SUPREME COURT OF QUEENSLAND

CITATION:	*Wiltshire v Amos* [2014] QSC 210
PARTIES:	**EDWARD AMOS** (Applicant) v **CHRISTOPHER WILTSHIRE** (Respondent)
FILE NO/S:	Appeal No 4199 of 2010 DC No 1527 of 2009
DIVISION:	Trial Division
PROCEEDING:	Trial
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	29 August 2014
DELIVERED AT:	Brisbane
HEARING DATE:	8 & 9 April 2014
JUDGE:	Martin J
ORDER:	**The questions are answered as follows:** 1. Neither affidavit was in Mr Wiltshire's possession at the time referred to in the question. 2. Neither affidavit had been perused by Mr Wiltshire at the time referred to in the question. 3. Unnecessary to answer. 4. Unnecessary to answer. 5. No. 6. No. 7. No. 8. Not every detail of the facts asserted in that affidavit was the subject of evidence. Those matters which are the subject of consideration above are accurate. If there is any inaccuracy, then there is no evidence that he was aware of it at the time referred to in the question. **The costs of this hearing are costs reserved in the appeal.**

CATCHWORDS: APPEAL AND NEW TRIAL – NEW TRIAL - IN GENERAL AND PARTICULAR GROUNDS – PARTICULAR GROUNDS – FURTHER EVIDENCE – OTHER MATTERS – EVIDENCE OF FRAUD OR DECEPTION – where the applicant succeeded against the respondent in a claim for damages in the District Court – where the Court of Appeal allowed the respondent to adduce fresh evidence, and allowed an appeal against the judgment of the District Court – where the applicant sought to have the Court of Appeal's decision re-opened, alleging that the "fresh" evidence adduced in the Court of appeal was not in fact fresh, and was known to, or had been in the custody of, the respondent all along – where the applicant's allegations were, to a considerable extent, fabrications – whether questions remitted to the trial division by the Court of Appeal should be answered consistently with the applicant's concocted version of events

Uniform Civil Procedure Rules 1999, r 668

Amos v Wiltshire [2010] QDC 138, referred to
Wiltshire v Amos [2010] QCA 294, referred to

COUNSEL: M T de Waard for the applicant
P O'Shea QC and K Boulton for the respondent

SOLICITORS: Keller Nall & Brown for the applicant
Sharma Lawyers for the respondent

[1] This matter had its genesis in 2004 in a claim in the Magistrates Court for damages by the applicant (Mr Amos). It has, since then, seen a number of hearings in both the District Court and the Court of Appeal.

[2] In order to understand this matter it will be necessary to outline some of its history. That is best done by repeating what Muir JA said in the Court of Appeal's decision in Wiltshire v Amos:1

> [1] The respondent sued a company which carried on business as a legal costs assessor ("Monsour") and two of its directors in the Magistrates Court for damages for negligence in relation to a costs assessment provided by Monsour in proceedings to which the respondent was a party. The claim was dismissed on 31 August 2004 and the respondent was ordered to pay the defendants' costs on an indemnity basis assessed at $49,996. An appeal to the District Court against the Magistrate's decision, other than in relation to costs, was dismissed with costs on 17 May 2005. An appeal to the District Court against the costs order was allowed on 2 November 2006 but only to the extent that the costs award

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was reduced by $4,490. The respondent was ordered to pay the other parties' costs of the appeal on the standard basis ("the Costs Order").

[2] An appeal against the Costs Order was dismissed with costs by the Court of Appeal on 24 July 2007. The respondent was not ready to leave Monsour in peace. By 1 November 2007 he was alleging that the Costs Order had been procured by fraud: a somewhat unlikely fraud said to have been constituted by an erroneous statement made by Monsour's counsel to the judge who made the Costs Order in the presence of the respondent's own counsel and was not corrected by him.

[3] On 2 January 2008 the respondent commenced District Court proceeding BD 2 of 2008 by filing a claim and statement of claim claiming that the Costs Order be set aside and that the defendants pay the respondent's costs of the appeal and damages in the amount of $250,000. The claim and statement of claim were drafted by the appellant, a barrister, and provided to the respondent by the appellant in a meeting on about 6 December 2007. The respondent rendered an account dated 6 December 2007 in the sum of $1,000 for "Fee on brief-drawing and settling claim and statement of claim".

[4] The respondent met the appellant for the first time in the appellant's chambers on about 23 November 2007. The appellant was then given a bundle of documents which included the District Court judge's decision of 2 November 2006 and a letter from the respondent to the appellant dated 22 November 2007. The letter commenced:

> 'As discussed briefed herewith please find the following documents for your examination and to advise if any grounds exist to overturn [the] judgment and, if so, then what are the prospects of success. Also what is the correct procedure if there are any grounds to overturn the judgment.'

[5] The claim and statement of claim identified the solicitors for the respondent as Keller, Nall & Brown. Put in evidence on the trial of these proceedings, without objection by the appellant, was a "client agreement" which, on the face of it, was signed by the respondent and the respondent's solicitors on 24 December 2007. It recorded an agreement between the solicitors and the respondent that the former act on the latter's behalf in relation to the proceedings. It recited that, "… the client has received advice from [the appellant] that he has good prospects of success in having the said judgment [that of the District Court on 2 November 2006] set aside".

These proceedings

[6] In the proceedings, commenced in the District Court on 2 June 2009, the respondent claimed against the appellant $134,302.17 damages for negligence or breach of contract and for costs and interest. In the statement of claim it was alleged that:

(a) The appellant was retained directly by the respondent;

(b) The respondent briefed the appellant to advise if there were grounds available to have the Costs Order set aside;

(c) The appellant advised the respondent that the Costs Order had been procured by fraud of the respondent's counsel "by having made submissions which falsely asserted that the costs hearing lasted a single day but the hearing was extended and time actually engaged in court was … a total of 7 hours and 30 minutes …";

(d) The appellant failed to exercise due skill and diligence by not ascertaining and informing the respondent that the facts were insufficient to support an allegation of fraud, that the action had no prospects of success and was likely to be summarily struck out with an award of indemnity costs against the respondent;

(e) Had the appellant advised the respondent of the matters referred to above, the respondent would have instructed that the claim and statement of claim not be prepared;

(f) The respondent suffered loss and damage in the sum of $114,302.17.

[7] The appellant, in his defence: admitted that he had been briefed directly by the respondent; denied that he had been retained to advise the respondent; alleged that the retainer was limited drawing and settling the claim and statement of claim and alleged that the respondent would have proceeded as he did regardless of any advice given or which may have been given to him by the appellant."

[3] After setting out the evidence adduced in the trial before Samios DCJ, Muir JA said:

[18] The primary judge resolved the credit contest against the appellant. He was persuaded to do so by Mr Collinson's evidence which provided support for the respondent's version of events and by the costs agreement, which he noted came into existence before there was any issue between the parties. Having regard to these findings, the primary judge held that the appellant had breached his duty to exercise reasonable care and skill in the provision of professional advice and that the respondent had suffered loss and damage.

[4] Mr Wiltshire appealed that decision and in pursuing that appeal "conceded that, apart from some grounds relating to damages, the appeal could not succeed unless the appellant obtained leave to adduce further evidence."

[5] For the purposes of this hearing, the relevant documents to be considered are two affidavits sworn by Glenn Collinson of Keller Nall & Brown, the solicitors who acted for Mr Amos. Affidavits were filed which dealt with this issue and the parties were cross-examined on them. The affidavit evidence was described in this way:

> "[36] Both the appellant and the respondent swore affidavits on which they relied in the appellant's application to adduce fresh evidence. The respondent swore, in effect, that in late December 2007 he briefed the appellant to prepare an application to set aside a warrant of execution filed in the Magistrates Court in the Monsour proceedings and also to prepare the supporting affidavit of Mr Collinson. He also swore to the following. On or about 20 December 2007, the appellant dictated to him the grounds to be included in the application and also "the contents and exhibits to be included" in Mr Collinson's affidavit. On or about 22 February 2008 the appellant, in the respondent's presence, prepared and settled a further affidavit to be sworn by Mr Collinson in BD 2 of 2008. The appellant on that occasion used the earlier affidavit of Mr Collinson as a precedent.
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> [37] In an affidavit responding to allegations in the respondent's affidavit, the appellant denied: being briefed as alleged by the respondent; conferring at a meeting with the respondent on or about 20 December 2007 and dictating to him grounds to be included in an application to set aside the warrant of execution or dictating the contents of any affidavit for that purpose. He denied having had any part in preparing or settling Mr Collinson's affidavit of 22 February 2008 and pointed out that the affidavit appears to have been hand-typed on a manual typewriter which was the respondent's method of preparing such documents. He denied having seen or been given the disputed affidavits or copies of them. He explained that in preparing a draft submission to the District Court in BD 2 of 2008, he was able to refer to affidavits of Mr Collinson, not because he had seen them, but because he had been informed of their existence by the respondent.
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> [38] In an affidavit filed on the morning of the hearing of the appeal, the respondent swore that the appellant was aware of Mr Collinson's affidavit of 24 December 2007 as on or about 22 February 2008, the appellant had settled and witnessed an affidavit by the respondent in BD 2 of 2008 which referred to Mr Collinson's affidavit of 24 December 2007."

[6] Muir JA concluded (at [42]) that Mr Wiltshire's evidence was to be preferred to that of Mr Amos. An order was made (among others) that the matter be retried.

[7] Before that could occur, Mr Amos brought an application in which he sought to have the decision of the Court of Appeal re-opened. That application relied upon, among other things, an affidavit from Ms Scheiwe which is the subject of some of the orders referred to below.

[8] On 22 August 2012 the Court of Appeal ordered as follows:

> "Order that the issues:
>
> 1. Whether either or both of the affidavits of Glen Phillip Collinson sworn on 24 December 2007 and 22 February 2008, copies of which are included in the record in this proceeding, ("the Affidavits") had been in the possession of the respondent Christopher Wiltshire prior to the commencement of the preparation by himself or anyone on his behalf of any document intended to be filed or otherwise relied on in proceeding CA 4199 of 2010.
> 2. Whether either or both of the affidavits had been perused by the respondent prior to the commencement of the preparation by himself or anyone on his behalf of any document intended to be filed or otherwise relied on in proceeding CA 4199 of 2010.
> 3. If the answer to 1. is in the affirmative, for what period and in what circumstances were the affidavits (or was the affidavit as the case may be) in the respondent's possession?
> 4. If the answer to 2 is in the affirmative, when and in what circumstances were the affidavits or (or was the affidavit as the case may be) so perused?
> 5. Did Ms Paula Scheiwe prepare or assist in the preparation of any affidavit or affidavits filed or intended to be filed in proceeding CA 4199 of 2010 and, if so, which affidavit or affidavits?
> 6. Did the respondent prepare or assist in the preparation of any affidavit or affidavits filed or intended to be filed in proceeding CA 4199 of 2010?
> 7. Are the matters deposed to by Ms Scheiwe in paragraphs 3, 4, 5, 6, 8, 10, 12, 15, 16, 18 and 19 [of her affidavit filed 2 August 2012] factually correct?
> 8. Whether if there is any factual inaccuracy in the affidavit sworn by the respondent in proceeding CA 4199 of 2010 on 6 October 2010 he was aware of that inaccuracy at the time of swearing the affidavit and/or prior to his giving oral evidence in that proceeding.
>
> Be remitted to the trial division of the Supreme Court for determination by a judge of that division."

[9] This hearing is concerned with those questions.

[10] This hearing came about because of the material contained in the affidavit of Paula Scheiwe referred to in Order 7 of the Court of Appeal's orders. Ms Scheiwe had been Mr Wiltshire's solicitor in the appeal against the order of Samios DCJ. They had a falling out and, in what might be thought a strange choice, she retained Mr Amos's solicitors in respect of a claim that Mr Wiltshire was stalking her. In fact,

she contacted and dealt with Mr Amos, who was then working for Keller Nall & Brown.

[11] Ms Scheiwe did not provide Keller Nall & Brown with a statement, yet that firm was able to prepare her affidavit. It is clear that she dealt with Mr Amos and that it was he who raised with her the suggestion that Mr Wiltshire had the Collinson affidavits in his possession at the time of the trial before Samios DCJ.

[12] The affidavit of Ms Scheiwe is replete with statements of an absolute nature which, in cross-examination, she either disowned or sought to dilute.

[13] In paragraph 3 of her affidavit she says that: "The vast majority of the exhibits attached to my affidavit, sworn 2 July, were provided by Mr Wiltshire." When tested on this proposition she admitted that he did not provide them to her and that she had said that they had been provided by him because "they didn't come from me".

[14] In paragraph 4 she says that when originally instructed by Mr Wiltshire she was informed by him that he had in his possession several briefs which he had accepted on a direct access basis from Mr Amos and which contained documents which should have been disclosed by Mr Amos in the matter before Judge Samios. In cross-examination she retreated from that and said that she did not recall Mr Wiltshire saying he had them in his possession at the time but, that at an earlier time he did have them in his possession. She was then asked:

> "Now, you say here that you also were instructed by Mr Wiltshire that these briefs contain documents which should have been disclosed by Mr Amos? - - - No, that's what I verily believe.
>
> I'm sorry, that's? - - - that's my belief. This is an affidavit sworn on information and belief.
>
> …
>
> Mr Wiltshire told you, he said to you something like this, 'Ms Scheiwe, those briefs contain documents which should have been disclosed by Mr Amos in the matter before Judge Samios"? - - - No, I don't believe that he said that to me."

[15] Ms Scheiwe was then pursued in cross-examination about the statements she had made with respect to those matters:

> "Can I suggest to you then that what you said in paragraph 4 about his having had possession of briefs in the matter of – one matter in the Magistrates Court and another in the District Court that – can I suggest to you Mr Wiltshire didn't tell you that when you received instructions from him? And I am just suggesting that your recollection set out here is mistaken? - - - Well, no. Like, as I said before, I think you're reading that paragraph incorrectly. It's got 'and verily believe'. You can obviously in Queensland swear affidavits based on information and belief.
>
> I'm not asking you about whether, in fact, he had the briefs in his possession. What I'm asking you is what Mr Wiltshire told you. That's not a question of belief. That's a question of fact. What did he

> say to you? - - - As I said, my recollection is quite hazy about what occurred a couple of years ago."

[16] It became clear that Ms Scheiwe had a very imperfect memory of what had occurred. She had based her affidavit on beliefs which she had developed as a consequence of certain assumptions. For example, with respect to the second affidavit of Mr Collinson she assumed that Mr Wiltshire must have had it. She said that those affidavits were not things to which she gave much attention. She also said that her belief was formed on the basis that a client does not normally go to a barrister and the barrister gives the client documents: "It's normally the other way around."

[17] In paragraph 15 she says: "Mr Wiltshire held copies of each of the affidavits of Mr Collinson in his briefs before I was retained by him." She was asked:

> "Now, are you making that statement again on the basis that you didn't locate those affidavits and so you assumed that they must have come from Mr Wiltshire? --- Well, I mean he was the – you know, a client. So if he didn't have them and I allegedly prepared the affidavits, well, then, you know, reading that you would think that I discovered the documents, whereas I didn't.
>
> But what – the basis for what you say in paragraph 15 is just that: that you, in fact, didn't locate or find these affidavits? --- Yes, yeah.
>
> There's no other basis for it? --- No."

[18] In paragraph 19 of her affidavit she refers to Magistrates Court proceeding M17192 of 2011. She was asked where she had obtained that Court matter number and was asked how she was able to identify the particular relevant number. She was then asked:

> "But you obviously looked it up in June 2012 when you prepared this affidavit; correct? --- In 2012, no. No, no.
>
> So you just carried that number around in your head from 2010? --- No. No, well, I guess the person who prepared this affidavit must have put it in there.
>
> And who prepared this affidavit? --- I'm not sure entirely but it would have been Keller Nall & Brown.
>
> Well, who did you see in relation to this affidavit? --- Mr Amos.
>
> So did you ever meet with Mr Collinson in relation to this affidavit --- -? --- No.
>
> --- or did you only meet with Mr Amos? --- Only with Mr Amos.
>
> So you think he might have provided that number to you? --- Yes.
>
> Did he provide anything else in the affidavit to you? --- Well, I didn't write the affidavit.

> So did he prepare this affidavit and give to you for signing, really?--- Yes.
>
> All right. You see, what I want to suggest to you, Ms Scheiwe, and I can be plain about it, is that Mr Wiltshire never held a brief in any Magistrates Court proceeding which contained a copy of Mr Collinson's affidavit of 24 December 2007. I'm saying to you that is the truth; do you have any comment on that? --- Well, as I have said before, I've never seen that brief so I couldn't say for certain.
>
> And, so that I can be plain, I'm saying to you that Mr Wiltshire never said to you that he had a brief in those Magistrates Court proceedings which contained a copy of Mr Collinson's affidavit? --- Well, I have actually answered that question earlier and no, he did not say that to me.
>
> He did not say that to you? --- That's right.
>
> All right. So this could only have been put in then by Mr Amos? --- I mean, it is my belief that he did have those affidavits in briefs in those matters."

[19] Later, Ms Scheiwe repeated her statement that the affidavit was based on information and belief and accepted that the information upon which she based her belief was information provided by Mr Amos.

[20] Her evidence disclosed a substantial misunderstanding of the manner in which a deponent should ensure that the affidavit which is being sworn is true. Her memory of the matters was, as she said, "quite hazy", and in light of her admissions that the affidavit was prepared by Mr Amos and that she based her statements on information provided by Mr Amos I am not prepared to accept anything she says unless it is corroborated by other evidence which is acceptable.

[21] Ms Shannon Moody, a barrister, gave evidence. She was briefed as junior counsel to Mr O'Shea QC in the Court of Appeal. Ms Moody had been acting for Monsour Pty Ltd who had been the subject of an action by Mr Amos against them and was the respondent in the 2004 claim in the Magistrates Court. As a result of her involvement in the matters concerning Monsour Pty Ltd, Ms Moody was aware of the existence of certain letters and other documents which had been written by Mr Amos's lawyers, Keller Nall & Brown. In April 2010 McInnes Wilson (the solicitors for Monsour Pty Ltd) provided Ms Moody with documents which had been exhibited to affidavits used in other court proceedings. Those documents included the affidavits of Mr Collinson.

[22] Ms Moody has no recollection of Mr Wiltshire ever saying that he had the affidavits at the relevant time and she disputes many of Ms Scheiwe's statements in her affidavit about the involvement of Mr Wiltshire in the creation of affidavits. Contrary to the evidence in Ms Scheiwe's affidavit filed 2 August 2012 the relevant affidavits were prepared and drafted by Ms Moody and settled by Mr O'Shea QC. Her evidence was consistent with the documents in this case and were supported by the events which were occurring during the time that she was briefed. I accept Ms Moody's evidence.

[23] Mr Amos gave evidence by way of several affidavits and in cross-examination. He says that on or about 20 March 2012 he was informed by Ms Scheiwe that the assertions by Mr Wiltshire in his affidavit about not having seen the affidavits were untrue. I do not accept this. Ms Scheiwe's unsatisfactory recollection of what occurred was influenced by Mr Amos, in particular, by the manner in which he prepared her affidavit.

[24] He gave evidence of his professional relationship with Mr Wiltshire and what Mr Wiltshire had done for him in his action against Monsour Pty Ltd. There are a number of aspects of Mr Amos' evidence which are most unsatisfactory.

[25] He says that he briefed Mr Wiltshire in December 2007 and on or about 20 December Mr Wiltshire dictated to him grounds to be included in an application to set aside a warrant of execution. He was cross-examined on this in the Court of Appeal. Muir JA said:[2]

> "[40] There were a number of aspects of the respondent's evidence which cast doubt on its accuracy. He admitted that the appellant had not rendered an account for work in relation to the warrant of execution matter but speculated that the appellant may have included his charges for this work in later accounts rendered for other matters. He did not produce any such accounts. Had they existed, it is highly likely that they would have been produced as corroboration for the respondent's account. If the respondent's evidence in relation to the appellant's involvement in the warrant of execution matter is accurate, the appellant would have spent a great deal of time on it, much more than the respondent's evidence originally indicated, and it would have been unlikely that he would have failed to render an account."

[26] The following matters are important in considering this part of Mr Amos' evidence. No fee for this work was ever sent by Mr Wiltshire. Mr Amos sought to deal with that in his affidavit filed 2 August 2012 by asserting that Mr Wiltshire did send him a bill on 28 February 2008 which included an account for that amount. In cross-examination, that claim was abandoned. His evidence then altered to say that he had paid Mr Wiltshire $250 to $300 without having received a bill. I think that most unlikely. Mr Amos' evidence leads to the conclusion that he is both particular about his accounts and he has a general reluctance to pay them swiftly. In any event, this was new evidence that came in very late in an affidavit from him. He then sought to rely upon a note that was made on another bill to the effect that he later paid cash in the amount of $400 for that bill. That explanation cannot be accepted because it is established that he paid an amount of $440 on 13 February 2008. That is evidenced by Mr Wiltshire's bank statements.

[27] Mr Amos also used the word "dictate" quite often in his affidavits when referring to Mr Wiltshire. For example, he said that Mr Wiltshire dictated certain affidavits. This was a deliberate choice by him for it suited his case. He departed from that when it became clear that certain work could not have been accomplished in the available time. The alleged meeting in December 2007 was, he said, somewhere between an hour and two hours in length. It was apparent, in cross-examination, that

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he realised that that time was insufficient to do the work which he said was done. He changed his evidence to the effect that Mr Wiltshire did not dictate the affidavit but in the main only said whether or not particular exhibits should be included. I do not accept that Mr Amos was being truthful with respect to this matter.

[28] Mr Amos also said that a brief which had been delivered to Mr N M Cooke was later given to Mr Wiltshire. The matter it concerned was resolved by 14 January. A brief of a similar nature was also sent to Mr Tait QC. He gave evidence that he had caused the brief, save for the copies of authorities included in it, to be copied. The copy which Mr Tait kept did not include the memorandum which Mr Amos says he sent to Mr Tait and Mr Wiltshire. I accept Mr Tait's evidence that the material that had been in his brief was photocopied. The material which Mr Amos said he gave to Mr Tait was not photocopied because, as I find, Mr Amos was not being truthful and the memorandum was not delivered to Mr Tait.

[29] In another affidavit by Mr Amos he said that Mr Wiltshire prepared and settled documents in a meeting on 22 February 2008. After reading what Mr Wiltshire said in his affidavit (filed 6 October 2010) he changed this to "dictating" the affidavit. As with the other matter I referred to, Mr Amos retreated from the use of that word in cross-examination. When Mr Amos was challenged and it became obvious that his statements could not be supported, he changed his evidence and said, again, that the word "dictate" was inappropriate. Mr Amos accepted that he was an experienced litigant. He is an intelligent man. I do not accept that he used the word "dictate" in a haphazard way.

[30] The evidence upon which Mr Amos relies is, primarily, that of Ms Scheiwe. Her evidence was unreliable and, in some places, unbelievable. Mr Amos's evidence was tailored to suit his case and he shifted ground as it became apparent to him that his statements were demonstrably untrue.

[31] Mr Wiltshire gave evidence. He was closely cross-examined. His answers to some questions were probably more robust than was necessary in the circumstances, but I formed the view that his evidence was consistent with the evidence given by Ms Moody and Mr Tait QC, both of whom were disinterested in this matter. Mr Wiltshire denies being in possession of the affidavits prior to judgment being given by Samios DCJ. I accept his version of events where it conflicts with anything said by Ms Scheiwe or Mr Amos.

[32] I therefore answer the questions set out in the order of the Court of Appeal in the following way.

Whether either or both of the affidavits of Glen Phillip Collinson sworn on 24 December 2007 and 22 February 2008, copies of which are included in the record in this proceeding, ("the Affidavits") had been in the possession of the respondent Christopher Wiltshire prior to the commencement of the preparation by himself or anyone on his behalf of any document intended to be filed or otherwise relied on in proceeding CA 4199 of 2010.

Neither affidavit was in Mr Wiltshire's possession at the time referred to in the question.

I have proceeded on the basis that the earliest day on which any preparation of a document which could have been intended to be filed or otherwise relied on in the appeal was the day judgment was given in the District Court proceedings, that is, 25 March 2010[3].

Whether either or both of the affidavits had been perused by the respondent prior to the commencement of the preparation by himself or anyone on his behalf of any document intended to be filed or otherwise relied on in proceeding CA 4199 of 2010.

Neither affidavit had been perused by Mr Wiltshire at the time referred to in the question.

If the answer to 1. is in the affirmative, for what period and in what circumstances were the affidavits (or was the affidavit as the case may be) in the respondent's possession?

Unnecessary to answer.

If the answer to 2 is in the affirmative, when and in what circumstances were the affidavits or (or was the affidavit as the case may be) so perused?

Unnecessary to answer.

Did Ms Paula Scheiwe prepare or assist in the preparation of any affidavit or affidavits filed or intended to be filed in proceeding CA 4199 of 2010 and, if so, which affidavit or affidavits?

No.

Did the respondent prepare or assist in the preparation of any affidavit or affidavits filed or intended to be filed in proceeding CA 4199 of 2010?

No.

Are the matters deposed to by Ms Scheiwe in paragraphs 3, 4, 5, 6, 8, 10, 12, 15, 16, 18 and 19 [of her affidavit filed 2 August 2012] factually correct?

No.

Whether if there is any factual inaccuracy in the affidavit sworn by the respondent in proceeding CA 4199 of 2010 on 6 October 2010 he was aware of that inaccuracy at the time of swearing the affidavit and/or prior to his giving oral evidence in that proceeding.

Not every detail of the facts asserted in that affidavit was the subject of evidence. Those matters which are the subject of consideration above are accurate. If there is any inaccuracy, then there is no evidence that he was aware of it at the time referred to in the question.

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3 *Amos v Wiltshire* [2010] QDC 138

Order

[33] The costs of this hearing are costs reserved in the appeal.