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COMPULSORY
EXAMINATION

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

COMPULSORY EXAMINATION

OPERATION TOLOSA

Reference: Operation E17/1221

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY, 5 MAY 2022

AT 12.15PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Yes, Mr Darams. Are you ready to proceed with this?

MR DARAMS: We are ready to proceed with the compulsory examination.

THE COMMISSIONER: Yes, very well. Before I make formal orders, Mr Henry, I grant leave to you to appear in this compulsory examination.

MR HENRY: Thank you, Commissioner.

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THE COMMISSIONER: And I understand your instructing solicitor is Philip Parker, who's also present.

MR HENRY: Yes, that's correct.

THE COMMISSIONER: Thank you. Anything you want to raise, Mr Henry?

MR HENRY: I just wish to raise the issue about the section 38 declaration.

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THE COMMISSIONER: Yes.

MR HENRY: And there was a prior compulsory examination in private at which such a declaration was made, and I just wanted to clarify on the record whether or not it's necessary for me to request a further one or whether it holds over and applies today.

THE COMMISSIONER: Yes. Mr Henry, I propose to make a further declaration under section 38 on the basis that, as I understand what you're saying, your client wishes to have a declaration made, is that right?

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MR HENRY: Yes, thank you.

THE COMMISSIONER: Yes, very well. I'll address that in a moment. In relation to this compulsory examination, I direct that the following persons may be present at this examination: Commission officers, including transcription staff; the witness, Mr Joseph Jacob; his legal representatives, Mr Henry, Mr Michael Henry, Senior Counsel, his instructing solicitor Mr Philip Parker.

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I propose to make an order under section 112 of the Independent Commission Against Corruption Act. The effect of that order will be to restrict the publication of information with respect to this compulsory examination. The direction will prevent those present today, other than Commission officers, from publishing or communicating information relevant to this compulsory examination. It will permit Commission officers to publish or communicate information for statutory purposes or pursuant to any further order made by the Commission. The direction may be varied or lifted by the Commission without notification if the
10 Commission is satisfied that it is necessary or desirable to do so in the public interest. I note that it is a criminal offence for any person to contravene a section 112 direction.

Being satisfied that it is necessary and desirable in the public interest to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act that the evidence given by the witness, Mr Joseph Jacob, any information that might enable him to be identified, any information as to the fact that he has given evidence today shall not be published or otherwise communicated to anyone except by Commission officers for
20 statutory purposes or pursuant to a further order of the Commission.

**SUPPRESSION ORDER: BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT THAT THE EVIDENCE GIVEN BY THE WITNESS, MR JOSEPH JACOB, ANY INFORMATION THAT MIGHT ENABLE HIM TO BE IDENTIFIED, ANY INFORMATION AS TO THE FACT THAT HE
30 HAS GIVEN EVIDENCE TODAY SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE EXCEPT BY COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO A FURTHER ORDER OF THE COMMISSION.**

THE COMMISSIONER: Mr Jacob, Mr Henry on your behalf has raised the question of a section 38 declaration. I think you understand what a section 38 declaration is and what it's directed towards?

40 MR JACOB: Yes, Chief Commissioner.

THE COMMISSIONER: It offers you the form of protection that I think I might have indicated to you previously, but just to make it perfectly plain, in the event of a section 38 declaration being made, and I do propose to make one, you must firstly answer all questions truthfully and you must produce any items such as a document or other matter described in any summons or as may be required during the course of this compulsory examination to be produced. You understand that?

MR JACOB: I understand.

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THE COMMISSIONER: Thank you. You may object to answering questions and producing any items and, as you are aware, the effect of that is that the evidence you are going to give in this compulsory examination can't be used against you at any future proceedings, including criminal or other proceedings, subject to the exception which I again restate, sir, for clarity, that is the exception is that the protection does not prevent your evidence from being used against you in the event of any prosecution for an offence under the Independent Commission Against Corruption Act. Such offences include an offence of giving false or misleading evidence for which the penalty can be a term of imprisonment for up to five years. The purpose of making a section 38 declaration is to save a witness from objecting to each question asked and answers given, so the declaration, in effect, will operate in this compulsory examination throughout in relation to all questions and answers given.

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On application made for a declaration under section 38, pursuant to that provision of the Independent Commission Against Corruption Act, I declare that all answers given by the witness Mr Joseph Jacob and any documents or things that may be produced by him during the course of his evidence at this compulsory examination are to be regarded as having been given or produced on objection. That being the case, there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

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DIRECTION AS TO OBJECTIONS BY WITNESS: UNDER SECTION 38, PURSUANT TO THAT PROVISION OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THE WITNESS MR JOSEPH JACOB AND ANY DOCUMENTS OR THINGS THAT MAY BE PRODUCED BY HIM DURING THE COURSE OF HIS

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EVIDENCE AT THIS COMPULSORY EXAMINATION ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION. THAT BEING THE CASE, THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

10 THE COMMISSIONER: Mr Darams, any other formal matters you want to raise at this point? I'll have the witness sworn in a moment.

MR DARAMS: Not at this stage, Chief Commissioner.

THE COMMISSIONER: All right. Thank you. Mr Jacob, in order to give evidence, you either have to take an oath or an affirmation as I think you are aware. I think you have before indicated that you wish to give evidence on oath. Is that the position?

20 MR JACOB: Yes.

THE COMMISSIONER: Thank you.

THE COMMISSIONER: I think the appropriate response is “I do”.---I do.
I do.

But I understand that’s what you’re saying.---I do.

Yes. Thank you, Mr Jacob. Yes, Mr Darams.

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MR DARAMS: So, Mr Jacob, I want to start the compulsory examination by just focusing on a few different matters. The first matter I want to focus on is any more recent contact you have had with Mr Chidiac. Okay. So when I say “more recent contact” I mean, we finished off yesterday talking about where Mr Chidiac came by and informed you he’d been raided by the Commission.---Yes.

I meant subsequent to all of that, have you had any contact with Mr Chidiac?---Zero.

20

Zero contact. Has anyone reached out to you on behalf of Mr Chidiac that you know of?---Yes.

Who has done that?---In my, sorry, I can’t refer to anything in the past, sorry. I’ll just correct that.

THE COMMISSIONER: Mr Jacob, sorry to interrupt you again.---Sorry.

I’m sorry to keep repeating it.---Sorry. Yeah.

30

It’s all right. You don’t have to lean right into the microphone but just stay close, but do keep your voice up. Yes, go ahead.

MR DARAMS: You were saying you can’t refer to anything in the past. ---Oh, no, about my previous evidence. I just, he went to Frank Bruzzano’s office. It was only not so long ago.

So when not so long ago? Can you just try and help us with the timing? Are we talking this year, 2022?---Yes.

40

Yes. So we’re now in April.---Yes.

No, we're in May.---May.

My apologies.---Yes.

So what, within the last four weeks or within the last six weeks?---I'm not allowed to refer to my previous examination.

Yes, you can.---Oh, can I?

10

Yes.---Yeah. It was before that.

Okay.---Yeah.

Before you came down here - - -?---Yes.

- - - on the first occasion?---Yes.

So he went to Mr Frank Bruzzano?---Office, yeah.

20

Did Mr Bruzzano tell you that?---Yes.

Did Mr Bruzzano tell you that Mr Chidiac was coming to his office before Mr Chidiac came?---No.

So Mr Bruzzano tells you after Mr Chidiac had come to Mr Bruzzano's office?---Correct.

Okay. So tell me, please, what Mr Bruzzano told you.

30

THE COMMISSIONER: So I'm sorry to interrupt you again.---Yes.

Mr Jacob, I think you are conscious and aware of the fact that I require from you full and truthful disclosure of these matters.---Yes.

It is not that you're being asked to summarise but doing the best you can - - -?---Yes.

40

- - - when you're recreating what was said or done is to refer to who was there and what each person said including yourself and so on, so doing the best you can. If you'd follow that approach so that the specifics and the

accuracy of your evidence can be understood. Do you understand?---Yes, Chief Commissioner. I'll do my best.

Okay. Thank you. Just put the question again.

MR DARAMS: So I was focusing on what Mr Bruzzano said to you after Mr Chidiac had attended on Mr Bruzzano or spoken?---Well, what Mr Bruzzano said there was no appointment. That one of his staff looks after his affairs so he went in to, to see that staff member, and as he finished
10 with that staff member he popped past and had a chat to Frank and he, he made Frank aware that he knew that we had sold the property in, in Rhodes and he, he said that he was surprised that no one told him and, and he believed that, you know, he had an interest in that, in that. And Frank said I couldn't help you with that and, and that was the basis of that. But then Frank relayed that conversation to me and the first thing I did with that was contact my lawyers, being Philip Parker here from Bridges Lawyers, and I asked Mr Parker if he could send Mr Chidiac a correspondence saying that he's not to interact or contact us in any way, shape or form, and if he had something that he would put it forward to Mr Parker and his legal firm.

20

Did Mr Bruzzano tell you whether Mr Chidiac said anything else in particular about the Commission's process or the Commission's investigation?---No.

So you're saying that it was limited only to whether or not Prolet had disposed or sold a property?---Yes.

And so that's the most recent contact, is it?---It's the only contact since mid-2019.

30

THE COMMISSIONER: Since when?---2019.

MR DARAMS: And when you say mid-2019, are you referring to the last contact being the Mr Chidiac coming and informing you about the Commission?---Yes.

Between that period in time have you received a text message from Mr Chidiac?---No.

40 Have you tried to make any contact with Mr Chidiac?---No.

Do you know whether your brother has had any contact with Mr Chidiac?
---To the best of my knowledge, no.

Have you had a conversation with your brother about any contact with Mr Chidiac?---No.

Now, have you had a conversation with Mr Bruzzano about your evidence or giving evidence to the Commission?---When would that be?

10 Well, whenever. Have you ever had a conversation with Mr Bruzzano about giving - - -?---No.

No.---No, no.

So you were hesitating on a, seemed to hesitate on the time.---No, 'cause I, I just, 'cause you didn't ask when.

Right.---Yep.

20 Well, have you had any conversation with Mr Bruzzano at any time?
---Yeah, the only time, he was just concerned about my welfare, that's it.

Right. When was this?---He was concerned about my welfare.

When did you have that conversation?---During this public inquiry.

So when you say during this public inquiry, what, in the last two weeks?
---Well, when it, when a witness list came out and everyone knew that I was coming in, 'cause we're good friends, he was just checking up on my
30 welfare.

So what, what did he say?---He just said, you know, 'cause he saw that I was struggling a little bit, you know. And I, I don't want to disclose my private life, but he, he just, supporting me, that's all he was doing.

THE COMMISSIONER: What did he say?---He just said just be strong and just go in and just answer honestly. Mmm.

MR DARAMS: Now, what about any recent contact with Mr Tsirekas?
40 ---No.

Have you had any contact with anyone on behalf of Mr Tsirekas?---No.

When was the last contact you had with Mr Tsirekas?---In mid-2019.

Have you seen, other than in the hearing room here, have you seen Mr Tsirekas subsequently?---Yes.

10 Okay, so just I'll come back to the mid-2019 in a moment, but where have you seen, outside this hearing room, Mr Tsirekas since [REDACTED].

Right.---[REDACTED] Sometimes I walk out and he, and he's walking in the street, and it was just a wave, that's all it was.

Have you had a conversation since mid-2019 with Mr Tsirekas about this investigation or any evidence - - -?---No. No.

20 And in terms of the mid-2019, the last contact you had with Mr Tsirekas, what were the circumstances of that?---Apologies, Mr Darams. The last contact I actually had with Mr Tsirekas was when the second Rhodes plan was exhibited and they asked for it to be scrapped, which was in, I think it was late February, late February. And that's when I stopped talking to him.

When you say late February, you mean late February 2019?---'19, yes.

30 You stopped talking to him. Do you include that you stopped sending him messages?---Yes. For our phone contact, I stopped talking to him. But if I saw him in the street, to the best of my recollection, maybe I did have a, a talk to him, you know.

Yeah. When you say you did, best of your recollection you did have a talk to him, but what were you talking about when you - - -?---Well, I can't remember exactly, but I do remember that he knew I was upset. You know, and if you saw him in the street, he would come up and he'd try to have a chat. And that was it.

How many times has he done that?---To the best of my recollection, I, would have been about two or three times I think it was, yep.

40 And when you say he knew you were upset, what did you understand he thought you were upset about?---'Cause over, between mid-'16 to early

2019, we worked collaboratively with the department and the State Government agencies on the state and regional infrastructure in Rhodes, and we spent a lot of money on those submissions and proposals. And they – I don't want to go into a long story. I'll just keep it short. They wanted, the council was advocating for affordable housing. And we were, we were working with the state to develop \$350 million worth of state and regional infrastructure while they wanted to put a 5 per cent mandatory affordable housing across the whole 17 hectares of Rhodes East, and that was going to take \$200 million. And that was going to put a \$200 million black hole into
10 the funding of the state and regional infrastructure. And the State Government with the department were saying that they would not support the precinct unless there were satisfactory arrangements made for state and regional infrastructure. And I don't want to go into full extent but there was a viability test done on the, on the affordable housing in the department's reports and we asked how that came up with that 5 per cent and we asked them what report the, the council has done to, to show that it's viable because the department's report shows a different scenario on viability of, of affordable housing and we just got no answers.

20 THE COMMISSIONER: Mr Jacob, I want to take you back to the incident you gave evidence about yesterday - - -?---Yes.

- - - in which you said that Mr Chidiac advised you that he'd had a visit by the Commission.---Yes.

And you went on to say that what he actually said was something to the effect that ICAC had raided him or his home - - -?---Yes.

- - - and that you also said he said you might be involved in the investigation
30 or words to that effect?---Yes.

Okay. It's important that you give the Commission by way of your cooperation of the Commission - - -?---Yes.

- - - the full account and any additional matters that he indicated to you at that time. So I want to take you back to that particular incident - - -?---Yes, Chief Commissioner.

- - - so that we can have it firstly identified approximately when and where
40 the conversation took place, and Counsel will take you through the balance as to exactly what was said by Mr Chidiac on this occasion. It's important

the Commission have it and it something that the Commission is looking to you - - -?---Yes, Chief Commissioner.

- - - to provide full and truthful disclosure. You understand the importance of this?---I, I understand the importance.

All right, thank you. Now if you just listen to the questions. Thanks, Mr Darams.

10 MR DARAMS: Yeah. So I think the Chief Commissioner's directed you to the circumstance we're talking about?---Yes.

So, again, tell us in the words that Mr Chidiac told you, when he met you on a street but before I do that, you explained yesterday that you just happened to be in the street and Mr Chidiac drove by. Was that truthful or did Mr Chidiac tell you he was going to come by?---I have no explanation for why I said that but what (not transcribable) yeah.

20 My question is did he give you the heads-up? Did he say, "Look, I want to come and speak to you"?---It wasn't just me there, yeah.

Okay. Who else was there?---John Kinsella.

So did he - - -?---Yeah.

- - - did Mr Chidiac contact you?---No.

Who, he contacted Mr Kinsella?---No, not Mr Kinsella.

30 Who did he contact?---What was, Mr Darams, what, to the best of my recollection, I was told that Mr Kinsella is on the way down to Drummoyne.

Who told you that?---I know you're not, but I'm, I, 'cause it was back in '19, I, I, like, you - - -

THE COMMISSIONER: All right. You continue on.---Yeah, yeah, yeah. It was, if I had to say who it was, I wouldn't be truthful. I can't honestly recollect - - -

40 I've asked you to just keep the narrative - - -?---Yeah, yeah, yeah, continue, yeah, yeah - - -

- - - keep the discourse running.---So, so all I can remember is that Mr Kinsella came down - - -

MR DARAMS: Sorry. You were, no, you were told Mr Kinsella's on his way down?---Yeah, yeah, Mr Kinsella's on his way down and - - -

To your office?---To our office, yeah. We didn't go to my office.

10 No.---We went to Harris Farms, next door.

Right.---Yeah. And Mr Chidiac came, as well.

Right.---And we sat down on one of the tables in front of Harris Farms there on Victoria Road. And then I asked what was the purpose of that, of, of, of this catch-up, and Mr Chidiac said, 'cause I, I, I'd reduced my contact with him, so I found it surprising he was, he was coming. You know, so he said that the Commission has paid him a visit, actually raided him.

20 Sorry, what words did he say? "Paid a visit" or "raided him"?---He said both.

Right.---He said both.

Did he say the Commission or did he say ICAC?---He said the Commission, yeah.

The Commission.---The Commission.

30 Did you understand that to be ICAC?---ICAC, yep.

Did he say at any stage it was ICAC or you, everyone understood it was the ICAC?---Maybe he said ICAC, but I always refer to this as a Commission.

THE COMMISSIONER: You continue on with the account as to what was said by you, by him or by Mr Kinsella.---Well, Mr Kinsella pretty much didn't say anything. He was listening, like myself. And Mr Chidiac said he got raided and he said that, that, that we could be implicated. And, and he claimed, he, which I found very, very strange, he claimed that he asked the
40 Commission if it's okay he tells us. And, and, and he said, and I said to him, "That's a bit odd," you know. And he said, "No, the Commission

actually told me that it's okay if I, if I, if I tell, tell you." And then after that event I remember the word went around the whole community. People come up to me telling me that Mr Chidiac was raided.

If you just stay with the meeting and the conversation.---Yeah, yeah, yeah, sorry, yeah, I'll stay with that, yep. Yep.

MR DARAMS: All right. So he tells you – then, what, did you say something or did he say something?---No, we were, we were just shocked,
10 you know, and, and, and I didn't really want to say anything else. I said to him, "I still find this very strange that the Commission would tell you that they had no problem in you telling us." I found that very odd.

Did he tell you or was there any discussion about the deleting messages, removing documents.---No, no, no. He didn't say that. No, he didn't.

What did Mr Kinsella say?---Mr Kinsella just said, "Okay." He was, I think he was shocked as much as I was with it.

20 THE COMMISSIONER: What did he say?---Chief Commissioner, best of my recollection, well, all I know is he told us, Mr Kinsella goes to Joseph, "What can we do?" Like, you know, I, if I had to say anything I probably, I just can't recall if, 'cause it was such a long time ago, Chief Commissioner.

Well, can you remember the effect of anything Mr Kinsella said at this meeting with you and Mr Chidiac?---Well, he said to me he was very surprised as well that the Commission would, would allow him to come and tell us.

30 MR DARAMS: Sorry, Mr Kinsella said this to you - - -?---Yes.

- - - in front of Mr Chidiac?---'Cause I, I brought it up to Mr Kinsella. I said, "John, don't you find it very strange that he's saying that the Commission said it's okay for him to tell us?"

Sorry, are you saying this happened in front of Mr Chidiac in this conversation?---No, I pulled him on the side, yeah.

Okay, we'll come back to that in a moment.---Yeah.

40

I just want you to focus on this conversation with Mr Chidiac.---Yes. Yep.

And what did Mr Kinsella say in this conversation with Mr Chidiac?---Well, he, he found it very odd that the Commission would actually allow him to tell us as well.

Is that 'cause he said something to that effect?---Yes.

10 What did he say?---I can't recall exactly what he says, but that's what I can recall. He found, sorry, he found the same assumptions as myself. It was very strange.

THE COMMISSIONER: Mr Jacob, this was a meeting organised by, in a sense, by Mr Chidiac, is that right?---Yes. It was instigated because - - -

So he calls upon you to meet with him at this, what was it, a coffee shop, was it?---Harris Farms in Drummoyne. It wasn't organised for Harris Farms, he just rocked up in Drummoyne and we decided to walk in there.

20 So you travelled to the meeting at his request?---Yes.

And he's brought with him Mr Kinsella?---No, Mr Kinsella was already in Drummoyne before he came.

He was what?---Mr Kinsella was already in Drummoyne before he came.

I see.---And then I, I - - -

30 So there was just you and Mr Kinsella there in the start?---Mr Kinsella, yes, yes.

Did you understand Mr Kinsella had been asked to attend by Mr Chidiac? ---Yes.

Right. So it's evident from what you say Mr Chidiac had something in mind to trouble you and to trouble Mr Kinsella to come to a meeting with him?---That's a fair assumption, Chief Commissioner.

40 Mr Chidiac at this stage of course knows that the ICAC have executed a search warrant because it was his home and - - -?---Yes.

- - - it affected him.---Yes.

So he wasn't seeking any information about that incident because he obviously knew about it and he was telling you about it.---Yes.

I want to come to the point of the purpose of the meeting other than to tell you what he already knew, namely, that ICAC had executed search warrants on him and that is the purpose of this meeting, this gathering.---Yes.

Troubling you to attend there, troubling Mr Kinsella to come there.---Yes.

10

He obviously had something in mind.---Yes.

Yes. What did he have in mind by what he said? What did he say? Why in effect he had asked you to attend along with Mr Kinsella? What was said by him to indicate what was behind the calling of this meeting?---Well, Chief Commissioner, he, he looked, he looked very, I've never seen, he looked like he'd seen a ghost. He looked very pale on the day and he was even struggling for words when I, when I was with him. He was telling us that the Commission, it was pretty much when someone talks like very
20 drowsy and, and I, I didn't know what to say to him to tell you the truth. Like I was just shocked, you know, at the news, you know, about him being raided.

But you said that he said words to the effect that you might be involved in the investigation.---Yes. He did say - - -

So that's another piece of information he related to you.---Yes.

30 Apart from the search warrants issued.---Yeah. He said to us, he never showed us his piece of paper that he said that he had a piece of paper from this Commission which, which implicated myself and Mr Kinsella and others.

That's what he said.---That's what he said.

MR DARAMS: Did he show you the piece of paper?---No.

THE COMMISSIONER: So he was conveying a message to you that you might have some personal involvement in the investigation.---Yes.

40

And what else was the evident purpose of his calling you into this meeting? What else did he say which indicated why he had called you to be there and Mr Kinsella to be there?---Chief Commissioner, that was solely the purpose of that meeting. That was it.

Did he say anything to you as to what you might do or not do?---No, he didn't, Commissioner.

10 Have you spoken to him or met with him since that day?---No. Chief Commissioner, the following day he comes back to, to, this time to my office and, and he looked very rattled from what had happened the day before. I said to him, "Joseph, I find this highly inappropriate you've come back here because I said yesterday that I find it very strange on, on what you're, what you're saying." And I suggested to him, "Listen, I don't, I think it's a good idea that you go back. Whatever has happened I just don't want to be involved and, and I just want all contact to cease then and then."

20 What did he say on that occasion to you?---He said to me, "All right. If you want it that way no problem."

What had he said to you at the initial point of this discussion?---He just came back. I think he just wanted to have a talk more about the day before.

Well what did he say?---Chief Commissioner, I, I personally was so uncomfortable. I'm very uncomfortable him even coming back and speaking to me. I made it very clear that he should go.

30 MR DARAMS: What did he say to you when he approached you and came back the next day?---He just said to me that – oh, yes, sorry. He said that "The Commission has possession of a, of an agreement between us." That's right. Sorry, I forgot to mention that. That's the only other thing he said.

THE COMMISSIONER: What did you say about that?---He said that, that when he got raided there would have been documents there that the Commission took.

And that it included an agreement, is it?---Yeah, a draft agreement, yes. Sorry, Commissioner, my voice, sorry.

40 That's all right. There's some water there if you wish to - - -?---Yeah, right.

MR DARAMS: Sorry, Mr Jacob.---Yeah, yeah.

This reference to the draft agreement, was that something he told you the day before or has he told you this on the second day?---The second day.

All right. What did you say when he told you that?---I just said, "Listen, it is what it is." But I, I just really emphasised the point that I just didn't want to talk to him.

10 When you say you re-emphasised the point, how did you re-emphasise the point?---I told him whatever has happened that's related to you, and I feel very uncomfortable that he's telling me all this.

THE COMMISSIONER: Well, having had these two meetings and you say it made you feel very uncomfortable, is that right?---Yes. Because, sorry, I'll let you finish first.

Yes, go on.---No, because, Chief, I make the point it's very, very strange I found that this Commission would tell him to tell us, yeah.

20

And after these two days and you're feeling uncomfortable, is it the case that you then spoke to somebody to tell them what had happened to you at this meeting with Chidiac the day before and the next day?---The only person I told was my brother Pierre.

Right. When did you tell your brother? Was it soon after?---Yes.

Right.---Yes.

30 And what was your brother's response?---My, my brother's position was the same as my position, that we should cease talking to this guy. That's it. He found it very odd as well.

Mr Jacob, you said that Mr Chidiac was very shaken by these events.---Yes.

And you had dealt with him over a considerable period of time prior to this in relation to the proposed joint venture.---Yes.

40 Okay. Was it your understanding that at all times in relation to those discussions and matters concerning the proposed joint venture that he was

acting for Billbergia?---My impression was he was acting, the, that draft agreement was between us and him.

But did you understand he was representing some particular interest? Whether it be Billbergia or someone else.---With Billbergia, like, I stayed sort of arms-length from whatever him and Billbergia were doing. I was more concentrating on my business interests, being our property. Now, we, we wouldn't know Billbergia without Mr Chidiac. He introduced us to Billbergia. You know what? His arrangements with Billbergia, I, I never, I
10 never asked or never got involved.

MR DARAMS: Well, what did you understand them to be, though, or believe them to be?---Mr Darams, I, that's the thing. I just, I don't get involved in, in other people's business.

But you must have had some understanding or belief as to what arrangement Mr Chidiac had with Billbergia?---The only, the only understanding I had is that he knew Billbergia and he introduced us to Billbergia and he, he's had a much longer association with Billbergia than us, yeah.
20

Well, when you say that he's had a much longer is that from discussions you had with Mr Chidiac?---No, that's 'cause he introduced us. I just assumed that he's known them for a while before that. I wouldn't know how he's known them for. But he would have introduced us to Billbergia approximately in late '14, early '15.

Just going back to this meeting when he tells you you could be implicated in something, what was Mr Chidiac worried about?---He, I was referring to his, his claim he had some sort of piece of paper from this Commission that involved us.
30

Yeah.---Mmm.

You didn't ask him what you were implicated in?---Mr Darams, I was so uncomfortable with the conversation, I didn't want to discuss it because I, I just thought, I just think from what I've heard with this Commission that everything is done in secrecy. So I found it very strange what he was - - -

No, but - - -?---Yeah, yeah.
40

- - - he goes to you, he goes - - -?---Yeah.

- - - "You could be implicated in this." Didn't you say to him, weren't you curious, say, "Well, what, what have we done that we could be implicated in?"---That's why he came the next day and he said that, about those draft agreements. That's what I, that's what I thought he meant by "implicated" because he said that the Commission had those, those agreements.

THE COMMISSIONER: Mr Darams, I see the time.

10 MR DARAMS: Yes.

THE COMMISSIONER: Is this a convenient time - - -

MR DARAMS: It is a convenient time.

THE COMMISSIONER: - - - to take the luncheon adjournment?

MR DARAMS: Yes.

20 THE COMMISSIONER: Very well.

THE WITNESS: Yes.

THE COMMISSIONER: Mr Jacob, we'll take an hour luncheon adjournment.---Yes.

We'll resume this compulsory examination at 2 o'clock.---Yes.

You understand the direction that I've made under section 112?---Mmm.

30

You are not at liberty to publish anything about this compulsory examination.---Yes. Yes.

Very well. I'll adjourn.

LUNCHEON ADJOURNMENT

[1.00pm]

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COMPULSORY
EXAMINATION

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

COMPULSORY EXAMINATION

OPERATION TOLOSA

Reference: Operation E17/1221

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY, 5 MAY 2022

AT 2.00PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Yes, Mr Darams.

MR DARAMS: Mr Jacob, just before the luncheon adjournment we were asking you some questions about the meetings or conversations you had with Mr Chidiac after he had been visited by ICAC, remember that?---Yes.

10 You said there were two meetings, in effect, in two successive days.---Yes.

Is it the case that you deleted your messages between, the messages between you and Mr Chidiac after the second of those meetings?---There's a possibility.

THE COMMISSIONER: Can't hear you, I'm sorry.---Sorry, there's a possibility.

20 MR DARAMS: There's a possibility what? Or do you mean there's a possibility you deleted them immediately after the first meeting but before he came back on the second occasion?---Because it was such a long time ago, I, I know prior to that meeting that I, I had a habit of deleting my messages you know. And - - -

THE COMMISSIONER: Would you keep your voice up?---Sorry. Sorry, I had, like, prior to those meetings and prior to my knowledge what he, he discussed with me, Mr Chidiac, I, I, I did before used to delete my messages even before that as well.

30 I don't think you've answered the question. I think I've said before but I'll say it again, listen to the point of the question - - -?---Okay.

- - - and answer the point of the question directly.---Directly, yes.

No statements.---Yes.

No explanations.---Yes.

40 Just answer the question. Put it again.

MR DARAMS: The question I asked you was that after the second of the meetings between you and Mr Chidiac, you agreed that you deleted his phone number.---Yes.

Now, you also deleted your messages. Whatever messages were left between you and he, you deleted them after that second meeting.---Yes.

Yes. Now, can you recall how long after the second meeting you deleted them?---I can't recall.

10

THE COMMISSIONER: Is it a question of days or hours or what?---Chief Commissioner, I'd be guessing. I, I - - -

Sorry?---I'd be guessing. I'll just, I'll say - - -

Well, there's a difference between a day and a year, isn't there?---Yes. Yes.

Okay.---It, it would have been - - -

20 These meetings you've given evidence about are fairly, are vivid in your recollection, aren't they?---Mmm, yes.

Because of their nature.---Yes.

That right?---Yes.

And the effect it had on you, you were quite shocked to hear what Mr Chidiac was saying, is that right?---Yes. Yes. Yes. I was, I was, I was - - -

30 Both at the first and the second meeting.---Mmm.

Is that right?---Yes. Yes.

Okay. Now, on your evidence you subsequently deleted, you told us, the phone numbers of Mr Chidiac and Mr Tsirekas and also the message, any messages between each of those and you. Yes?---Yes.

40 When approximately did you delete that data from your phone? After the second of the two meetings or after the first?---Commissioner, best of my recollection, it would have been within probably months of that. Within that period.

About a month, that's your best recollection?---Yeah, yeah, best recollection, yeah.

And in that sense it could, you're saying it could be any time within a month, is that right?---Yes.

So it could have been early, mid or late in the month after - - -?---Yes.

10 What, after the second meeting or the first?---The second.

Hmm?---After the second.

The second. It was after the second.---Mmm.

So either, early means it could have been a week or two or it could have been after two weeks or it could have been after four weeks but certainly within that bracket of time - - -?---Yes.

20 - - - you deleted the messages. Is that right, to the best of your recollection?
---Just to the best of my recollection, yes.

MR DARAMS: And you recall yesterday I took you to an image that had been extracted from your phone that appeared to be a Google search about the ability to retrieve messages?---Yes.

Do you remember that from yesterday?---Yes, I remember.

You actually did that search, didn't you?---Yes.

30

You did that after you'd deleted the messages. That's correct? When I say "the messages" the messages between you and Mr Tsirekas and you and Mr Chidiac.---Mr Darams, I, to the best of my recollection, that screen, that, that Google search, was that, sorry, in August that year?

Well, the - - -?---Yeah. Yeah.

- - - the image appears to be taken - - -?---Yeah.

40 - - - from the data we have obtained - - -?---Yeah.

- - - on 30 August, 2019.---Well, it could have been around that time, then.

Sorry.---Yeah.

The question was you did that, you've accepted you actually put that search into Google?---Yes.

10 Because you put that search in, you were interested to know whether messages from WhatsApp that had been deleted could be recovered by investigators?---Yes.

The reason I was suggesting that to you is that you had by that stage deleted the messages between you and Mr Tsirekas and you and Mr Chidiac?---Yes.

Yeah. That is exactly what happened. Correct?---To the best of my recollection.

20 Now, just going back to Mr Chidiac on the second meeting telling you that you might be implicated and referring to the agreement between you and, sorry, referring to the agreement between Prolet and him, remember that's what you said he explained to you?---The first meeting - - -

In the first meeting.---Yeah, yeah. But the second meeting - - -

He also - - -?--- - - - he just, he just came and he just said, I can't remember the whole conversation but, you know, all I can remember is he told me that the, that the ICAC is in possession of those agreements.

30 Could I just ask you to have a look at a couple of documents. So can we please show you volume 3.5, page 209?---Yeah.

You gave evidence yesterday that you were a director of each of those companies in paragraph 1 of the parties - - -?---Yes.

- - - the Prolet companies?---Yes.

The second party is Mr Chidiac's company?---Yes.

40 You've seen a copy of this document before?---I, I haven't, the only time I saw it was on the, on the restricted website.

So you gave some evidence just earlier today, you were talking about a draft agreement that had been prepared between Prolet and Mr Chidiac?---Yes.
Yes.

Is this not the draft agreement?---It, it appears to be, yes.

Well, I had understood your evidence from yesterday that you had been provided with a copy of the draft agreement but it hadn't been signed?---No, no, nuh. I, I, I, I saw that on the restricted website.

10

MR HENRY: I'm sorry to interrupt. May I just raise one matter, Chief Commissioner? In fairness to the witness - - -

THE COMMISSIONER: Sorry, Mr Henry. If you could just - - -

MR HENRY: Yeah.

THE COMMISSIONER: Thank you.

20 MR HENRY: I apologise. In fairness to the witness, might he just be shown the document from beginning to end - - -

THE COMMISSIONER: Yes, certainly.

MR DARAMS: Yeah, of course.

THE COMMISSIONER: Yes.

MR HENRY: Thank you.

30

MR DARAMS: So this is the, just take your time, just - - -?---Yes.

- - - be familiar with this document, this page and then when you're ready, I'll show you the next page and the subsequent pages.---Yes.

Go to the next page. I just want to draw to your attention while you're looking at it, look at the definition of property entitlement.---Yes.

Also the retainer.---Yes.

40

Let me know when you want to look at the next page.---Next page. Yes.

THE COMMISSIONER: I think, Mr Darams, Mr Henry raised the point of allowing Mr Jacob an opportunity to look through the document, look at it in its whole context and I think that's a reasonable request, with respect, and then you can zero in on particular aspects.

MR DARAMS: Yes, I'll do that.

THE COMMISSIONER: If you wouldn't mind doing it that way.

10

MR DARAMS: Yes. Let me know when you - - -?---Yes.

THE COMMISSIONER: So just take your time to familiarise yourself with the agreement. It can be scrolled down. Just when you finish looking at a page just say next page.---Next page. Next page. Next page.

You have read through that?---No.

You're still going. That's all right.---Next page.

20

That's okay. There's no rush.---Next page. Next page. Next page. Yes.

MR DARAMS: Can I also ask that you be shown the next page as well. ---Yes.

Would you like to see the next page now?---Yes. Yes. Yes. Yes. Yes. Yes. Yes. Yes. Yes.

Now, Rhodes Design and Construct, again that's one of the other companies you were a director of.---Yes.

30

Now, just going back to the question I asked before. You accept there are two separate agreements there.---Yes.

Had you seen those documents before they were in the restricted website? ---No. Till, the only, the only recollection I have is when they were drafted around mid-'16.

That's what I was getting at.---Yeah, yeah.

40

They were drafted, were they drafted by you or your lawyers?---No.
Mr Chidiac asked me if, if I could recommend a lawyer and I recommended
him one, one of the lawyers we use.

Who did you recommend?---Greg Vale.

THE COMMISSIONER: Sorry, who?---Greg Vale.

Greg?---Vale, V-a-l-e.

10

So Mr Chidiac recommended him?---No, I did.

No?---I recommended him.

Oh, you recommended. I see.---Yeah, because Mr Chidiac didn't know a
lawyer so he asked for one.

MR DARAMS: So you gave him the name of the lawyer. Then what did
Mr Chidiac tell you he did?---He, he was going to go draft an agreement.

20

Which you understood to be agreement between Prolet companies and
Mr Chidiac's company?---Yes.

Early 2016?---I think it was mid-'16.

Mid-2016.---Yeah.

So then did Mr Chidiac come back with a copy of a draft agreement or draft
agreements?---I can't, I can't, I, I haven't, I don't have a copy.

30

No, my question is did you, did he come back with a copy of the draft
agreements or did he show you a copy of the draft agreements or did
someone else give you a copy of the draft agreements?---Mr Darams, I can't
recall.

40

Well, what I want to ask you is that you had referred in some evidence
yesterday to, if we can go, ask you to go to page, be shown page 210. You
gave some evidence yesterday, I recollect, referring to part of the agreement
or proposed agreement with Mr Chidiac where you would receive two
properties. Do you remember that?---Yes.

Yes. Was that based upon you having viewed a document back in 2016?
---To the best of my recollection, I, I would have viewed a draft copy.

Yeah. So that's what I'm asking you.---Yeah, yeah.

Is this, given now you've looked at the document, does this recollect with the agreement you had seen in 2016?---Yes.

10 You never signed these agreements on behalf of any of these companies, is that right?---No.

You don't know whether your brother did that.---I don't, to the best of my recollection, I don't know, yep.

What happened with these agreements, then?---Mr Darams, to answer the question, I'd need to explain it. Do you need an explanation or do you want me just to answer the question?

20 Well, we'd like you to explain why the agreements weren't signed, so - - -?
---Because in, in early '16 Billbergia started producing all these hundreds of millions of dollars of, of, of state and regional infrastructure through a tier 1 consultant called BG&E. And when we first purchased the properties, we, we didn't envisage there was going to be infrastructure, there was going to be – I think the, the vision was it was not going to be like Rhodes West, it was going to be much more lower densities. And once Billbergia started developing all those, all those infrastructure proposals, then it was said to us that if we don't contribute towards the infrastructure, then, then the development in the precinct won't proceed. So then Mr Chidiac recommended that we join the infrastructure proposals with Billbergia, and
30 then he said because of my introduction, and if you do a JV with them I need some sort of agreement with us, yeah.

So do you say that this was an original, sorry, an earlier version of a proposed agreement between you and Mr Chidiac, your companies?---No. No. That was, they were saying early '16, that's when the infrastructure was instigated by Billbergia. And then we were told that our land was vital to that infrastructure proposal being put forward. And that, we had a choice whether we join the infrastructure proposal or we don't. But if we did join the infrastructure proposal, it would have to be with Billbergia. And
40 because Mr Chidiac introduced us to Billbergia, that he, he said that 'cause of my introduction, if you ended up doing a JV with Billbergia, then you

would, that I wouldn't need to draft an agreement. And that was the catalyst then for us. He said, "Do you know a lawyer?" and then I said to him, "You don't have a lawyer?" He said, "No." So I recommended him Greg Vale to start drafting some agreements around that mid-2016.

So that's what I was asking.---Yeah.

These, this draft agreement - - -?---Mmm.

10 - - - came out of the discussions with joining up with Billbergia - - -?
---Billbergia.

- - - as a joint venture.---Yes.

Right. The question I asked you before, though, is that these weren't signed.---They haven't been signed.

No. A question as to why weren't they signed.---Because the, the joint
20 venture we didn't know if it was ever going to happen and I was - - -

THE COMMISSIONER: Sorry, because?---Because we didn't even, I,
there was no guarantee that the joint venture was ever going to happen.

MR DARAMS: So on your, if I understand your evidence from yesterday,
come 2019, when Mr Chidiac visits you - - -?---Yes.

- - - the joint venture discussions had concluded by that stage. In fact,
concluded in sort of late 2018. That was your evidence yesterday, wasn't
it?---There was still a, the school had been, resolved not to go on our
30 property but then there was still discussions with Transport for NSW about -
- -

Focus on your joint - - -?---Yeah. That's, I, I, sorry, Mr Darams, I am
focusing on it. There's still a possible JV if there was going to be a station
upgrade to Rhodes Train Station, which required two station entrances, and
we're proposing that one of the station entrances would be on the Prolet
property to, to, to allow a new northern concourse, which has already been
approved but now, Transport for NSW have put that entrance within their
own railway corridor.

40 Yeah.---Yeah.

So just let me understand your evidence.---Mmm.

Are you saying these agreements were not signed - - -?---Yes.

- - - because there was no joint venture had been concluded?---Mr Chidiac was pushing for them to be signed but - - -

Just, no, no - - -?---Yeah.

10

That's your explanation?---Yes.

There was no joint venture come or by the time Mr Chidiac visits you at Harris Farm with Mr Kinsella. Correct? There was no joint venture at that time?---No.

You hadn't signed these agreements - - -?---Yes.

- - - draft agreements?---Yes.

20

So just having a look at those draft agreements - - -?---Yes.

- - - was there anything in those draft agreements when you originally reviewed them and even reviewing them now that, is there anything there that was concerning to you in terms of a commercial agreement?---I, I never, I never, I never, I not a lawyer, sorry. I didn't draft those documents. All I did was get a draft copy - - -

30

THE COMMISSIONER: That's not the question you were asked.---Sorry. What was the question?

MR DARAMS: When you reviewed them on the first occasion and again having the benefit of reviewing them again now, there wasn't anything concerning to you in the terms of these agreements, was there? Or, put it another way, they seem to be relatively, put aside the generosity of it all, but it's a relatively vanilla commercial agreement, is it not?---In, in respect to the generosity, the way I looked at it - - -

40

Don't worry about the generosity.---Yeah, okay, yeah. Yeah.

The terms of the agreement itself appear to be a vanilla commercial agreement between two parties. There's nothing unlawful in there, is there?---No.

So you hadn't signed this agreement?---Yes.

There was no joint venture. There might have possibly been a joint venture?---Yeah, it was based on a possible joint venture.

10 Right.---Yeah.

But you know you hadn't signed so there was no agreement - - -?---Yes.

- - - in existence, as you understood it - - -?---Yes.

- - - between Mr Chidiac and your companies?---Yes.

So I want to go back to why you would be concerned when Mr Chidiac comes to you after he's told you that he'd been raided by ICAC and refers to
20 ICAC obtaining these draft agreements or copies of these draft agreements?
---They're very private people, Mr Darams, you know - - -

No, no, no.---Yeah, yeah.

Just, well, what I'm suggesting to you is that given what Mr Chidiac told you about ICAC obtaining a copy of these draft agreements, none of that should have concerned you or worried you, Mr Jacob. They're quite, my suggestion, vanilla agreements - - -?---I didn't have that - - -

30 - - - that hadn't been signed?---I didn't have an, I didn't have a copy of.

But you had reviewed them beforehand?---Yes.

You knew that they were only coming into existence if a joint venture had -
- -?---Prevailed.

- - - been consummated between Billbergia?---Yeah. Yes.

You knew you hadn't done that at that stage?---Yes.
40

So you would have understood there was ultimately no agreement between the Prolet companies and Mr Chidiac?---Yes.

Even if there was an agreement in the terms that had been provided to you previously, and you know that there wasn't - - -?---Yes.

- - - even if it was in that terms, it doesn't seem to me that it's anything other than a relatively ordinary commercial type agreement?---Yeah, I agree with what you say, yeah.

10

But what I'm suggesting to you is that if Mr Chidiac says to you, "They've got a copy of this draft agreement," it shouldn't have caused you any concern at all in relation to ICAC having a copy of that agreement or implicating you in that respect?---I, I never, I never said it, that I was worried, Mr Darams, yeah.

Okay. Well, so then now we - - -?---Yeah.

20 - - - focus on the question I want to ask you. You accept that after the second occasion with Mr Chidiac, you go then and delete all the messages between you and Mr Chidiac and you and Mr Tsirekas. Correct?---With, yeah, correct.

Yeah.---Yes.

30 Now, in those circumstances, given what Mr Chidiac had said to you, why did you go and delete the messages from your phone in those circumstances?---Because, because as I said before, we're very private people. I don't, I don't like our business being, you know - - -

THE COMMISSIONER: Mr Jacob, with respect, that's not an answer to the question. If it is your answer it's certainly not a sensible or rational one, I'm putting to you.---Yeah.

You see, at some stage within a month you say of these meetings with Chidiac you determined to delete these messages and you did.---Yes.

40 All right. So after you had met with Mr Chidiac on those occasions, the messages you specifically selected for deletion were the messages between you and Mr Chidiac.---Yes.

And then you turned and decided to make another selection, sorry, another deletion and they just happened to be of all the people you had used the phone for and text messages. The other person who you selected was Mr Tsirekas.---Yes.

And you decided, did you not, that of all the messages on your phone on the day that you deleted them the messages that were to be deleted related to two men, one was Mr Chidiac, the other was Mr Tsirekas.---Yes.

10 Yes?---Yes.

They both had had involvement in meetings or discussions, is this not right, in relation to planning matters with you that is? They had discussions with you, those two gentlemen - - -?---Not - - -

No, just listen.---Yes.

Over time they had, each of them, Chidiac and Tsirekas, had had meetings and/or discussions with you and possibly others about planning matters. Is that right?---Planning matter - - -

Just answer my question. Is that right?---Chief Commissioner, before I answer that question - - -

No, no, no, not before you answer it. You answer it. I'll put it again. Over some time you had been party to discussions, either face to face or by text messages or other means, with both Mr Chidiac and Mr Tsirekas about, firstly, general subject matters related to planning issues. Correct?---Chief Commissioner, when you say planning matters, I, I want to answer that question and I'm not avoiding answering the question, but they were infrastructure proposals.

All right.---Yeah.

You say that over time you'd had discussions and/or meetings with both Chidiac and Tsirekas about matters connected with the proposed subject for a possible joint venture. Is that right?---No, not with Mr Tsirekas.

Pardon?---Not with Mr Tsirekas, never. Only with Mr Chidiac. With Mr Tsirekas it was purely on the infrastructure proposals. He wanted the

affordable housing and we were supporting the state on the state and regional infrastructure.

Right.---He had no idea what's (not transcribable) never was highly inappropriate and I would never do that.

Infrastructure matters were a central consideration in determining whether or not a joint venture was viable. Correct?---Yes.

10 Right. If it wasn't viable then there was not obviously - - -?---Correct, it won't proceed, yes.

- - - much likelihood of a joint venture going forward. Is that right?
---Correct.

Right. So far as the discussions you had with the other man, Chidiac, over time in one way or the other is it true to say that communications with him did include communications touching or concerning the development of Prolet land - - -?---Yes.

20

- - - either with or without an arrangement with Billbergia?---Yes.

Right. So when you deleted the emails dealing with communications between you and Mr Chidiac, and then with Mr Tsirekas, or you might have done it in a different order, you had in mind that the communications recorded in the messages would have or would likely have some connection to either of the matters you have just identified, infrastructure matters - - -?
---Yep.

30 - - - or other matters touching or concerning a possible joint venture of the land.---Yes.

Right. So it is obvious that for any of us to select the deletion of emails relating to one person or the other, that you're normally doing it for a reason, that right?---Commissioner, was it emails or text messages?

Text messages we're talking about.---Sorry, text messages, yep.

40 You're doing it for a reason. You've got to have a basis for the selection. Why do I think it's a good idea to delete the messages?---Because I didn't want to have any connection with them, Commissioner.

You'd agree that there'd be a reason why you - - -?---Yeah, yeah.

- - - on one day selected each of the emails of those communications with you for deletion.---The text messages.

You did one after the other. Chidiac, then delete the ones with Tsirekas, or it might have been in the other order. Tsirekas messages deleted first and the Chidiac messages deleted second. Something like that but close in time.
10 Is that right?---Yes, Chief Commissioner.

All right, now - - -?---But I didn't want to have any connection with them.

No, just - - -?---Yep.

- - - stay with me.---Yes.

You will have gathered by now we proceed by way of a question-and-answer format.---Yes.
20

And witnesses don't just make statements.---I'm sorry.

Unless it's responsive to a question. Now, you said that Mr Chidiac was shaken up or words to that effect.---Yes.

And markedly so.---Yes.

And indeed, once you had had Chidiac reveal matters that you say he revealed to you after the search warrants were executed, you too were shocked or you were concerned about what he was telling you, is that right?---It's not ideal.
30

Pardon?---It's not ideal.

Sorry?---It's not ideal.

Not, no, no, no, I asked that you had a reaction just as his. It might not have been as severe as his, but you said you were, I think it made you feel uncomfortable.---Yes.
40

All right. And what Mr Chidiac had revealed in those two meetings you say you had with him not only made you feel uncomfortable but it raised concerns in you, did it not?---Yes.

All right. But therein lies the explanation as to why you decided to delete the messages of both Chidiac and Tsirekas, is that right?---Yes.

Hmm?---Yes.

10 All right. Yes.

MR DARAMS: So just tell us about the concerns that were in, or would have been revealed by those messages.---It's not the messages, Mr Darams. It's, I don't know Mr Chidiac. I, I don't believe he, we were the sole focus, like, when he told us. I just thought that, I, I wouldn't know what, what in broad terms they're looking in general. Wouldn't be just us. So I just didn't want any connection with him or, or Mr Tsirekas.

20 THE COMMISSIONER: But can I just ask you, then, you say this news that Chidiac imparted to you about the search warrants executed by ICAC made you uncomfortable and give rise to the concern - - -?---Yes.

- - - which in turn led you to make the decision to delete these emails from Chidiac, or with Chidiac and with Tsirekas, is that right?---Yes.

And at the time you did delete them, you knew, based on what Chidiac had said, that ICAC was investigating matters concerning Chidiac, is that right? And he – is that right?---Chief Commissioner, I - - -

30 You knew from what he said that ICAC is actively now investigating matters concerning Chidiac? You knew that from what he told you?---Yes, Chief Commissioner.

No, it's either yes or no. You did know or you didn't know? I think you did know because he told you ICAC executed search warrants. Is that right?---Yes, but he, he didn't say that it's being investigated. He said that he's been raided and he said that the following day when he came, he just made us aware that they're in possession of these agreements.

But I thought it was a basic fact, well established, but you correct me if I'm wrong, you knew from what Chidiac said that ICAC was investigating a matter which had some relevance to Mr Chidiac, is that right?---Yes.

And he indicated to you it could also have a relevance to you.---Yes.

All right. You knew at that time when he told you that what ICAC was. ---Yes.

10 You knew it was an investigative agency.---Yes.

Right. It's an anti-corruption agency. You knew that.---Yes.

So with that knowledge, however, you decide to delete the messages that we've been talking about, is that right?---Commissioner, the best of my recollection - - -

You just answer my question.---Yes. I - - -

20 You had the knowledge at the time you deleted these messages, these text messages we've been discussing, that Chidiac was under investigation. You knew that?---Yes.

And you also knew at that time, according to what he had said to you, that you might be involved as well - - -?---Yes.

- - - in the investigations. You knew that.---Yes.

Is that right?---Yes.

30

You then, after having been made aware of those facts, to turn around and delete the messages involving Chidiac and the messages involving Tsirekas, you knew that that was, in effect, seeking to destroy evidence that could be relevant to the investigation. That right?---Chief Commissioner, can I just - - -

You knew - - -?---Before I answer that, can I - - -

40 No, no, no, no.---Yeah, yeah.

Not before you answer it. You answer it now. You knew, did you not, that with ICAC investigating the matter and possibly involving you, you decided to destroy the messages or to delete the messages that we've been talking about because it could have relevance to the investigation.---Chief Commissioner, you want a simple yes or no without me, without me just - - -

You knew, you had the knowledge - - -?---Yeah. But I just - - -

10 - - - that ICAC was investigating. Chidiac said that they executed search warrants on him, and he indicated to you in the first meeting that this investigation could implicate you, that's correct?---Yes.

And he also indicated the next day that he came round with this draft agreement, indicating that that too might have some relevance to the investigation.---Oh, he didn't have the - - -

For whatever reason he thought.---He didn't have the draft. He just said that you're in possession of the draft agreement, yep. So - - -
20

And you didn't want to have any more to do with him, you said?---Yes, correct.

Yes. You realised this was serious and it was involving Chidiac, who you had been dealing with, is that right?---Yes, yes.

And you determined you would delete the messages concerning him. You said that - - -?---Chief Commissioner - - -

30 - - - with that knowledge that he was, in effect, under investigation and that you might also be under investigation.---Chief Commissioner, I - - -

No, you knew it, did you not? You appreciated - - -?---Yeah.

- - - what was going on.---Yes, absolutely. But with the deletion part, you know, this public inquiry I think I heard some evidence that there was, yeah
- - -

No, don't worry about what evidence you heard.---Yeah.
40

I'm asking you for your frank truthful acknowledgement - - -?---Yes.

- - - if it be the case that you destroyed or you deleted these emails because you thought they might have some bearing upon your dealings with Chidiac and/or Tsirekas concerning matters under investigation by ICAC. That's true, isn't it?---Chief Commissioner - - -

No, no. You answer my question.---Yeah, I am.

10 It is true, isn't it?---If I answer that question, I don't have the ability first because there are some aspects before answering that question.

You'll be given an opportunity to provide an explanation but I want an answer to the question first.---Based on the Google search, yes.

You're acknowledging what I put to you. Is that right?---Yes.

20 Mr Jacob, I'm raising these questions not to make you feel uncomfortable but to try and understand, firstly, why you set about deleting the messages at all but more importantly, perhaps, why you would go so far as to attempt to in some way interfere with or possibly interfere with a state agency that's investigating. Why would you go to those lengths?---Can I explain that?

30 What's your answer?---Yeah. Commissioner, I didn't, whether I deleted in that period I'm not 100 per cent sure, but based on that Google search it does look like that was the intent. But I was, I was, I was reading a transcript of this public inquiry and it was before that a few months. Mr Chidiac was on a phone call recorded saying that Joseph Jacob wanted me to delete my WhatsApp messages. Yeah. So like I don't, I can't conclusively say it was happening before the, the, the raid and I, I'm not concealing or hiding anything but just I take my reputation very seriously. I, those agreements like Mr Darams referred to, they're not, they were based on a possible JV. There was nothing to be concerned about and I do agree with, with what you said there but I can't hide the fact he has some sort of, I don't understand his relationship with Mr Tsirekas and in that regard I just didn't want to have any connection between them.

40 You see, I'll put it to you so that you can deal with and respond to the point that your actions in deleting the messages we've been discussing indicate that you wanted to get rid of those messages because they might in some way be adverse to you.---That wasn't the intention.

And I put to you that when you became aware of the fact that the ICAC were investigating and with that knowledge deleted the emails or the, sorry, the text messages - - -?---Yeah.

- - - that further confirms that you were intent on hiding something. You did not want those messages for the eyes of this Commission. Now, how do you respond to that?---Commissioner, that's not the intention. I, I, I wasn't intent on that. I, I just didn't want any connection between myself and, and, and Mr Chidiac. Yeah.

10

MR DARAMS: Just let me pick up and run with that. You say you didn't want any connection between yourself and Mr Chidiac - - -?---Yes.

- - - from what, the time that he told you about ICAC?---It started before that as well because you could see that, you know, obviously I was trying to further my business interests and we had a position on the state and regional infrastructure and the council wanted affordable housing. And once I knew the council's position, that was a bit, a few months before that, then obviously it's, it's well known out there I was, I was very disappointed, extremely disappointed. And before even the, that event, I already was distancing myself from, from Mr Chidiac, yeah.

20

Just focus on the question, please.---Yes.

So we'll go back one step further. Earlier than that, you were using Wickr - - -?---Yes.

- - - to correspond with Mr Chidiac?---Yeah. Yes.

30 Why were you using Wickr?---As I said previously, you know, it allows large files - - -

But so does WhatsApp.---Yes.

That's not the explanation, though, is it? You were using Wickr because you didn't want your messages with Mr Chidiac to be recoverable or discoverable on someone's phone?---They, they, they self-destruct on the Wickr.

40 Yes.---Yeah. And on the WhatsApp, you can, if you don't want the message, you have to do it manually yourself, yeah.

Well, then, we'll go back one step.---Yeah.

And let's just pick up with what you were saying - - -?---Yeah.

- - - about you appear to give some suggestion you were telling Mr Chidiac before that to delete his messages. Correct?---Nuh. That's what he said on the phone, yeah.

10 Well, did you tell him to delete the messages on WhatsApp?---Well, that's what he was claiming.

No. Did you tell him?---Yes.

Well, why did you tell him to delete the messages on WhatsApp between you and he when this is preceding any ICAC raid that - - -?---That's right.

- - - caused you to, let me finish, caused you to concern to not have any association with Mr Chidiac? On your evidence and your explanation,
20 you're using Wickr where messages are not discoverable, they self-destruct, you're also telling Mr Chidiac to delete the messages between you and he before ICAC is involved, so therefore that can't be that you don't want any more involvement with him, 'cause you're still engaging with him. Why are you asking him to delete the messages? I want the reason why you're asking him to delete those messages?---'Cause I don't know who he was showing those messages to - - -

THE COMMISSIONER: I can't hear you?---I'm, I'm not sure who he, I just, I didn't want a record there because I don't know who he, if he, who
30 he's talking to or who he's showing the messages to.

MR DARAMS: But who did you think he was showing the message to and what was wrong with the messages?---There's nothing wrong with the messages. It was just paranoia. Sorry, Mr Darams.

But what messages were you sending to him that caused this paranoia?
---Because, you know, they were trying to achieve their joint, they were trying to achieve a joint venture, yeah.

40 But what was wrong with the messages?---There was nothing with them, Mr Darams.

So then there's no basis for any paranoia?---It was silly, Mr Darams.

No, no.---Yeah.

My question was there's no basis for any paranoia?---Mr Darams, I agree with you. There was nothing wrong with the messages. And I'm just a very private person, that's all I am.

10 So what we have here is we have you deleting the messages with Mr Chidiac, and I'll come to Mr Tsirekas in a moment, but Mr Chidiac, after he tells you that ICAC have conducted a raid. That's correct?---Yes.

You have him telling you that you could be implicated in it, in the ICAC investigation?---He didn't say "implicated". He said "I've got a piece of paper which" you - - -

I thought you used the term earlier "we could be implicated" and that's what he told you, you could be implicated?---If I said that, Mr Darams, if I used
20 the word "implicated" but I just remember that he said he had a piece of paper and he, he didn't show me.

You were concerned - - -?---Yeah.

- - - when he told you that and that's the reason you deleted the messages?
---Yes.

You now accept that you were asking him to delete messages before that, as well?---Yes.

30

You were using Wickr which self-destructs messages?---Yes.

That suggests that you had a concern about the things that you were saying in the messages to Mr Chidiac?---Not a concern. I'm just a very private person. I don't, I don't like people knowing our business, Mr Darams. That's why these, with him - - -

But you were having meetings with Billbergia, you were having meetings with the council, you were having, talking about your business?---Yes.

40

So that can't be an explanation for deleting the messages, 'cause people did know about your business?---Yes, but I didn't, I didn't want people to know that I was – from a personal point of view I, from my business interests, that's the only reason why I was talking to Mr Chidiac was because of that, yeah.

Didn't you want people to know that you were associated with Mr Chidiac? Is that what you're saying?---Yes.

10 Well, tell us why you didn't want people to know you were associated with Mr Chidiac. What's the reason?---Because I wanted them to understand his full nature of his relationship with Mr Tsirekas.

Well, tell us what you thought was the relationship between he and Mr - - - ?---I, I don't know.

No, you must have had some thought about it. You're saying you didn't fully understand it. You must have had some suspicions about it.---Mr Darams, once those first draft ones were done in mid-'16, Mr Tsirekas was
20 not at council. So once Billbergia put those infrastructure proposals - - -

Don't - - -?---Yeah.

Sorry, I'm just going to cut you off.---Yeah, yeah.

I don't think you're answering the question.---Yeah.

I want you to focus.---Yeah.

30 It's important that you focus on answering my questions, okay? I understand you've had discussions about infrastructure proposals, I accept all of that and I understand it.---Yeah.

It appears from your answers and the questions that you were, you say there wasn't, there wasn't anything concerning on one version of the events, nothing concerning about what you were sending in your messages to Mr Chidiac, is that right?---Yes.

40 But I think you now accept you were concerned about your, having an association with Mr Chidiac.---Yes.

That's why you were deleting, deleting these messages.---Yes.

You then have started to explain that to say you didn't fully understand the relationship between Mr Chidiac and Mr Tsirekas. Now, I'll come to Mr Tsirekas' deletions in a moment.---Yes.

10 But I want you to tell us fully why you were concerned or what your concern was about being associated with Mr Chidiac and why that had something to do with Mr Tsirekas.---When Mr Tsirekas came back as mayor in, in September, when was it, I think September '17. I just, there was, I, I re-emphasise there's nothing wrong with those agreements and I'm not worried about those agreements, but it's just that I didn't know the true extent of Mr Chidiac and Mr Tsirekas 'cause I know that they - - -

When you say the full, true extent - - -

20 THE COMMISSIONER: Just a moment. You know what?---Yeah, yeah, I didn't know, I, I didn't understand the extent of their, their, their friendship or relationship, you know, between them. And then - - -

Well – yes.--- - - - I just didn't want the perception that this agreement that I had from mid-'16 had anything to do with it.

I think you've given evidence you had a, some sort of a friendship/relationship with Mr Tsirekas.---On a professional, yeah.

All right, you call it a professional friendship, I think.---Professional, yep, yeah, yes.

30 But you knew that there had been longstanding relationship, did you not, between Mr Chidiac and Mr Tsirekas?---Yes.

You knew they were good friends.---I know they were friends but I can't determine what type of friends.

Well, you were concerned - - -?---Yeah, yep.

40 - - - we'll look at that in a moment, as to what the relationship between Mr Chidiac and Mr Tsirekas was about.---Yes.

In terms of Mr Tsirekas' role as councillor.---Yes.

And Mr Chidiac's role as whatever you want to call him, people who – he's a lobbyist or he's a - - -?---No, that - - -

- - - introducer or a, whatever you call it.---Private consultant.

Oh, yeah, consultant, yes, yeah.---All I knew, he's a private consultant and introduces people.

10 Yeah, but you know his consultancy was all about doing deals, that sort of thing.---Yes, yes, that's right.

And there must have been something about the relationship between Chidiac and Tsirekas that was of concern or that made you wonder about what their true relationship involved, that right?---Yes.

It involved in the sense of Mr Tsirekas being able to make things happen, as it were, with, at the behest of or through Mr Chidiac.---No, it's, it's - - -

20 No? What was your concern about the relationship based on?---They're, they're, they're predominantly always together.

I can't hear you.---They're predominantly always together.

I'm sorry.---They're constantly - - -

Oh, I see. Constantly together.---Yeah, constantly together, yeah.

30 And apparently what, as good friends on many of the occasions you saw him?---I don't under - - -

Good friends together, I'm just saying they're not sitting down at a desk doing business.---Yeah. I didn't understand the true extent of their relationship. All I knew, it was constant.

But you do, do you not, have some information that concerns you about Mr Tsirekas's role in relation to the planning or infrastructure matters?
---No, because Mr Tsirekas had a different stance to what we had.

40 Right.---Yeah.

Now, you have come here to assist this Commission, haven't you?---Yes.

To cooperate with this Commission.---Yes.

And to make full and frank disclosure of any matters relevant to the investigation as you understand it.---Yes.

All right. You understand that?---Yes, I understand.

10 That's why we're here - - -?---Yes.

- - - this afternoon - - -?---Yes.

- - - in a compulsory examination - - -?---Yes.

- - - with very few people present, only those authorised.---Yes.

20 Right. What is about Mr Tsirekas that you know that this Commission should be informed about?---Sorry, Chief Commissioner, like besides my discussions on the infrastructure proposals there, yeah, yeah, yeah.

Don't go into that. Just answer my question. What is it that you have knowledge, whether it's direct or indirect, concerning Mr Tsirekas's conduct that's relevant to this investigation as you would understand it?
---Sorry, Commissioner, I don't, I don't have any concern, like - - -

You say nothing?---Yeah.

30 Nothing at all?---I have no concern with Mr Chidiac, yeah.

But I'm talking about Mr Tsirekas. Nothing at all?---Just their, I was trying to understand their, Mr Chidiac and Mr Tsirekas's constant contact.

40 And what were your concerns and what did you come to know about Mr Chidiac's conduct that is relevant to this investigation which you consider might be a matter of concern about whether he's acted properly in relation to any matter concerned with this investigation?---Chief Commissioner, respectfully I was looking at furthering my business interests.

Sorry, say again.---Respectfully, Chief Commissioner, I was looking at furthering my business interests in my matter and that included myself included Mr Chidiac's introduction to Billbergia to make that happen. But that was separated from Mr Tsirekas. Mr Tsirekas, all I ever did was speak to Mr Tsirekas about the, because he, he, he, he's the leader of all the constituents in Rhodes. The infrastructure proposals we, 'cause they wouldn't, council would invite them to all the meetings and they would never join, so we were forced to go and speak to council.

10 MR DARAMS: No, no. No, no.---Yeah.

No, no. The question – no.---Yeah.

Mr Jacob, the question was quite clear.---Yeah.

You were asked about your concerns you had with the relationship between Mr Tsirekas and Mr Chidiac and your answer was no, you were more concerned about issues with Mr Chidiac.---Yeah.

20 And I'll come back to Mr Tsirekas in a moment.---Yeah.

But what were your concerns in relation to Mr Chidiac in respect of the matters which are before this Commission? We don't want to know the history of it all.---Yeah, yeah, yeah, I, I know but there was a - - -

THE COMMISSIONER: Well, would you answer that - - -?---My, my dealing - - -

30 Are you going to answer that question?---Yes, I am going to answer that question.

All right. Now, you go and answer it.---Yeah, yeah. What was, sorry, what was the question?

MR DARAMS: What was the concerns that you had about Mr Chidiac? ---The, those draft agreements. I agree there's nothing wrong with them. There's nothing sinister about them but the thing, no, but, my concern - - -

40 THE COMMISSIONER: Mr Jacob, you stop. Stop.---Yeah.

Answer the question. Don't avoid it. You are being evasive I'm afraid to say.---No, I don't want to be evasive.

Or at least you're giving the appearance of being evasive.---I don't want to do that.

And you persist in wanting to make statements. You recall I told you - - -?
---Yeah, just, just - - -

10 - - - to listen to the point of the question.---Yes.

Don't look away.---I won't look away.

Look at the point of the question and respond with an answer that deals with the point of the question. You remember me saying that?---Yes.

And you understand what I'm now saying?---Yes, I understand.

20 Listen to the question. We'll put it a third time.

MR DARAMS: What were your concerns about Mr Chidiac?---His, his constant contact with Mr Tsirekas.

But what was it about the constant contact with Mr Tsirekas? Did you understand, either indirectly or directly, that Mr Chidiac was providing financial benefits to Mr Tsirekas?---No, no, no.

30 Well, then what does it matter about the contact between Mr Chidiac and Mr Tsirekas? What concerned you about that?---That's what I was trying to say before. Those draft agreements – I know there's nothing sinister about them but just I felt uncomfortable between, the contact because there's a perception.

Sorry, the draft agreements, the draft agreements are between - - -?---He, Mr Tsirekas, no, no, just between us, yeah, yeah.

Let me finish, let me finish, sorry. Sorry?---Just between us and Chidiac, yes.

40 But I think you agreed before that the agreements are quite vanilla. They've got nothing to do - - -?---Yes.

So then that can't be the concern of the contact between Mr Chidiac and Mr Tsirekas, can it? Nothing to do with Mr Tsirekas, on your evidence.

---Correct. Mmm.

There must, there – well, then what was the basis of your concern that you've said about Mr Chidiac and his contact with Mr Tsirekas?---Because, because we're connected with Mr Chidiac and he's connected with Mr Tsirekas.

10

But how does that give you any concern whatsoever? There must be a reason why you were concerned about that connection. What's the basis of that concern? What do you know or what have you heard about that?

---Nothing, Mr Darams. It's just - - -

Then it seems to be completely absurd - - -?---Yes.

- - - that you're telling us that you're concerned about the contact between Mr Tsirekas and Mr Chidiac.---Not, 'cause I was more concerned, what's the word - - -

20

The concern was, your concern, concern was - - -?---The word - - -

No, "concern" was your word before.---Yes.

There must be a basis for that concern other than the fact that Mr Chidiac and Mr Tsirekas met with each other. And it has to be based on something you know or something you've heard or something of your dealings with Mr Chidiac or your dealings with Mr Tsirekas.---No, no, Mr Darams.

30

Then what is the concern?---I just look at my matters, no one else's matters.

No, no.---Yeah, yeah.

Don't worry about your matters.---Yeah.

Just focus on what is the concern that you've said you had about Mr Chidiac?---Paranoia. Sorry, Mr Darams.

40

Based on what? There must be some basis for this paranoia. Otherwise what we've got - - -?---I was trying to keep a distance to him.

But why?---I just, 'cause we know a lot of people in the community, and people talk, yeah, yeah.

Well, tell us, what was this talk?---People, you know, trying to understand what our relationship with Chidiac is and what his relationship with Mr Tsirekas is.

But what was it?---I don't know.

10

No, no. What was your relationship with - - -?---But, but it's just I didn't like the word, the community talking.

But why? From what you've told us you've got this relatively vanilla agreement that was never entered into with Mr Chidiac.---Yes, I totally - - -

Right? So that's not, that can't be a concern for you at all.---Mmm.

That can't be a concern for you.---I come from a proud family, so.

20

No, no, no, that agreement can't be a concern for you.---No, it isn't.

So Mr Chidiac and Mr Tsirekas meet often, regularly. You know that. How can that be a concern for you? There must be something 'cause you said that you were concerned about your involvement with Mr Chidiac. That's the reason I understood your evidence as to why you were wanting him to delete messages between you and he, right?---Yes.

30 You wanted to use Wickr because you don't want a record of these messages, right?---Yes.

You were doing this before ICAC raided Mr Chidiac.---Yes.

So this, that's the basis for you saying you're concerned about your association with Mr Chidiac. But there has to be a reason for that concern. ---Just the perception in the community.

40 The perception. But so what? What's the issue on this perception?---I come from a proud family.

No, no, but what, but, but, so, but what does it matter? Mr Chidiac is running a business.---Yeah.

You were drafting an agreement with Mr Chidiac, you knew he had some involvement with Billbergia, a big organisation. On your evidence of what you've told us to date, you weren't doing anything wrong, you didn't know that anyone was doing anything - - -?---Yes, I wasn't - - -

10 Let me finish. You didn't know that anyone was doing anything wrong. There'd be nothing for you to be concerned about to be associated with Mr Chidiac. So what was the concern that you're not, you haven't told us about at the moment?---There isn't, Mr Darams, just - - -

But there must be, there must be a concern with the - - -?---Mr Darams - - -
- - - being associated with Mr Chidiac?---I promise. I, I, I came here to cooperate. I promise there, there isn't. It's just that I, I just - - -

20 But why are you concerned with being associated with Mr Chidiac?
---'Cause, you know, peoples talk - - -

But what are they talking about? That's - - -?---Everyone thinks there's something going on - - -

Something going on between who?---Between us and Chidiac and you know, my parents, you know, I, I feel, feel for my parents. I don't want anyone talking - - -

30 But - - -

THE COMMISSIONER: Look, I think we'll pause there for the moment.
---So sorry. I just couldn't handle any more.

Mr Jacob, you step down from the witness box.---No, no. It's okay. I want to finish.

40 No, no. I'm going to take an adjournment in a moment. I just want to speak to Mr Henry. So if you just take your seat, please. Mr Henry, I decided to conduct this compulsory examination in order to give your client an opportunity to be able to - - -?---No, I'm okay (not transcribable)

No, please. Just, there's no need for you to comment on this. I'm asking you to leave the witness box because we're going to take a break and I'm addressing your counsel, so that he can understand what I'm about to do. Mr Henry?

MR HENRY: Yes.

10 THE COMMISSIONER: It does seem to me that I had understood that your client may have some information that would assist the Commission. At the moment, I don't think much has been accomplished in adjourning the public inquiry and holding this compulsory examination because I don't think much information has been disclosed of any use beyond what we already know. There is some but not much. As you're aware, the opportunity to have this compulsory examination was to potentially provide some assistance to your client.

MR HENRY: Yeah.

20 THE COMMISSIONER: As you'd appreciate, the act of, in effect, interfering with this Commission's processes, particularly by destroying or removing potentially relevant evidence is a very serious matter.

MR HENRY: Yes.

30 THE COMMISSIONER: I was prepared to give your client an opportunity, however, of perhaps being able to improve on his position depending upon what information he could provide to the Commission of some utility. It doesn't seem to me at the moment any point in continuing the investigation, sorry, continuing the compulsory examination I should say. However, having said that, I'm not prepared to terminate the compulsory examination. I think in light of the fact Mr Jacobs seems to be upset - - -

MR HENRY: Yes.

40 THE COMMISSIONER: - - - it would be inappropriate to press on this afternoon. So I'm going to, subject to anything you want to say, of course, discontinue today and resume the public inquiry tomorrow morning at 10 o'clock and continue with his evidence in the public inquiry. He is fortunate to be in a position where he has you as Senior Counsel to advise him, and it's entirely a matter for him, of course, to listen to advice given to him and to make whatever decision he feels is appropriate. So that having

played itself out, he's had the opportunity I understand for him to speak to you, to receive advice and I think in those circumstances, there's not much point in continuing the compulsory examination today, particularly in light of the fact that he seems to be upset, so if there's any other course of action you would like to raise with Counsel Assisting, of course, that's always open to you between now and tomorrow.

MR HENRY: Thank you.

10 THE COMMISSIONER: So, Mr Henry, I don't expect any response from you but I'm just simply indicating I'm trying to balance providing your client with the opportunity I've spoken of but, on the other hand, I have a responsibility to press on with the public inquiry and get it moving. All right. Mr - - -

MR DARAMS: Just in terms of the continuation of the public inquiry, what we had proposed, obviously, tomorrow we are starting at 11.00. And we had proposed to continue with Mr Kinsella but not continue with Mr - - -

20 THE COMMISSIONER: Well, it's really a matter for you, Mr Darams, as to whether you want to complete the evidence of Mr Jacob or if you, for any reason, wish to have him stand down the list and to take the next witness
- - -

MR DARAMS: We do - - -

THE COMMISSIONER: - - - and I'm open to - - -

MR DARAMS: Yeah. We do wish to take that - - -

30

THE COMMISSIONER: You do? All right.

MR DARAMS: - - - do that approach - - -

THE COMMISSIONER: Very well.

MR DARAMS: - - - have him stand down.

40 THE COMMISSIONER: Well, then, I understand Mr Kinsella will be the next witness. Is that right?

MR DARAMS: He will be the next witness tomorrow.

THE COMMISSIONER: All right. 11 o'clock tomorrow?

MR DARAMS: 11 o'clock tomorrow.

THE COMMISSIONER: All right. Fine. Very well. Nothing else, Mr Henry, from you?

10 MR HENRY: May I just raise one question?

THE COMMISSIONER: Yes. Please, again, if you could just use the microphone?

MR HENRY: Sorry.

THE COMMISSIONER: That's all right.

20 MR HENRY: I'm grateful to Mr Darams for suggesting the course he has. Part of that I rather apprehend is because I'm unavailable tomorrow and, unfortunately, all of next week - - -

THE COMMISSIONER: Sorry? You are available tomorrow?

MR HENRY: No, no, I'm not available tomorrow and I'm not available all of next week.

THE COMMISSIONER: Right.

30 MR HENRY: So I have a personal difficulty on that front.

THE COMMISSIONER: Yeah.

MR HENRY: But the question I wanted to raise at this point notwithstanding the uncertainty about when Mr Jacob will be returned to the witness box is in relation to the completion of the investigation, will Mr Jacob be afforded an opportunity to put on submissions at the relevant time if we get to that point?

40 THE COMMISSIONER: Well, absolutely. There will be timetable set for submissions and anyone potentially affected by adverse findings be they a

witness or be they an affected person, yes, certainly, I'll make provision for that.

MR HENRY: Thank you.

THE COMMISSIONER: As to your availability, I suggest you speak to Counsel Assisting. I think given notice, we'll be able to reorganise things so that you will be available when we recall Mr Jacob.

10 MR HENRY: Well, I'm grateful. Obviously, it shouldn't revolve around my availability. I just did have some issues that I can't extract myself from.

THE COMMISSIONER: Very well. Thank you, Mr Henry.

MR HENRY: Thank you.

THE COMMISSIONER: I'll adjourn.

20 **THE WITNESS STOOD DOWN** **[3.13pm]**

AT 3.13PM THE MATTER WAS ADJOURNED ACCORDINGLY
[3.13pm]