. Mr Panapa said he assumed there was a contract in existence; he agreed Mr Davies and all of the NTRU worked long hours; he said Mr Davies worked weekends and sometimes at night; Mr Panapa said that during the last 12 months of Mr Davies employment there was some book keeping people in the office. Mr Panapa said he believed everything was still operating as normal in the last couple of months of Mr Davies employment; he said he thought Mr Davies was still in control at that stage.

Jennifer Anne Austin

34. Ms Austin gave evidence that as a book keeper she was requested to do some business consultancy by NTRU in June 2000; she said she worked about one day per week; she said her role was to make sure the system was working and was appropriate for the NTRU; she said she was involved in the payroll system; she said that sometimes she would do the pays by checking

the hours that people had worked, put the hours in the system and allow the calculations to be done; she said she was unsure whether she ever physically wrote any cheques or whether they may have been handed to Michelle; she said it was possible if there were cheques to be done she may have written them; she said that towards the end of the time she was there she started to do direct deposits and debits rather than cheques. Ms Austin said that when she wasn't involved in doing the pays Mr Davies did the pays as she said he was the only other person with the password; she said there was a possibility that her replacement Joan Marshall may have had a role in getting pays from about January 2001; the relationship between NTRU and Ms Austin's firm terminated on the 14 March 2001. Ms Austin said that at the time when she started on or about the 21 June 2000, Mr Davies was the person who was responsible for book keeping up to that point; she said he had the password to the system and the computer was set up in his office; she said MYOB was accessed from Mr Davies office and that it was password access; she said that she and Mr Davies had access and Michelle may have had limited access; she said she had no involvement in processing holiday or leave; she said in relation to exhibit P17 she would not have processed that payment because it was not in her handwriting; she said that if she had processed a leave payment she would expect her handwriting to be on the exhibit; Ms Austin was able to recognise Mr Davies handwriting on exhibit P33; Ms Austin said she processed the termination pay for Michelle Grass; Ms Austin told the court exhibit P3 was not a MYOB generated document.

35. Ms Austin was shown the Horwath document that became exhibit P26. She read the file note onto the record as follows:

“Jenny, would you please make change to NTRU wage provision on MYOB when you are there next. Details are as follows: Bill Davies is entitled to 400 days at 31/5/00 at – the copy that I have has been written over and it reads – 28, 3 or it could be a 4 per hour.”

She then notes a number of figures and that there are various calculations done also for Patrick Bree, Edward Reid and Michelle Grass and then the final note reads on that exhibit:

“Would you please make these changes as at the 31/5/00 so we can have accurate records in the accounts.”

Ms Austin said she did not recall the man who was the author but said she recalls what he looks like; she said the “Jenny” in that document would be her; she said she did not recall receiving the document; she said she would have done something with it as it is her handwriting on the bottom of the page; she said the faint handwriting concerning figures was hers. Ms Austin was asked if she had actioned that memo, would she have altered the leave records on the MYOB system?; she said she wouldn’t have altered the leave records – it was for the general ledger; she said it was assumed it was done after and audit by Horwaths; she agreed that what Horwaths as the auditor’s were telling her to do was to show the entitlement on the general ledger for those employees; Ms Austin said that wouldn’t necessarily include entries into the payroll part of the system; she said the MYOB system would have to be manually manipulated to show the auditor’s figures if it didn’t already show that; she said she had once been tasked to do that and she said it may have been a task that she performed; she said she mainly worked in an area in Mr Davies office; she said she had full access with Mr Davies to the MYOB system; she reiterated that she thought Ms Michelle Grass may have had some limited access; she said that access could have involved noting the receipt of invoices for payment; Ms Austin recognised four payroll cheques as being payroll cheques for Mr Davies but a number of other cheques she did not recognise as being Mr Davie’s handwriting, she said she thought they were Michelle’s or the handwriting of others. She said her replacement Jane Marshall worked the similar hours that she had; she said the NTRU did not pay her company and that is why the arrangement was terminated.

36. Ms Austin said she recalled that the MYOB system was upgraded; she said it was necessary to take back up copies of the data; she said she didn't recall whether she physically transferred data from one machine to another; she said she had initially done backups on a floppy disk and then was told after the upgrade that backups were no longer necessary. Ms Austin was referred to a previous statement where she had said that Mr Davies appeared to be at the brunt of recriminations; she said:

“immediately what I had was only Bill’s word for it, but he was very uptight about various different things he was trying to work out to pay people, the employees’ had more supplies he was brief about why things weren’t paid, basically didn’t have the funds to be able to pay them that sort of thing.... And he was getting phone calls from supplies wanting to know where there money was etc etc.”

She said he was “copping it from the suppliers and from what I was hearing also from the committee”. In relation to whether Mr Davies took Ms Austin’s advice concerning the NTRU accounts, Ms Austin said there were a number of times that he ignored her advice; she thought he should take steps to protect himself concerning the accounting management. She said he did take her advice in relation to procedural matters concerning the handling of invoices, coding and filing; she said the way he was dealing with invoices meant that it was too complicated to back track things. Ms Austin said that she thought it was unusual for a chief officer to be entirely responsible for all of the functions; she said there were usually checks and balances that are in place that were not at NTRU; Ms Austin said she felt rushed in the provision of the services she was contracted to provide; Ms Austin said she was critical that the second signature on the cheques that was required appeared to be a mere formality; Ms Austin said that from her recollection when she commenced providing services to NTRU the actual account was maintained on two separate versions of MYOB; she said the previous year’s accounts were on an older version than the current account details of running a GST compliant upgrade to the MYOB; she said there were two systems of MYOB that were unable to talk to each other and that the new

upgrade was not installed in a way to be able to incorporate the accounts of the first system; she agreed that that led to a need to operate across both systems; she said it was only balance sheet items that would be brought forward; she said Mr Davies was unable to adequately cope with the accounting responsibilities especially with everything else he had to do; Ms Austin said the new version of MYOB was being set up as an accrual system of accounting; she said the older system would have been accrual as well. Ms Austin said of the MYOB system, if the data is properly entered and providing the card file for the person's information has been set up properly, it should by normal mathematical progressions be able to find out when a person has been paid and other details; Ms Austin said it was possible to check a person's pay record by going to their card file; Ms Austin said in relation to the NTRU system "yes, it was possible but I was also aware that the upgraded system – the GST system – that that information was not correct because there was no brought forward leave balances put in"; Ms Austin said in relation to the file note by Horwaths she couldn't remember getting it but to do the general ledger entry that they wanted she would have waited to get a reply to see if she should put the balances in the MYOB system for a brought forward balance; she was unsure whether or not she did this; Ms Austin reported a number of problems with the MYOB system, she agreed that data could be lost on the system however she thought "in theory" this would not happen concerning leave because there would have been payslips done; she agreed with a number of scenarios that would not be able to be reconstructed on the MYOB.

37. In re-examination Ms Austin said she was not aware of the source of the entitlement of 400 hours indicated for Mr Davies; she said she would not have made an enquiry as to the legitimacy of the 400 hours; she said that apart from Mr Davies and her having different techniques, she did not have a view about his competency.

Ms Jonelle Tyson

38. Ms Jonelle Tyson gave evidence that she was employed briefly between January and July 2001 at the NTRU as a part time administrative assistant; she had occasional involvement in the payroll assisting Mr Davies and Jessica and wrote cheques once or twice; she said to the best of her knowledge the computer was isolated and only three people had the code who were the book keeper, the treasurer and Mr Davies.
39. In cross examination she said that no one got on with Mr Brosnan; she was aware there had been a physical altercation between Mr Brosnan and Mr Davies and she said that as a result of Mr Brosnan physically threatening her she left the NTRU; she said she reported that to the committee, she was pregnant at the time and nearly suffered a miscarriage; she said she reported it to Mr Vince Kelly who took some action; she said Mr Brosnan was taking over the accounting function from Mr Davies for a few months, she said she was aware that at times only Mr Brosnan and his wife were at the computer, she was aware but was not aware for how long that Mr Davies was not allowed to operate the MYOB system. In re-examination she said that she understood that Mr Davies was responsible for her pays but after the incident with Mark Brosnan she was informed that the MYOB programme documents were produced by Mark and left on Mr Davies desk for him to write out the cheques.

Patrick Gerard Bree

40. Mr Patrick Bree gave evidence that he was employed by NTRU from February 1999 until December 2001 as the development officer; he said there was an office at NTRU for the manager Mr Davies, outside his office was a desk with administrative people working and he worked out of a room with the coach in development; he said they were two distinct areas; he said he knew of someone by the name of Peta Ryan; he said that just after he started the NTRU brought in MYOB and Mr Davies was sent to do a course

at university about how to operate it; that after that Mr Davies was the only person he knew who operated it; he said there was one other lady who had trouble getting information out of Mr Davies of what to put into the system; he said Mr Davies was responsible for calculation of wage payments, leave and leave loading. Mr Bree said he was aware of Mr Davies taking leave to go with the under 14's to Thailand; he was aware of him taking leave locally and he was aware of him taking leave to go to the National Championships at Caloundra. Mr Bree said there was another occasion when Mr Davies went to visit family in Toowoomba that was about for a week; he said there was another occasion in Caloundra that would have been about seven days; he said that would have been around the middle of 2000. When asked if whether he recalled any time Mr Davies returned to work he said there was one time that Mr Davies was in town that he took some leave and came into the office for about an hour but he thinks that was a different leave occasion; he thinks on the occasions that leave was taken in Thailand, Toowoomba and Caloundra he did not return to the office.

41. In cross examination Mr Bree said he recalled Peta Ryan working during the start of his own employment; of the leave that he recalls Mr Davies taking he says he diarised the Thailand one, he didn't know if he diarised the Toowoomba one; he said that in relation to evidence concerning his own application for an increase in salary, it was turned down but it was not turned down straight away.

Peta Anne Buckman

42. Miss Buckman gave evidence that she worked at NTRU commencing 4 February 1998 (part time) and then became full time and she finished working at NTRU in October 1999; she said at the time Mr Davies worked in the office and another girl in the administration side and another girl on the development side; she said she did not access financial information at NTRU but she was involved in processing cheques and she was aware that

the cheque account was with the National Australia Bank; she said she would get payment slips and write out the amounts on the payment slips and who they were to; she said she did this at Mr Davies direction; she said this was both for salaries and bills; she said she didn't receive directions from anybody else. She recognised her handwriting and Mr Davie's handwriting on a number of cheques in relation to exhibit D28; she recognised Mr Davies signature but was not sure of the other signature; in relation to exhibit P29 she recognised her handwriting - she recognised the signatures as being Mr Davies and "Dan's"; in relation to exhibit P30 she recognised her own handwriting and the signatories being Mr Davies and Dan; on a cheque for the 30 December 1998 contained in exhibit P30 she said it was not her handwriting it was another girl's handwriting but she recognised Dan and Bill's signatures; she identified certain ANZ cheques. In relation to exhibit P5 (being the cheque drawn for \$19,463.70) Ms Buckman said it was Mr Davies handwriting on the cheque. Ms Buckman agreed she recalled times that Mr Davies had taken leave; she said she recalled he went to Bali to watch his son to play football and she thinks that was for a week or two; she said there were other periods but she didn't recall the details; she didn't recall whether she came into the office or stayed out on leave; she said Ms Grass took over from her after NTRU and she returned to work in the development side of NTRU.

43. In cross examination Ms Buckman said she worked as Mr Davie's assistant during her time there; she said she did not remember Mr Davie's taking leave regularly although she remembers that he did take leave. She said she was not authorised to have access to the MYOB and she was unaware whether the then treasurer had access.
44. Tendered to the court were also statements from Mr Michael Francis Kelly of 15 June 2005 with relevant records from the Department of Immigration and Multicultural and Indigenous Affairs detailing the dates that Mr Davies left and returned to Australia those dates indicate that Mr Davies left

Australia on 05/07/1999 and returned on 21/07/1999; it indicates he left on 12/08/2000 and returned 19/08/2000. Tendered also by consent is the statutory declaration and annexures of Heidi Marie Schubert indicating the entries to the Commonwealth Bank account held under the name of Mr Davies. Tendered also by consent is a statement of Mr Colin Golding (exhibit 36) annexing the records of the Australian Central Credit Union concerning an account in the name of Mr Davies and Mrs Davies. Tendered also by consent is the statement of Mr Bradley James Tanner (exhibit P37) annexing the accounts held by Northern Territory Rugby Union Inc. at the National Australia Bank. Tendered also by consent is the statement of Paul James Trigwell of the ANZ banking group annexing the bank records of the Northern Territory Rugby Union Inc.

Martin William Briggs

45. Detective Briggs in evidence in chief essentially tendered his file containing a number of annexures, most have become exhibits previously but his folder (exhibit P39) also contains detailed correspondence between the defendant, solicitors and various other documents that are before the court in any event. That folder also contains a transcript of a record of conversation that Detective Briggs had with the defendant. The transcript of that record of conversation became MFI40; a number of the documents already tendered were provided to Detective Briggs by NTRU or the defendant. At page 29 of the record of conversation discussion occurs in relation to exhibit P4; Detective Briggs said that that document was obtained prior to the record of interview. Detective Briggs noted that the document given to him by the NTRU gave more detail than the one supplied by the defendant. The record of conversation took place on 11 December 2002 as this was some time after the defendant's employment had ceased, Detective Briggs said the differences were inexplicable. The document that became P40 was also supplied to Detective Briggs as part of a bundle of documents. In cross examination Detective Briggs said he did not find any hole in the documents

in that there was not a series of documents missing but he said there were periods where documents were missing; Detective Briggs agreed that on one pay period concerning 7 March 2001 he couldn't find anything indicating that the defendant been paid for that period; Detective Briggs agreed, (as would appear to be evident from the transcript of the record of conversation) that the defendant maintained that there was some sort of financial accounting error; Detective Briggs agreed the defendant was forthcoming with records he produced; Detective Briggs said later he obtained a letter from Mr Davie's solicitor; he agreed he had obtained a statement from Jessica Holmes; Detective Briggs said he was not aware that a statement had been taken from Ms Holmes; of a number of documents from the defendant's lawyers Detective Briggs agreed that the defendant at no stage claimed any privilege in those communications; Detective Briggs agreed the defendant appeared to be cooperative adding "yes absolutely"; Detective Briggs said he tried to speak to Mr Brosnan but that Mr Brosnan had said he was very busy and it would have to be out of hours and then it never eventuated; Detective Briggs interviewed Mr Finch and spoke to Mr Norris but did not actually interview him; Detective Briggs spoke to Mr Dennis Bree but did not interview him; Detective Briggs said he did not take a statement himself from anybody apart from Patrick Bree.

46. In general the explanation that Mr Davies gave to police is contained in a written statement dated 11 June 2003 and in the transcript of the record of conversation; there are also a number of letters in the police brief that have been tendered where Mr Davies has given explanations about what he thinks may have occurred. Both explanations are of an exculpatory nature. Much of the material is subsumed in the evidence of Mr Davies that he gave in these proceedings and was cross examined about some of the material in those documents and it is more appropriate that the relevant material be considered with his evidence.

Michelle Lee Grass

47. Ms Grass commenced employment at NTRU on 11 October 1999 and finished on 4 September 2000. She performed general office duties and some personal assistance duties for Mr Davies; at that time she said there were no other full time staff; she said her friend Nicole was also employed for some of that period; she explained that as a trainee she needed to complete a competency on MYOB and Mr Davies took her through the process; she said he was supervising her; she said she was involved in putting in data; she said she did not know whether she processed leave; she did not think so but she couldn't really remember; she said Mr Davies had the programme open in his office for her to use; she said she was aware that access to the programme was password protected; she said she could not recall but she did not think she had knowledge of the password; she said she was involved in the preparation of cheques; she would give the number for the next cheque to Mr Davies; she would organise the signing of the cheques; of exhibit P33 she said she recognised Mr Davie's handwriting, she also recognised his handwriting on P32 of a further cheque in P33 she did not recognise the handwriting – the cheque dated the 7 September 2000 she said she was present when staff would come and collect their cheques; she would give them the pay cheques and they would sign for them; she said she remembered Mr Davies having a small holiday but could not remember how long it was. She said she remembered him being away and constantly being contacted by other employees throughout his trip.
48. In cross examination Ms Grass said that there were other development staff and other people around the office; she remembered Patrick Bree; Graham; a guy called Ben; she said there was another lady at the end of her employment who came and sat in Mr Davie's office; she said she thought she had access to the computer; she said there were two computers at the time she worked there out in the admin area and she remembers Bill Davie's computer; she said she thought those computers were linked. Ms Grass said

that Mr Davies would usually access the computer for the pay slips; she said once he had given her the slip she would write out the cheque; she said there was a concertina file where invoices and accounts that needed to be paid were kept; she said Mr Davies did not make entries into MYOB on those documents; she said she remembered Mr Davies paying the petty cash account of from own pocket on a number of occasions in emergency situations and he would be repaid shortly after; Ms Grass said there was a back log of invoices but she could not remember if they were entered into MYOB; Ms Grass said she thought it was Jessica Bell who took over after her; Ms Grass said she never had an occasion when she was writing a cheque when the cheque number did not correspond with the cheque on the payslip; she said she would always write on employee pay cheques “please pay cash”.

Amelia Horvart

49. Ms Horvart was an administration assistant in 2000 and was employed for approximately three months between August and November at NTRU; at that time Mr Davies and Michelle Grass were employed there; she said there was some interaction with the development staff but the offices were distinct; Ms Horvart did not have access to the MYOB accounting system; she said Mr Davies and Jennifer Austin had access; Ms Horvart said there were no processes in place and she thought she needed to start her work right from the beginning concerning filing and small things to big things and all sorts of issues in administration; she said she was unable to achieve or put in a proper administration system in place; she said the access to the things that she needed was extremely limited. She recognised her handwriting on cheque number 500191 in exhibit P33; she said she did not know what the cheque was for; she said the person with the access to the data bases and internet access and email was Mr Davies; she said the cheque book and petty cash was kept in Mr Davie’s office; she said she was continually frustrated

at trying to achieve what she was asked to do and put in place transparent procedures which lead to her leaving NTRU.

50. In cross examination Ms Horvart said she was employed by Mr Bree to sort out the development side of the office as well; she said the computers were not networked at the time and at that time email access could only go through Mr Davie's computer; she agreed Mr Davies had a lot of duties; she agreed she would describe his management of the accounting side of things as incompetent and not transparent; she said she was not suggesting anything was hidden; she said the records were not open to inspection; Ms Horvart said she has no knowledge of the MYOB system and did not actually know if it was password protected; Ms Horvart said she would describe the office as in an extreme state of disarray; she said she did not have any financial expertise as such.

Carol Lowde

51. Ms Lowde advised the court she holds a Masters of Commerce in Accounting obtained through the University of Canberra and had been employed in the field of accounting for 15 years; between April 2000 and October 2000 she was in Darwin on a working holiday and was employed for Horwath NT; during that period she did some work on the NTRU files; Ms Lowde was referred to exhibit P16; her attention was drawn to the notation "amount worked out with Carol"; Ms Lowde said she had no memory of being involved in that calculation; she said it could have been something she would have done as part of her tasks in relation to the tax files but she doesn't remember it; she said if she had been involved in that she would have sourced her figures from the NTRU records.
52. She agreed she had been shown by police an annual trial balance for the Northern Territory Rugby Union dated 29 June 2000; she said she recognised her handwritten notation against the balance sheet as being hers; she said it appears she was involved in the trial preparation but she could

not say to what extent, she agreed there was provision for employee entitlements being \$10,888.00 and beside that was a number B15; she said that was her handwriting; she said she would have printed a document dated 27 June 2000 or had NTRU print it out to show the balance; she said it shows “year to date” now but is printed in 2000; she said that would depend on the MYOB records, records that the payroll year has been rolled; Ms Lowde said the document B15/2 reflects what the MYOB payroll system believes Mr Davie’s entitlement for the year to date printed off on 27 June 2000 was; in relation to D26 concerning the notation of 400 hours Ms Lowde has someone has later amended the amount to increase the number of hours; Ms Lowde said that as per the MYOB at 27 June her understanding was he was entitled to 167.2 hours. Documents B15/1 and 2 became exhibit P41.

53. In cross examination Ms Lowde agreed that she would not have developed any intimate knowledge with the client files; Ms Lowde said she was unsure when she would have produced B15; she said her short hand “OS” meant outstanding leave rather than “overseas leave”; Ms Lowde said she could not recall how she obtained records; she agreed D26 was the Horwath general sheet; Ms Lowde said that when she said “year to date”, that meant the current payroll year; Ms Lowde said she could not tell from her records or from the printouts before her in the court whether the MYOB payroll had been rolled at the end of the year; Ms Lowde said she could only say that the B15/1 and 2 was a reflection of the year to date depending on the MYOB year; she said it depended on whether on the MYOB, the payroll year is set for 2000 and then it would be a reflection of that year to date; she said it depends on the year that MYOB believes is still current; she said she could not tell from the printout what year it relates to in terms of being able to say it is definitely 2000 or 2001; she said she could not tell whether B15/1 and 2 came from a GST compliant system or not without looking at the systems. She said in relation to D26 that she was assuming some later changes to the

accounts in recreation leave; she said she had assumed that B15/1 and 2 and further documents were printed from the MYOB system but that she did not have personal knowledge of that. Ms Lowde said that in re-examination that if there were two systems she said she would have to somehow resolve which system was the correct system and which accounts were more correct; she said it was very unusual and that she could not ever recall being involved where there has been two systems running at the one time.

Tracie Monica Lew Fatt

54. Ms Lew Fatt gave evidence that NTRU was a regular client of the travel company she worked for; she produced records indicating Mr Davies travelled from Darwin to Alice Springs on 16 October 1998 and returned 25 October 1998; the first invoice became exhibit P42. Further invoice records indicate Mr Davie's departure on 3 July 2000 and his return on 16 July 2000 (exhibit P43). In cross examination Ms Lew Fatt said she did not know whether the travel was completed in its terms and she did not know what was done on the travel.

Dennis Patrick Bree

55. Mr Bree gave evidence of long involvement with NTRU and between June 1992 and July 2001 was the president of the executive committee; he confirmed that from April 1997 through to July 2001 Mr Davies was the general manager; he said the day to day management of the NTRU office was in the hands of Mr Davies as general manager; at the time of his commencement of his employment in April 1997 Mr Davies was entitled to four weeks annual leave. Mr Bree says that he thinks that at the end of the first year the conditions were renegotiated to five weeks leave to take account of the time in lieu as he said they knew Mr Davies was doing a lot of extra hours but that could not really be managed and he was given an extra week's leave; he said there were no other discussions in respect of leave entitlements; he said he recalled in a general way discussions that he

remembers having with Mr Davies when he went on tour to Thailand and there was discussion about whether it might be official duties and Mr Bree basically said he thought it was not official duties so it was determined it would be taken as holidays.

56. Mr Bree said that at the end of the 2000-2001 financial year there had been a bad year and a decision was made to let go of some staff and Mr Davies was part of that and his recollection was that Mr Davies finished at the end of July; in relation to the amount of money to be paid Mr Bree thought that may have occurred just after he left as president; Mr Bree could not recall whether he had seen the documents that now comprised exhibit P3, 4 and 5. Mr Bree said he was aware of the appointment of Mr Brosnan before Mr Davies left; Mr Bree said he recalled that Mr Brosnan tightened up procedures he said he was “pretty hands on” and it was a change of the procedure of the past; Mr Bree said it was still his understanding that Mr Davies had control of the payroll until he left but he thought it was under closer supervision; Mr Bree said Mr Davies had control on staff accruals; Mr Bree said he was unaware that on occasion Mr Davies was paid his normal salary in addition to his holiday entitlements; Mr Bree said that if someone from NTRU had applied for leave, taken holidays and returned to work for some of that period he would assume that if the request was made the leave would be reversed; he said he assumed that if the leave was not reversed then it would be taken off the leave.
57. Mr Bree said in cross examination that he would have thought Mr Davies’ final pay would have been done in conjunction with the treasurer; he agreed the treasurer was Mr Brosnan; he agreed that he would have expected Mr Brosnan to have records and ensure payment was correct; Mr Bree said he accepts that Mr Davies may have given Mr Brosnan a record (of his termination pay to check in early July).

58. It was suggested to Mr Bree that he had discussed giving Mr Davies an extra month's bonus in salary to acquit all of the extra hours he had worked; Mr Bree said he could not recall it but they did talk about some separation payment but his memory was that Mr Davies decided to work through the period; he said he was stretching his memory but he thought that Mr Davies was to work out the period until the end of July. Mr Bree said he thought he remembered that the discussion about the month's salary would be in compensation for early completion; in relation to the month's salary referred to on exhibit P3 Mr Bree said he thought what he was saying from memory was that it was an "either or". Mr Bree said that in 2000 he had some concerns about Mr Davies' financial ability. Mr Bree said he agreed he had a complaint from Mr Davies of assault by Mr Brosnan; he said he wasn't sure whether Cathy Boyd was working there when Mr Bree was president concerning a possible complaint against Mr Brosnan; he said he did not receive a complaint from Jessica. Mr Bree agreed that Mr Brosnan had barred Mr Davies from the use of MYOB system. Mr Bree agreed that Mr Brosnan took over the accounting function in a hands on way; Mr Bree said that he had lost confidence in Mr Davies but he thought his strength was with the sponsors and his weaknesses were with financial management and also stakeholder relationships. In terms of the Alice Springs Masters Games Mr Bree said there was no arrangement for work to be done there but he could remember however he did acknowledge that Mr Davies once or twice a year had to go to Alice Springs for work; Mr Bree said it would depend on the arrangement and how much time was being suggested that he would be working; Mr Bree said he did not specifically know when Mr Davies went to Alice Springs but the plan was that he would go a couple of times a year and talk to sponsors and clubs as was part of his role. In relation to the Christmas New Year break in 2000/2001 Mr Bree said of cashing in his holiday pay that:

“I don’t remember a specific time but I do have a memory at some stage of Bill asking me. Look I can’t remember the details of it though.”

He then said that under normal circumstances if it was not a lot he would probably agree with it; Mr Bree said there was an initial contract and he is surprised it has not shown up; he said there was a starting base rate of \$40,000 with a \$10,000 bonus; Mr Bree acknowledged:

“We allowed someone in the circumstance that has been noted to sort of record their own leave and put it off. I mean usually that’s poor accounting practice and I take responsibility for that”.

Mr Bree acknowledged that no one has ever told him that any documents have gone missing and that they could not reconstruct everything that Mr Davis has been paid by the NTRU; Mr Bree said that Mr Davies was around a lot, there was no question about him taking any long stretches of leave however he said he didn’t think he went without leave either. Mr Bree agreed that book keeping and financial reporting were not Mr Davies strong point and that was part of the reason auditor’s and others become involved. Mr Bree agreed that Mr Brosnan’s position was as an honorary treasurer; Mr Bree agreed there was an agreement between them to a certain level of payment when he had taken days off from work and he thought there was an arrangement through KPMG; Mr Bree said he did not know whether staff leave records and records of leave loading were solely contained on the MYOB system. In re-examination Mr Bree said in relation to whether Mr Brosnan allowed Mr Davies to touch the MYOB system, Mr Bree said

“I think that’s the case. You know there was – Mark really sort of got in there and he was the two of them while he there was a great deal of bad chemistry between them and they’d sort of grind away to get all the records in place.”

Mr Bree said he didn’t know whether Mr Davies could access the records for the preparation of his termination payments; he said he didn’t know that it was refused. Mr Bree said that he thought Mr Davies ended up with some

limited access when asked whether or not Mr Brosnan had barred him from use of the MYOB; Mr Bree said he thought Mr Brosnan took over the financial area in May but more likely June in 2001; in re-examination Mr Bree also said that if NTRU employees did cash their holiday pay in, then it would have reduced their holiday leave balance.

Mark John Brosnan

59. Mr Brosnan gave evidence that he was the treasurer of NTRU for one year; rather it started through 2000 2002; Mr Brosnan agreed it would have been around August 2000; he said his role was to act as a go between between the manager and the board; he said it wasn't actually the day to day operations but just to oversee the employees and check on the reporting; he said Mr Davies reported direct to him; Mr Brosnan said he didn't go down and oversee his work on a day to day basis; Mr Brosnan said Mr Davies brought reports to the board and information for the board; he said the board would meet once a month; he said the dealings with Mr Davies increased when he was aware the accounts were not being done in the manner that they should be; he said he increased his activity because they had debts they couldn't pay; he said he became treasurer around August 2000; he said he was concerned about Mr Davies and the finances once he had been in the treasurer job for three months; he said he wanted more information so he could ascertain what the NTRU commitments were; he said that he usually asked for printout information, access for more information but he usually got none of it; he said when he didn't get information from Mr Davies he would go and search it out himself; he said he got into the computer system to get information about debtors and creditors; he said he obtained it from MYOB but he could only get restricted access; he said the passwords were all under Mr Davies name; Mr Brosnan said he had a strained relationship with Mr Davies; Mr Brosnan said he was aware of the decision to terminate Mr Davies employment on 31 July 2001; Mr Brosnan said he was aware of the staff leave summary record, the termination payment calculation sheet

and the cheque requisition made out for \$19,463.17; Mr Brosnan agreed the cheque was signed by him; Mr Brosnan said he did not place restrictions on Mr Davies access to the MYOB system but he did place restrictions on him that he could not sign cheques without members of the board of the committees to sign the cheques and that that occurred two months before Mr Davies left; Mr Brosnan said Mr Davies did the salary calculations on MYOB; Mr Brosnan said he signed the cheque prepared by Mr Davies in good faith; he said he believed it to be correct because Mr Davies ran the “day to day stuff”.

60. In cross examination Mr Brosnan said he was aware that Horwaths were the auditors for the last few years before he became treasurer; he confirmed he approached Ian from Horwaths in relation to passwords and getting access to accounting information; he said that person was Ian Campbell; he said he was not sure whether he got the passwords from them but he approached them for information on how to obtain information; Mr Brosnan said he didn't have full access to MYOB but he had some access; he said he didn't have access to Bill Davies computer; he disagreed with the suggestion that he transferred the information on Mr Davies computer to the computer in reception; Mr Brosnan agreed that the finance committee agreed on priorities for which debts ought to be paid; he agreed he was at a meeting with Mr Bree in January 2001 where he expressed dissatisfaction concerning the accounts; he said it was not discussed at that meeting to terminate Mr Davies; he said they went through a full total cost structure; he agreed that his view was Mr Davies had mismanaged the accounts for the NTRU and he brought that to the attention of the management committee; as part of the expenditure controls Mr Brosnan agreed that it would be made a requirement for Mr Davies to obtain payment approval for expenditure but not for wages; he said those controls came in during a three month period before Mr Davies left; Mr Brosnan agreed he was at the committee meeting where a decision to terminate Mr Davies employment was made; Mr Brosnan said he did not

ever seek to reconcile the payrolls; Mr Brosnan said Mr Davies did not follow procedure but did what he wanted; Mr Brosnan said he would not answer what the normal procedure was unless Mr Berkley who was asking the questions would tell him whether he was asking what people actually did; Mr Berkley put it to Mr Brosnan that he did not like Mr Davies; Mr Brosnan did not want to answer saying it was a personal thing that it was not on the agenda whether or not he liked Mr Davies; I advised Mr Brosnan that Mr Berkley was allowed to ask those questions and he told me he was going to refuse to get into information that was personal to him; after some discussion Mr Brosnan evaded answering still and said “he’s a person who has his own personality” and “I can’t say I dislike him”; he said he did not at any stage push him and cause him to fall on the floor; he said any allegations along those lines were false disagreed that he had taken over the total control of the accounting function at NTRU; Mr Brosnan said he had never denied Mr Davies access to the MYOB because Mr Davies had the master control password; Mr Brosnan said he approached Mr Bree and asked him to direct Mr Davies to give Mr Brosnan the password access and he agreed with that; Mr Brosnan said he did not get access to everything; he said he did not get access to the payrolls; Mr Brosnan said he didn’t ever have access to the MYOB system that dealt with the payrolls.

61. He said that he “wouldn’t know” if he ever got angry with Jessica Holmes; he said he thought she was a receptionist; he said he may have told her that Mr Davies was not to have anything to do with the finances of NTRU; he disagreed that he ever dismissed the book keeper in early 2001; he agreed that his wife also assisted in trying to piece together the accounts at the NTRU after hours; Mr Brosnan said when Mr Davies presented the requisition for the payment of his termination pay he also presented a cheque; Mr Brosnan said he initially was not going to sign the cheque because he said he had no knowledge of the holidays that were being taken and he said “you’ll have to check with Dennis”; Mr Brosnan agreed that he

had charged NTRU for accounting work; he also agreed that his wife's company supplied stationery to NTRU; he said he could not recall whether he had had an argument with Mr Davies in which he told him he was a "waste"; he said he had no recollection and does not think he would have said something like "if it wasn't for you the NTRU would be in no trouble at all"; Mr Brosnan said he didn't know if he had ever told Mr Davies he was lazy; Mr Brosnan agreed that Mr Davies was allowed to sign cheques for the NTRU after Mr Brosnan became treasurer; he said those cheques included wage cheques he disagreed that he would have checked the calculations for wages; Mr Brosnan said that in signing the termination payment cheque he was relying on the checking of Mr Bree and Panapa as to the accuracy of the cheque.

Leslie James

62. Mr James gave evidence that he worked for Horwath Northern Territory in the audit division and that he had done the NTRU audit account once; he said he would have been auditing there in the year 2000. Could not recall having dealings with Mr Brosnan. He was referred to exhibit D26 he said the "Jenny" would have been Jenny Austin from Horwath. He said he had written Bill Davies is entitled to 400 hours as at 31/05/2000; he said he was not aware how the calculations of 400 came about; in cross examination Mr James said he had just finished university at the time; he said that at the time someone had wanted him to audit the leave records of employees at the NTRU; he could not recall what information he would have looked at; he said that he can't recall the records that he looked at except that he said he would have inspected the records in the computer and he did go to the office of the Northern Territory Rugby Union; he said Horwath kept an audit file for the NTRU; Mr James said that he could not be 100 per cent sure but he thinks he would have got the information concerning the 400 hours from the accounting system in use at NTRU; Mr James said that the document did seem to indicate that he had seen the MYOB records of NTRU and

discovered the need to alter them. Mr James said he could not recall precisely when he made the document that has become exhibit D26 but it would have been after the 31 May 2000. Mr James said that he wanted the changes made at the NTRU and he agreed the audited accounts were the most accurate records and he wanted the client accounts to reflect what the audit showed. In re-examination Mr Geary asked him if he ever looked into the NTRU MYOB he said:

“I’m not sure if I – yes, I would, it would have been part of the audit procedure to examine it, yes; I probably would have gone into Bill Davies office and checked out the MYOB system”.

Scott Andrew Manly

63. Detective Manly gave evidence concerning his participation in the investigation. He gave lengthy evidence of his attempts to locate Jessica Holmes; he gave evidence concerning the application and obtaining of search warrants of a variety of banks; he gave evidence of obtaining NTRU’s U – server and had the computer crimes section assist him in searching the server for a document; he said he was present as the computer was searched. On the document located headed SAM01 Detective Manly was directed to the second page that says “staff leave record” he said looking at the properties through to; general custom; through to “date of creation” and the next entry is “date last saved” that date is 31 July 2001; the date it was last printed was 2 July 2001. The next page on was “further staff leave record property summary”; Detective Manly said it had the same information and referred to the next page entitled “Bill Davies summary of amounts and calculations”. Detective Manly said he helped in the preparation of the information of Mr Finch’s statement; he said the calculations were in slight variance to those used by Mr Finch; Detective Manly provided a précis which forms part of exhibit P44 headed “Bill Davies summary of accounts and calculation in precise” that summary shows the claims by Mr Davies in days and hours compared to the leave paid, the

entitlements, and the leave loading giving the calculated alleged misappropriation of \$17,195.89; Detective Manly explained the calculations to the court in cross examination. Detective Manly told the court that none of the documents headed "Graham Reid" and setting out the various leave calculations were MYOB records; Detective Manly agreed he compiled the spreadsheet from documents given to him by Mr Finch; he said he agreed that the documents referred to screen dumps from the MYOB system; Detective Manly agreed that he did not himself perform the screen dumps from the MYOB accounting system; Detective Manly explained that he created the "summary of amounts and calculations" as a précis document to illustrate in a transparent way how he came to the figure as the calculation of the sum alleged to be misappropriated; he agreed he was not himself aware of the accuracy of any of the MYOB entries; Detective Manly said his understanding was that the leave records were the MYOB records; Detective Manly explained that he was aware that Mr Davies salary went from four weeks leave for a number of months and changed to five weeks leave; he was aware of the general manager's travel fund; Detective Manly agreed he was not aware of the specifics of any changes in Mr Davies gross salary; Detective Manly said he had some awareness in relation to alterations in leave based on his examination of NTRU payroll records given by Mr Davies while being paid leave and also being paid a general salary; Detective Manly said that it appeared from the MYOB cheques and the cheques issued; of the calculations in D26 indicating Mr Davies is entitled to 400 hours Detective Manly said that did not accord with the records at all and he agreed he would come up with a different figure; he agreed however that if D26 were correct the amount owed by the defendant would be less than appears in the calculated amount; Detective Manly said that Mr Hill who was an auditor was not going to be called as he understood it; Detective Manly was aware of Mr Hill's statement and knew he was presently in Katherine.

64. In the face of a no case to answer submission made on a number of points, I ruled that there was a case to answer. As I made a brief ruling and gave reasons at the time (25 August 2005) I will not revisit those arguments in these reasons.

William Patrick Davies

65. In evidence Mr Davies agreed that he participated in a record of conversation with police on 11 December 2002; his counsel referred him to a question at page 3 of the record of conversation asking “Ok, have you had any formal sort of training in office management?” and the reply is “Oh, yeh I just about finished – or completed a degree in marketing management”; Mr Davies said that degree was undertaken at Charles Darwin University; he said he eventually completed having to change one subject being statistics, finance; he said it was primarily a marketing degree and it took him around 10 years part time.
66. He was referred to a statement in the record of conversation where he was asked about faxes and records; he is asked by Detective Briggs about copies and he says “no, not even when I had to go home for mum’s funeral, I searched the house there again so there not there”; he explained that he was talking about faxes that Mr Dennis Bree had sent to him when they were negotiating for him to come and work for NTRU; Mr Davies told the court he was looking for those documents because there were discrepancies about his contract.
67. In relation to page four concerning sponsorship money and a \$5,000 bonus; Mr Davies said his employment was salary plus a bonus of \$5,000 if he could exceed the amount of sponsorship NTRU had at that stage; he said he exceeded within the first couple of months; he said that would have taken the wage to \$50,000 per annum; essentially Mr Davies said he did everything through Dennis Bree in terms of his conditions; Mr Davies said that they had agreed that he would have an extra week as time in lieu

("TIL") to make up for all the weekend work he had done in the sporting industry; he said he was not successful in negotiating anymore than five weeks leave.

68. In terms of the MYOB accounting packages Mr Davies said he did a weekend course at the Darwin Computer Academy; he said he agreed he set up the chart of accounts for the MYOB system for NTRU; he said he had a lot of different account headings; he said he was not very successful with it; he agreed he told police that NTRU obtained the MYOB system after Stuart Jamison started as treasurer; his statement to police on page 10 where he told them "that worked for a few months, um, but again, I'm not an accountant so um, I was stuffing up some of the simple debtors, creditors, they call simple, but I still have problems understanding those type of things. So again, um, our accountants Horwaths, Ian Campbell advised me to get a book keeper in now and again, and I'm talking a couple of years ago." Mr Davies said he spoke to Mr Campbell about problems with the MYOB system; in relation to his statements at the bottom of pages 11 and the top of page 12 of the record of conversation where he said words to the effect that they would come and talk to a book keeper if there was a major problem, Mr Davies said he was basically talking about the finance committee; in relation to his discussion with police in the record of conversation about the MYOB and the payroll, he said basically on the payroll apart from people who worked in the bar or the gate, everyone else was on salary of permanent employment so to calculate their pay there was no need to adjust the payroll; he said with casual workers he would just key in the hours and the casual rate pertaining to them. Mr Davies agreed he would allocate cheque numbers to pay salaries; he said salaries were paid in one group and bills were done up individually. His counsel asked him in relation to discussions with Detective Briggs at page 13 where he said he could never get the MYOB to roll over and he would be doing manual ones for two or three months; Mr Davies said the end of the financial year was

different to the financial year in most places; he said NTRU used to play during the wet season; the season would end generally May or early June; he commented on Mr Bree's evidence that NTRU did not always run on a normal financial year and Mr Davies in evidence agreed with that; he agreed that an audit report would be put to the AGM in July or August.

69. In evidence Mr Davies counsel took him to page 14 concerning Austin Book keeping services; in the record of conversation on page 14 Mr Davies was asked about Austin Book keeping services; he said he thought Ms Jennifer Austin was the actual principal of Austin Book Keeping Services; Mr Davies said he accepts Ms Austin evidence that she did the termination pay for Michelle Grass but he could not remember it. He was asked about his discussion with Detective Briggs recorded on page 14 of the record of conversation that in relation to people applying for leave they would say "Bill, can I have a couple of weeks off?" "*I would have a look in the diary work it out, yeh, nothing clashing and give it to the book keeper*"; that section of the answer, he explained, also refers to answers concerning keeping a total done manually on a sheet because the machine would not roll over properly and they could not keep a total; he said he was just doing it himself on a spreadsheet; he explained to the court that because the end of the rugby union financial year is so different to the taxation end of year and the payroll of MYOB would work up until 1 July, he said there was no way of adjusting it to fit in sync with NTRU so there were always a couple of months that things could not be inputted because the MYOB was not linked for the same financial year.
70. In terms of the termination pay Mr Davies said he had to work out what he thought he had taken and did the calculations from there. He said he did that from the spreadsheet document; he said "*MYOB was the major accounting programme; but because I was having trouble with it I could not use it; it also got some sort of virus that got into it*"

71. Mr Davies said that he would have upgraded the GST compliant of MYOB when he needed to; he can't recall who loaded that into the computer; he said as between the old system and the new system the two systems did not talk to each other; he said one computer was in admin and the other was in his office; he said there were three computers outside of his office; he said he wouldn't himself have obtained advice about linking the old system to the new system; he said he thinks there were problems with the GST system in terms of most people having difficulty with it but he can't remember anything precise about that. He was referred to page 19 of his record of conversation where he was asked about applying for leave and he told police that he would give Dennis a ring and he would tell him he would like some time off; he was asked whether he was replaced while he was away and he replied "no" and

"...the biggest problems I had when I was away was I was just getting phone calls all the time and each time I came back I just went back to work. Just too many people ringing up wanting to know what was going on this that and everything else so it was an impossibility to try and have leave in Darwin. I just went back to work. And that has happened on three or four occasions".

He said in evidence when he would come back to Darwin he wanted to stay on leave and be around home. He said that he remembered that he travelled to Bali and spent half to three quarters of a day in an internet shop trying to get some proof designs that were being used for football. He had arranged sponsorship these designs. He said when he came back to town he would have to go and make sure they were exactly what they were after. He would go back into the office to sort that out and then something else would come up and he would end up just being at work. In terms of overseas travel he said that from what he has now read he obviously had more than what was recorded but he was pretty sure that Bali was for only 5 days and Thailand was a 7 day tour but he said he had a lot of other trips to various areas for the NTRU. He agreed that departing Darwin on 5 July 1999 and arriving back on 21 July 1999 would have been for the Thailand trip; he said he

realised that there was more leave then; he said there were a couple of weekends in there and he had a feeling there was also a public holiday; he said he thinks he claimed 8 days and he now says that was wrong; he said he claimed 10 days because his memory was that he went to Thailand and he remembered doing the tour to Phuket for a couple of days but he didn't have any other information to go on at that stage.

72. He said that after discussing the matter with Mr Finch and Dick at the Sailing Club and it was pointed out that he had taken too much leave in his final pay, he said that it wasn't at that same time but that around that time he advised that if he had made any mistakes in what he had done he would repay it. He said that he did perform some work for NTRU in Thailand but it wasn't paid work; he said it was difficult not to be involved in the hospitality or tradition that the Thai's had with rugby; he said he discussed recompense with Dennis but that Dennis had said that it wasn't valid.
73. He was asked about the period up to about approximately the 30th June concerning the evidence that appeared to indicate that he was paid ten weeks pay for a six week period, he answered that he just wasn't sure; he said he really can't remember what was going on there. He was asked about a flight for the 12th August 2000 to 19th August 2000, he agreed that probably included at least five working days; he said it sounded like the trip he had to Bali. He was asked about the evidence which indicated there was four weeks or 20 days leave for the five days in Bali. He was asked by Counsel whether he recalled how that would have shown on the records. He said he was intending to take four weeks leave; he said when he came back he got into the work again and things started coming up and basically he stayed there until he got snowed under with it; he agreed that his intention was to take four weeks leave of which one week was going to be in Bali and the rest local leave; he said that the girls from the office would ring him if he was back in town and Dan would ring him and he said that there were various people who rang at different times wanting advice or wanting him to

look at something. In relation to the overpayment in July of 1999 he said he had intended to get away for a while but for various reasons it didn't happen. He was asked about taking any pay in lieu of leave. He said he didn't think he had until it was pointed out to him and he had forgotten about it; it was coming up for Christmas. He said his memory was probably after the additional paid leave – to make Christmas a bit better but he couldn't remember; he said he could not remember what Christmas it was; he said he asked for pay in lieu of leave so he could use it for the Christmas period; he said he thought that he had asked Dennis but he could not be 100 percent sure.

74. He was asked if he could explain the discrepancy between the leave that he took and the leave in the MYOB payments; he said he thought the MYOB records were probably never really accurate except for about once or twice a year and he used memory to try and get the final pays worked out; he said that was why it was done on an excel sheet calculated on how many years he had worked there by the number of weeks he was entitled to and worked it back to what he thought he had taken. Given the evidence indicating that he was overpaid more than 60 days he said only that things that had been pointed out to him since he took the leave shows that he was overpaid; he says he wasn't aware or couldn't remember some of the other periods that were mentioned to him. He said in relation to leave when he had come back early he did not make adjustment to the MYOB financial records because he was flat out and it had slipped his mind though he wasn't aware of how to do it properly; he said he had people helping with accounts and he anticipated that they might have picked it up; he said he got back and got into things and didn't think about what to do about the leave; he said because he was working he got paid to work but was unaware that he was not allowed to claim. In terms of what he should have done he said that if he came back to work he thought he was entitled to get the leave again like time in lieu and he thought he would be entitled to that leave again. He was

referred to page 35 of the Record of Conversation when questioned by Detective Carter and Detective Briggs. He said in relation to when the allegations were being made:

“I will try and pay you back, because at no stage had I admitted anything and I still don’t. I don’t know how well I know what I have done there I have calculated wrong, as you have said just then but at no stage have I done anything that I believe is wrong”.

Of that part of the questioning Mr Davies said that he thought at that stage police interviewing him told him that he had been overpaid by 80 days, he said that at that stage he didn’t know that he had done anything wrong, that he hadn’t intentionally done anything wrong. He said he calculated these holidays from his memory but he wanted to say that if he had made a mistake he was quite willing to pay them back. He was referred to page 36 of the Record of Conversation when Detective Sergeant Carter stated to him: “The allegation is essentially that you must have realised that at that time that you had in fact been paid for nearly all of this holiday”. He had answered in the Record of Conversation: “Well no, I didn’t. The figures that we were working on there, the hours as to what the auditors gave to us, at the end of the financial year, accrued leave, that is the hours that I worked back on”.

75. Mr Davies said that basically from what he could remember is the sheet that “Jenny” was told to do the calculations in the MYOB; he was shown Exhibit D26; he couldn’t remember when he saw it but he said he knew he saw it; he said the auditors prepared it when they came through the books and systems and were printing off reports; he agreed that there were payslips in hardcopy of each payment made in salary, wages and/or leave loading and there were separate files for all the different areas; he said he didn’t destroy or alter any of the records; he said he understood D6 to be saying how much accrued leave himself and a number of other persons were entitled to as at 31.05.2000; he said he was aware auditors may make or require a manual

alteration to the system; he says he was asked to find invoices and cheque numbers and cheques by auditors.

76. He was referred to the Record of Conversation where Detective Sergeant Carter asks about the auditor Peter Hill. He confirmed what he had told police was that he came in with a handwritten piece of paper that was given to the bookkeeper and that that amount of hours was input and he confirmed in court that that was what occurred. He was referred to page 37 of the Record of Conversation where he said “here is all your accruals for leave” to the bookkeeper. He said he can only assume he mentioned for her to get the figures to put in to finalise the books for the financial year. He was asked about page 39 of the Record of Conversation and further where police were asking questions and he indicated he no longer wanted to participate. He told the court he had been there for quite a while, he wasn’t sure what was being asked and he thought he would need some legal advice; he said he thought the questions were getting at rapid fire and he was getting confused. Mr Davies said he had received documents from the TIO and advised that because of the criminal proceedings he did not wish to compromise his position by settling on a sum with them; he told the Court he does now have the money set aside to be able to settle with NTRU. Mr Davies said he believes he made a mistake by putting the Masters Games in April 1998 but he said he went with Lyn on a short holiday to Alice because she had never been and he now realises that that was a different period. He said he didn’t really have records apart from noting in his diary the times he was in attendance or doing NTRU business. He said he didn’t have the diaries in Darwin; he said there were some noted sheets he had given to police at the interview.
77. In terms of obtaining the final payment he said that he produced documents that had been presented in Court a couple of weeks before; he said he thinks Dennis asked him to make sure some documentation was together so it could

be looked at; he said he passed it to either Dennis or Mr Brosnan but more likely Dennis and what he was told at the time was that Dennis had given it to Mr Brosnan so that he could check it out. He said it was mentioned that Dennis was asking Mr Brosnan whether he was happy with what was done and that was the effect of a conversation between him and Mr Bree; he thought Mr Brosnan and Dan may have been there as well.

78. Mr Davies agreed that he and Ms Austin both had total access to the MYOB system; he said to his knowledge that there was only one password; he said Michelle had limited access; she only had access to the invoicing area; Mr Davies said if a person did not have a password they couldn't get in to the MYOB system; he agreed with Ms Austin's statement that there were difficulties bringing forward the balances into the new MYOB system from the old system. Mr Davies said after that the incident concerning himself and Mr Brosnan, Mr Brosnan instructed Mr Davies not to have anything to do with the accounting or MYOB; Mr Davies gave evidence of his allegation of assault against Mr Brosnan; he gave evidence of the poor relationship between himself and Mr Brosnan; after the incident Mr Davies said he was prescribed some stress medication; as to whether he still had access Mr Davies said if he did have some access on the system after the incident with Mr Brosnan he didn't use it. The records Mr Davies had access to were the excel sheets and his knowledge or memory of what he was entitled to; he said he went nowhere near the MYOB because of the incident with Mr Brosnan.
79. In cross-examination Mr Davies restated that his salary package was \$55,200; he agreed prior to working for NTRU he had a similar role at Northern Territory Rugby League Association; he was not the General Manager; he was said he was not involved in payrolls; he was working with sponsorship. On his involvement with finances he said he came across money but had nothing to do with the program; he said he didn't have a

great deal to do with finances; as General Manager for Northern Territory Aides Council he said he was not involved in finances; that there were people who did the inputting; his role was more of advocacy and PR; he said Mr John Robinson who was a bookkeeper and an accountant kept an eye on that; he agreed that as General Manager in conjunction with the President he would sign off on things as being accurate and correct; he agreed he had duties with regard to staff salary payments at NTRU; he said Tania Gamble was the treasurer when he started he had a lot of control on the books; he said he did not do any inputting. He agreed he was eventually given the MYOB system to work with in late 1998; he agreed it was on his desk; he agreed he would make entries on the payroll section on a fortnightly basis but said he did it for a couple of months but soon after he had bookkeepers come in because he was having a lot of trouble with the accounts; he thought Ms Austin was the first one; he agreed he was in charge of the financial system that paid the payrolls; he agreed he had the odd part time or casual employee; he agreed he would have to manually record their hours; he agreed copies of cheques were signed for by the employee and one copy went to the office; he agreed the same process was done for holiday and leave loading cheques; he said though he didn't remember inputting any one for holidays while he was there; he agreed as General Manager he was responsible for the upkeep of those records. He agreed he had a weekend training course at the Darwin Computer Academy on MYOB at the start when MYOB was commenced at NTRU. He agreed MYOB has facilities if mistakes are made then changes can be made; he said he believed that MYOB had a facility for re-crediting leave; he said that he believed that MYOB could re-credit leave if people came back to work during their holidays.

80. He was asked questions by Mr Geary on Exhibit P4. In relation to the entry for the Masters Games he agreed that he had made a mistake however he said he was not saying the leave was incorrect just saying the reason for it.

He agreed he drew a cheque on 7 April 1998 (D28) for \$1,835.05. He was shown Exhibit P9 and was shown the cheque for \$1,738.65. He agrees that he and Dan's signatures are on the cheque; he said he assumed he signed a hard copy of the payroll slip with that; he agreed he banked it into his personal account. Mr Davies agreed in relation to cheque number 4075 that the sum of \$1,302 was his normal pay packet; he agreed that would be for the preceding fortnight; he was asked whether the leave payment taken in that cheque were reflected in P4 (staff leave summary); Mr Davies said "not that I can see". It was put to him that he was aware at the time that he made the leave summary that he had been paid that leave; he answered "*I am not sure. I am really not sure*". He agreed he had not recorded it on the leave summary; it was put to him that he knew that he had been paid that leave back on 15 October 1998 and he said he didn't know; he agreed saying he assumed cheque 4086 would have been reflected in the MYOB system.

81. He was shown P7; he agreed it was a pay advice for the proceeding fortnight of 7 October 1998; he was shown Exhibit P6 a pay advice for the period ending 15 October; he agrees it is in regard to annual leave and leave loading; he agrees that hours are recorded on the document; he was shown exhibit P8; he agreed they were two pay advices that are the same both dated 21 October; he agreed he had been paid his normal salary for the preceding two weeks; he agreed the drawn amount of \$1,738.65 was not reflected in the staff leave summary; he was shown Exhibit P30 and cheque 4201; he identified it as a cheque of \$3,040.80; he agreed it was signed by himself and Dan and banked into his personal account; he agreed the same process occurred with cheque number 4176. for 217. In relation to Exhibit P 9 Mr Davies acknowledged it was a pay advice for holiday leave; he said he was not sure if he recorded this or someone else entered it; in relation to Exhibit P10 & P11 he agreed they were in the same category as P9; he agreed he had signed the pay invoices; he agreed that was not reflected in Exhibit P4; it was put to him that when he presented the staff leave summary he was aware

that he had paid himself that leave to which he answered “no no I don’t know”. He said “no I was only using my memory and that is all I can remember from what I had taken”.

82. In relation to documents given to police Mr Geary suggested to him they were rough estimates, Mr Davies agreed. Mr Davies agreed that when he signed a cheque or payroll advice he was signing it off as being true and correct. He was shown P12 being the payslip for June 1999 and agreed that he signed that and would have received the cheque for that amount; similarly he was shown Exhibit P31 and he agreed he would have banked that; similarly with Exhibit P14. He was shown Exhibit P15 the payslip advice for 28 June 1999; he agreed there was net pay of \$1,062.85; he said he would agree it would appear to be his normal fortnightly pay. In relation to Exhibit P12 it was suggested there was excess leave loading. Mr Davies said he didn’t remember entering that, and that it may not have been him; he agreed that he had initialised Exhibit P12; he was asked if he took 31.3 days leave and he said “It looks like I have taken part of it”. He agreed in relation to leave for Thailand he had recorded eight days; it was suggested to him that he took more than eight days to which he replied he did know that now; he agreed that he relied substantially on his memory. It was suggested to him he overwrote the MYOB system so the leave wasn’t debited. He said he didn’t know who entered that in, he couldn’t say if it was he or not. He said he didn’t remember applying for 31.3 days leave. Mr Davies was shown Exhibit P12; he agreed that P3 accorded with the figures on P12; he said that he assumed that he wrote that note around that time and paid himself the leave on P12; he said he assumed so but didn’t know; he agreed that on P12 he hadn’t recorded the hours that he had been paid with regard to leave; he disagreed that the only other person to use MYOB was Mr Brosnan; he said that the bookkeeper also had access; he said that if Ms Austin had not started by 30 June 1999, then it would have been he who would have inputted it and signed it.

83. In relation to Exhibit P13 he agreed it was around the time he went to Thailand; he said he assumed that amount referable to P13 was in regard to the holiday in 1999 to Thailand; he said he would assume so; he said he didn't dispute he was in Thailand for 17 days but he said he only thought it was around 12, given there were weekends. Essentially throughout the cross-examination when taken to each particular exhibit Mr Geary asked quite particular questions that Mr Davies acknowledged were his cheques or payslips being P18, P32, P17, P21; Mr Davies answers variously that he cannot be sure although on most occasions he assumes he was involved in the creation or the entry into MYOB for debiting the days. Concerning his leave for 9 August 2000 he agreed that he prepared a normal fortnightly pay plus 20 days leave of annual leave and leave loading; he said if the documentation was there he would agree with that; he was shown Exhibit P19 being a pay advice for 19 August; he agreed he initialled it similarly with P33. He reiterated that that was when he took leave to Bali and returned back to work early; he said he did do some work on the Bali trip but it was a holiday; he agreed he had never recorded when he went back to work early; he said to his knowledge he didn't record those sorts of things; he said a number of people would have been present when he went back to work early; he agreed he kept a diary but it was of appointments; he agreed he would have had appointments after a period of being back. When suggested to him that he still received his fortnightly pay of pay for that period on 9 August 2000 except for one week he said he can only assume so going on the documentation.
84. On the importance of keeping records Mr Davies said that he now realised it was important but denied knowing it at the time saying "I thought what I did was right and again as has been pointed out since there are a lot of things that I haven't done which was correct". It was suggested to him that he wanted the Court to believe he was utterly incompetent. He says he wasn't incompetent. He was skilful at marketing and sponsorship but his skills did

not extend through to accounting and finance. In relation to questions concerning whether Mr Davies thought it was important to record leave properly, he said what he thought was right and he understands that a lot of what he did was not correct; a number of the records were put to him (P20, P25) and he was asked whether that was reflected in P4; he agreed that it wasn't; he maintained in relation to leave in Bali that he came back to work early from that leave. He agreed that the staff leave summary in P4 was appallingly inaccurate; he said a lot of the things he had forgotten and even when some issues were pointed out it was still taking some time to remember some of them; he was asked whether he indicated to the Finance Committee that he had concerns about the accuracy of the document and he said he did not; he reiterated that from his memory he thought it was correct. He agreed he has only kept the excel spreadsheet from October 2000 and when asked what he was basing his leave on before that, he said he wasn't sure and that because he was having so many problems with the system he couldn't now remember how to work it out or how he worked it out or how it was done; concerning Exhibit 39 that was referred to Mr Davies, he was asked when he started recording those hours; he said most of it was estimates because he would have recorded it after as an indication of the hours he was actually doing; he reiterated they were *estimates* of the hours they were doing; he said he had always worked on the basis of roughly 50 hours. He referred to some occasions concerning various events and duties that he had a good recollection of and others that he did not; he said as a result of attending to those duties it did not occur to him to re-credit leave at the time.

85. In relation to D26, he said he could not remember how he got hold of the document but it was something written by the auditor; he agreed the 400 hours was not accurate but he said at the time he thought it was; he said he thought that the auditor would have researched the books and the documentation. He said the auditors would come in and ask for certain

documents and invoices; he said he would go through the records and find them. In answer to whether he ever went to the Finance Committee to tell them he didn't understand what he was doing Mr Davies said he did ask them for help; he reiterated he had some difficulties with MYOB even though he had training in it; he agreed when it was put to him that being an accountant was not a pre-requisite to using MYOB. Mr Davies was asked about Mr Dan Panapa and whether he was a financially aware person; Mr Davies answered that Mr Panapa was not as un-financial as he made out; he said he had quite a few investment properties around town and was quite skilled on keeping an eye on them; he said Mr Panapa was utilised for signing cheques because of him being on the premises; Mr Davies said that for the majority of the time there would be a requisition with the cheques.

86. Mr Davies said that Mr Brosnan had access to the MYOB system from August 2000; he was asked about Mr Brosnan's position and Mr Davies said Mr Brosnan was treasurer but he was also paid for doing the accounts; Mr Davies said that Mr Brosnan was locked in his office many times after hours or sometimes worked with his wife; he said that Mr Brosnan was not doing the day to day salary processing, as they had bookkeepers at that stage; Mr Davies said as at about February 2001 he had partial access to MYOB and had been told not to have anything to do with the accounting; he said he never touched the payroll system after the altercation with Mr Brosnan; he disagreed with Mr Geary's suggestion that he had used it up until 31 July 2001; Mr Davies said the controls placed on him was that he was to have nothing to do with finance and Mr Brosnan was to sign everything. Mr Davies said that for a period he had access to MYOB but didn't want to touch it.
87. In answer to some questions concerning the excel sheet, Mr Davies said according to the evidence he had opened that document in October 2000; he said he didn't remember; he agreed it was before any altercation with Mr

Brosnan; he disagreed that that document went to the auditors; he rejected the suggestion that the alleged assault by Mr Brosnan did not occur; he was asked about why he terminated the Record of Conversation, he said he asked for it to be stopped as he had been there for quite a while and he didn't know what was going on or how to answer things and he thought he could seek some legal advice; he said he was very confused; he was asked about various documents that he gave police contained in Exhibit P39; he was asked to comment on the details in Exhibit P4 as opposed to other details in MWB2B; he agreed other leave was missing on the document that had been supplied to Detective Briggs; he agreed there were with inaccuracies on that document; he said that the documents concerning accrued hours were not correct, however he disagreed that he knew that it was not correct at the time; Mr Davies was asked about a number of the discrepancies that had been brought up in Evidence in Chief but he maintained that he did not know that the final documents were false and that he had primarily gone on memory when calculating what he may be owed.

88. He was referred to one of his statements to police where he said he relied on Austin bookkeeping documents; it was suggested to him that in evidence he had told the court he was relying on memory and the spreadsheet; he said the spreadsheet was what he worked it out on; he said that it was done in 2000 and that when he spoke to police it was a number of years afterwards.

Character Evidence

Arthur Wesley Boland

89. The character reference (exhibit D47) was tendered through Mr Boland who is an executive director of human resources for the Department of Corporate and Information Services. He attested to knowing Mr Davies and his family in the early 1990's as Mr Boland was a referee involved in rugby league; he knew Mr Davies in employment when Mr Davies once worked at Rothmans and the Territory Aids Council; he commented on Mr Davies role as

operations manager for the Darwin Rugby League; he said he carried out his duties in an exemplary manner and his conduct never gave rise to any concerns over administration of finances; he said he would have no hesitation in engaging Mr Davies in a similar capacity. In his evidence before the court when asked whether he thought the allegations concerning the deception that were before the court were consistent with Mr Davies character, Mr Boland said no. In cross examination he was asked whether Mr Davies was highly competent in relation to dealing with money and cash; he answered “Yes”. He said there was a person with qualifications in the book keeping area on the staff, and there was always a director of the board responsible for finance who was qualified for finance.”

Dallas John Graetz

90. Mr Graetz is a retired police officer who gave a reference for Mr Davies that became exhibit D48. Mr Graetz also gave evidence before the court. He had known Mr Davies for 11 years when they were both involved with Northern Territory Rugby League; Mr Graetz worked for Mr Davies for a period at Optus Rugby Park; he spoke of Mr Davies as “a pretty hard taskmaster, he worked a lot harder than I did”; Mr Graetz said he maintained his friendship with Mr Davies until he left to go interstate a couple of years ago; he said was surprised about the investigation into Mr Davies financial dealings because he always considered him a hardworking honest and dedicated manager; in evidence he said he thought Mr Davies was a good man, respectable and honest; he said in relation to the current charges:

“Well to the best that I know Bill, which is fairly well, particularly when I was working with him for about three months, I’m sure that if there was an overpayment, in my opinion, it would have been a mistake. I’m sure that he wouldn’t deliberately defraud the Rugby Union”.

He then said it was inconsistent of what he knew of Mr Davies.

David Farquahar

91. Mr Farquahar's reference became D49 in these proceedings. His reference indicates that he has been friends with Mr Davies and Mr Davies family for more than 10 years; he indicates in his reference that the friendship commenced between daughters in each family; Mr Farquahar's reference indicates that his friendship with Mr Davies is personal and family based and has included attendances at charity functions at NTRU and later the Darwin Sailing Club. Mr Farquahar's reference indicates that he was approached by Mr Davies to assist him in relation to corresponding with NTRU and its insurer concerning how the loss attributed to Mr Davies was calculated; he said he was advised by NTRU lawyers that for their client to make a claim on the insurance policy the matter had to be reported to police. Mr Farquahar's reference states that he was very surprised that the police thought he had acted criminally. Mr Farquahar's reference states:

“the picture that I had of Bill, both before and after he had spoken to the police, was that he was not well qualified to be the sole financial manager of a business, because his attention to detail in paperwork was far less than I thought prudent, and his understanding of accounting and office systems was not what I had expected.”

Mr Farquahar ends his reference by saying *“I am proud to call Bill a friend and I am confident that my trust in him will not be misplaced in the future.”*

92. In his evidence before the court Mr Farquahar wanted to explain to the court that he had discussed matters with Mr Davies in relation to the dealings with NTRU and subsequent dealings with TIO and attended with him more as a friend with the police but when charges were laid he advised him that he should have a lawyer who is more at arms length and who practices in criminal law. Mr Farquahar said that Mr Davies enjoyed an excellent general reputation although he pointed out that the charges had certainly tainted his reputation. He thought Mr Davies best contribution was to his family who are all very active in different ways in the community; he referred to Mr

Davies community fund raising activities that sometimes were work related but sometimes they were not; he said Mr Davies involvement with the Aids Council had been above the call of duty. In relation to the current charges Mr Farquahar said that a deliberate act (on the part of Mr Davies) seemed to be quite contrary to his character.

93. Further references favourable of Mr Davies character are tendered in a bundle exhibit D50 before the court.

Consideration of the Issues and Submissions

94. The prosecution must prove all relevant matters beyond reasonable doubt. In my view, it is no wonder Mr Davies fell under suspicion and was investigated. It is a terrible blow to the whole community when community or sporting associations suffer financially because of the actions of their employees or generally through the management or mismanagement of employees of those organisations. The role of the court in this criminal case is not an overall inquiry into the background matters but to determine whether there has been criminal conduct according to particular offences charged, here, furnishing false accounting documents etc (knowing they are false) with a view to gain and obtaining property by deception.
95. Mr Finch in his capacity as honorary treasurer, (taking on that role at a very difficult time for the NTRU), has certainly located completely mismatching records of leave that do not accord with the termination pay calculations furnished and presented by the defendant. They do not accord in a most major way and that provides the basis in itself for a strong inference of dishonesty. It is no wonder that the matter was put into the hands of the police who, from what I can ascertain have investigated the matter most thoroughly. Although I was concerned in discussion with counsel about why the matter started as a civil matter and escalated, I appreciate that there were reasons why law enforcement agencies took the view that they did.

96. Ms Ratcliffe and Mr Geary have prosecuted the matter in a strong, detailed and fair way. Mr Geary on behalf of the prosecution has submitted this is not a matter that involves a mistake of a few days, but rather a claim for 69 days more than was actually due and calculated to be a misappropriation of \$17,195.90. I agree it is a significant sum in the context. This is over a period of a little more than four years employment. It is submitted on behalf of the prosecution that given the position of the defendant as general manager, the fact that he was essentially in charge of the payroll, with access to the MYOB (although granted some other persons had access of varying degrees); that for some of that period he had sole access to the MYOB, the prosecution is able to prove that the defendant possessed the requisite knowledge when he formulated his termination pay claim.
97. Mr Geary submitted that the character evidence called indicates Mr Davies was a competent manager not prone to making mistakes on financial matters. In my view the evidence on this point goes the other way and very clearly so. Mr Geary points to answers made by the defendant in his evidence concerning previous explanations given by the defendant to police to the effect that he relied on auditors reports and that his evidence before the court has been working from memory and the spreadsheet. Mr Geary submits this detracts from the defendant's credibility. Mr Geary submits the defendant conveniently shifts between issues of stress, problems with the MYOB before and after the GST upgrade, then he relies on information he knows to be incorrect. Mr Geary also points to the defendant's evidence (page 113) where he can't really say how he worked out his leave entitlements on the excel spreadsheet. Mr Geary submits the defendant knows that information given to the auditors is not correct and he would have been well aware that his claim was incorrect. Mr Geary also points to the evidence of Mr Davies at page 124 where he suggests to Mr Davies that he opened the excel sheet in October 2000; Mr Davies agrees it is according to the evidence but can't remember why he opened it in October 2000. Mr

Geary also points to the defendant's evidence at page 139 concerning the spreadsheet and his explanations for compiling it. Mr Geary suggests this proves the defendant knew the records were faulty.

98. Mr Geary submits the defendant's account that he thought his calculation was correct based on memory is undermined by his own testimony because the defendant as a General Manager knew the need for accuracy given his years of experience, his training on MYOB, the fact that he acknowledges the importance of keeping records for the casual staff and other employees. Mr Geary also points to the fact that the defendant attempted to obtain further leave and was refused.
99. Mr Geary reiterated that given the length of time of employment; given his knowledge of his position of trust; he submits the prosecution have proven the mental element beyond reasonable doubt. Mr Geary submits the character evidence is contradictory especially in relation to the question of the defendant's financial abilities.
100. Mr Berkely reminds me in submissions that both counts require proof of specific intent and that I have to be satisfied beyond reasonable doubt that this was a deliberate act of dishonesty before I can find the charges proven. He reminds me that Mr Finch's evidence is based on a reconstruction of records after the defendant had left NTRU; that Mr Finch's calculations are based on what he understood to be the contractual terms and on certain assumptions (that is, that the leave was paid and taken). He reminds me that Mr Finch had not seen D26, the Horwaths document which Mr Finch says would have represented 53.3 days owing; Mr Finch said he would have taken it into account; Mr Finch didn't know if holiday pay was taken in lieu of leave; he understood there was a facility to cash up in some awards but thought Mr Bree would need to approve it; he also reminds me of the evidence Mr Finch gave about Mr Brosnan. He reminds me there was no

discovery of missing documents of relevance for the periods under investigation,

101. He submits Mr Panapa's evidence was generally supportive of a number of issues raised by the defendant; he signed the cheque because Mr Brosnan as treasurer had signed; he knew Mr Davies worked long hours. Ms Austen gave evidence about doing some of the pays; she supports the defendant's case in that she agrees she had the password to MYOB; she acknowledged D26 was directed to her in respect of the leave of a number of employees including Mr Davies; she thought the number of functions Mr Davies performed was unusual for a CEO; she said the old and new MYOB systems could not talk to each other; this led to the compilation of an excel spreadsheet; she thought the system was problematic. Mr Berkely reminds me of Janelle Tyson's evidence in particular concerning the access to MYOB and her evidence concerning Mr Brosnan's conduct towards her and that MYOB documents were to be produced by Mr Brosnan and cheques were left for Mr Davies to sign. Of the police evidence Mr Berkely submits the spreadsheet provided was prepared from the NTRU documents and the calculations of Detective Briggs are based on those records.
102. Mr Berkely made a submission that P4 and P40 were not "accounting documents" for the purposes of the charge under section 233(b) *Criminal Code* as they were records the defendant had made for himself – they were his own documents. I don't agree with that submission in the context of documents made in the work place concerning accounting of sorts to account for leave and other matters.
103. Mr Berkely submits I should not draw anything adverse in the circumstances concerning the cross examination of Mr Davies over P40 and P4. He submits there is no independent evidence about the creation of those documents. Mr Berkely asks me to pay attention to the evidence of Ms Lowde who agrees she could have assisted with working out the leave entitlements. Mr Berkely

reminds me of the evidence of Mr Dennis Bree in particular concerning Mr Bronson and his taking over the MYOB function; he submits there is also some support for the various claims made by the defendant in Mr Bree's evidence. Mr Berkely submits I should disregard the evidence of Mr Brosnan. He reminds me to have regard to the character evidence.

104. In my view both counsel raise very valid points in their submissions. I am not entirely sure that the prosecution have proven that leave was taken on each occasion there is a record for it. Although I would act on the assumptions Mr Finch has acted on if I were in his position, I'm not sure I can do that in the context of a criminal case having heard there is some evidence, not only from the defendant, but evidence from other witnesses to the effect that Mr Davies did come back to work at times when he was on leave. If he did do that, although that should have been recorded, it hasn't been. There is still a lack of clarity around that issue, brought about most probably because of the defendant's failure to keep proper records, but I can't punish him for that by making adverse findings of fact. The defendant does, in these proceedings seem to accept the calculation, or close to it so I would accept it as proven that the leave discrepancy and consequent value of the deception is in the order of that alleged.
105. Much of the defendant's case has revolved around his poor financial or accounting skills. Although that is probably true, failure to keep proper leave records would be an issue attracting discipline even against very junior employees. It does not take accounting knowledge to know that everyone has a duty to protect the integrity of their own or their employer's records about those things. The defendant's failure to properly account for his leave; to assume he can take TIL; to return from leave to work and not document it and to cash up leave at various times is highly reckless. It is no wonder he has come under investigation. That is not what I am dealing with him for though. In as much as his conduct about record keeping is relevant, I have to acknowledge that there is support in the evidence, other than just the

evidence of the defendant to support some fairly loose arrangements concerning cashing up leave over certain periods and returning to work when on leave but not adjusting the records. So although I was initially of the view that those sorts of arrangements reflected adversely on the defendant's credibility, there is some support for his belief as to these entitlements from time to time.

106. I do have to focus on his mental state at the time of making his termination pay calculations and effectively presenting them and receiving the money. As against the inference that can be drawn against the defendant because of the 69 days (which in my view is grounds for a strong inference) I have to balance that against the evidence of some of the witnesses indicating the defendant either did not have access or made to think he should not have access to the MYOB when Mr Brosnan became treasurer and during the period when he had to submit his final pay; the fact of the existence of the auditor's note indicating he had 400 hours leave and that he had seen that note; the difficulties with MYOB for some periods at least that seemed to deter reliance on it; the non-interference with the existing records; his cooperation with both the NTRU and the police investigation; and obtaining his own accounting expertise to evaluate what he may owe.
107. In relation to Mr Brosnan, its not so much that he wanted to avoid answering questions in such a dramatic way, but some significant points in his evidence were contradicted by other witnesses; he was very ill-disposed towards the defendant; he didn't want to cooperate with investigators over this matter. On material matters where his evidence conflicts with either witnesses of the prosecution or the defendant I prefer the witnesses for both parties. In relation to the Horwath's note (D 26), there was a suggestion that the Defendant provided the faulty material to the auditors and they generated material that was false and he came to rely on it. D 26 concerns leave in relation to a number of employees. A number of witnesses had some knowledge of the documents but I did not detect there was anything that

suggested the defendant knowingly provided false, information there.

Although the defendant has at times said he relied on memory and at times on D 26 and he was cross-examined on this, in such a broad ranging matter that has evolved over a number of years with a period of negotiating between the main events and the police investigation, I don't think it would be fair to draw that inference against him because of that.

108. There is some difficulty with both prosecution witnesses and the defendant concerning memory recall. That is understandable. The events occurred some four years ago and some of the relevant background events occurred a few years before then. In those circumstances, the fact memory is not what it should be, is not something that should form the basis of adverse comment. I accept that witnesses are not going to remember details of conversations and the like. I thought some of the testimony of the defendant was lacking in detail and in parts was inconsistent, however in my view, given all the difficulties with the need to give evidence about events that occurred a number of years ago almost invites those problems. In any event I do need to view that against the very strong character evidence given on behalf of the defendant by highly respected members of the community such as Mr Arthur Borland; Mr Dallas Graetz and Mr David Farquhar. I direct myself to consider whether in the light of the good character evidence against the background of evidence before me in the case, I would be prepared to draw the inference against the defendant. I remind myself that people do commit crimes for a first time and that evidence of character cannot prevail against evidence of guilt. In a case such as this one, the good character of the defendant is one of the matters (but not the sole matter) that leads me to the conclusion that I entertain a reasonable doubt that the defendant knowingly or dishonestly committed the acts. I am going to dismiss the charges.
109. I will forward these reasons to the parties on 25 November 2005 and list the matter for final orders on 28 November at 2.00pm. Unless the prosecution needs the defendant to appear for some reason, I would be content with both

counsel appearing on 28 November as I am aware from the evidence the defendant resides interstate.

Dated this 28th day of November 2005.

Jenny Blokland
STIPENDIARY MAGISTRATE