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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC
COMMISSIONER

PUBLIC HEARING

OPERATION GALLEY

Reference: Operation E19/0569

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 8 JULY, 2022

AT 10.00AM

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THE COMMISSIONER: Mr Patterson, I understand that you have an application this morning and that application will be that I recuse myself from further involvement in this investigation.

MR PATTERSON: In respect of my client, Commissioner, and that he should be discharged forthwith from his summons.

10 THE COMMISSIONER: Well, I'll deal with that application but I won't deal with it just yet.

MR PATTERSON: If you please, Commissioner.

THE COMMISSIONER: Can I just say something about Mr Wong. Can we say that we are shocked and saddened by the news regarding the death of Clifton Wong, who was a witness in the current public inquiry. Our thoughts are with Mr Wong's family and we extend to them our deepest sympathy for what has occurred. I'm going to take a short adjournment and then I'll hear your application.

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MR PATTERSON: If you please, Commissioner.

MR SHARIFF: Commissioner, I'm sorry, may I just be heard? My name is Shariff and I appear for Mr Sansom. Can I extend Mr Sansom's condolences as well. He was informed of Mr Wong's passing this morning. Can I indicate to you, Commissioner, that he has not taken the news very well at all. He is due to be giving evidence on the current schedule on Monday but my assessment of him, and that of my learned junior, is that he is, on his reaction, not in any fit state, certainly today. We may need to
30 make an application, if he is compelled by his summons to attend on Monday - - -

THE COMMISSIONER: Can you just keep your voice up a little bit? I'm just having some - - -

MR SHARIFF: We may need to make an application, if he is compelled to attend to give evidence on Monday or Tuesday, because just on my assessment of his response and emotional state of mind, it wasn't good.

40 THE COMMISSIONER: Right.

MR SHARIFF: I am raising that now, Commissioner, in the event that we do need to make such an application, what kind of information you would be assisted by.

THE COMMISSIONER: All right, okay.

MR SHARIFF: But perhaps, Commissioner, you could think about that.

THE COMMISSIONER: I will and I'll come back to that shortly.

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MR SHARIFF: May it please.

MR PATTERSON: Commissioner, may I say this takes me completely by surprise. I had not known of this. As I was one of those who cross-examined Mr Wong, I must also extend my condolences to his family.

THE COMMISSIONER: Thanks, Mr Patterson.

20 MR PARARAJASINGHAM: Commissioner, I extend the same condolences on behalf of Mr Badalati.

THE COMMISSIONER: Thank you. All right. I'll adjourn and come back shortly.

SHORT ADJOURNMENT

[10.14am]

30 THE COMMISSIONER: I understand that those present have been given a copy of the information for witnesses of March 2022 which is given to witnesses when they are summonsed to give evidence before the Commission. Can I draw attention to page 6 of that document and just note for the record that the Commission's employee assistance program extends to persons whose health and safety may be at risk arising from a Commission investigation. As I understand the matter such a service is provided to witnesses at the cost of the Commission. The details are there and I urge those involved in the matter, witnesses and their legal representatives, to take note of that. Mr Shariff - - -

40 MS HEGER: Sorry, Commissioner, can I just add, as I understand it, those services are available to witness's legal representatives as well.

THE COMMISSIONER: Oh, okay. Thank you very much. Thank you so much. Mr Shariff, if you form the view that your client is unable to give evidence on Monday or Tuesday of next week, can you just let Counsel Assisting know?

MR SHARIFF: Yes.

10 THE COMMISSIONER: I can indicate in advance, if that is your view then he won't be called on Monday or Tuesday.

MR SHARIFF: Thank you. Thank you, Commissioner. I am indebted and I am indebted for the very fruitful discussions I have had with Counsel Assisting about the matter. I will keep both her and the Commission informed.

THE COMMISSIONER: All right. Mr Patterson.

20 MR PATTERSON: Commissioner, could I also say at this point that Mr Uy is shocked at the news. He has been in the witness box now for three days and is anxious, as you would appreciate, for this to be concluded but he tells me that he doesn't feel that he is up to giving evidence today because of what's transpired.

THE COMMISSIONER: Right.

30 MR PATTERSON: He also tells me that in Chinese culture it would be disrespectful to the memory of the deceased if this business, as he describes it, continues today and for that reason he instructs me to ask for him to be excused until next week, if that is possible. I know that will create severe problems but there it is.

THE COMMISSIONER: Let me think about that but I take it you want to make your application for me to be recused.

MR PATTERSON: I'm sorry, Commissioner?

40 THE COMMISSIONER: I understood that you – I will consider what you have just put to me of course.

MR PATTERSON: Yes.

THE COMMISSIONER: And consider it very seriously but I understood that you had an application that I recuse myself.

MR PATTERSON: Yes. With your leave, Commissioner, I do.

THE COMMISSIONER: If you're not in a position to do it, we can put that off too.

10 MR PATTERSON: Commissioner, I am prepared to do that now.

THE COMMISSIONER: All right.

MR PATTERSON: If you wish. Commissioner, I've reflected overnight on what fell from you at the end of the proceedings yesterday and I refer to the transcript at page 1155 at 40 and 1156 at 1 to 3 where you put to Mr Uy that he had given false evidence, intentionally false evidence and was attempting to mislead the Commission.

20 THE COMMISSIONER: Yep.

MR PATTERSON: Commissioner, I fully appreciate there is a distinction between a court and an inquisitorial or investigative body, as you yourself pointed out at the commencement of the proceedings. However, these are public hearings and the public, in my respectful submission, let alone my client, must be satisfied that the decision maker, investigator, brings an impartial and unprejudiced mind to the process. There is ample authority as to apprehended judicial bias, Tarrant v the Crown 2018, NSW Court of Appeal 21 and recent High Court decision in Charisteas 2021 High Court of
30 Australia 29. With respect, some trepidation and reluctantly, Commissioner, I must submit that you should recuse yourself against Mr Uy for apprehended bias. In my respectful submission a line has been crossed here. It is evident from the observations that fell from you yesterday that you have formed decided views about my client's evidence even before it is concluded, before I've had an opportunity to re-examine and finally make submissions. For all of those reasons, I respectfully submit that you should recuse yourself for apprehended bias in respect of Mr Uy and that he should be discharged forthwith from his summons. In Mr Uy's view, this has proceeded beyond merely an investigation or an inquiry and, in his case, has
40 become a show trial. And, for those reasons, I respectfully ask that you recuse yourself. They're my submissions.

THE COMMISSIONER: Thank you, Mr Patterson. And thanks for pointing out, too, that this is an investigation. It is not a show trial. My concern yesterday was that your client's evidence that Mr Hindi and Mr Badalati did not want to, and Mr Hindi did not attend the signing ceremony because they had been deceived and that they were angry because they believed they had gone to China, as I recall, in relation to a waste-to-energy project. Now, that was in circumstances where Mr Uy claimed that he had informed Mr Hindi and Mr Badalati, the very day after the Chinatown dinner, that they had been deceived in relation to the signing ceremony at the restaurant and, indeed, the signing ceremony concerned particular proposed developments. I felt compelled as a matter, can I say, of procedural fairness, to put it to him and obviously to allow him to respond. If he wishes to say anything further, he can of course, do so. And I appreciate that may not be today. In the circumstances, your application is dismissed.

MR PATTERSON: May it please the Commission.

THE COMMISSIONER: Now, in light of what's passed between us in the last five minutes, I think I need to take another short adjournment just to speak to Counsel Assisting about how we proceed in terms of witnesses. My view is, my preliminary view is, at least, my view is that if your client, Mr Patterson, doesn't feel up to giving evidence today and that indeed it would be disrespectful to do so, then we will let him go. But I just want to speak to Counsel Assisting to confirm what might happen for the balance of the day if anything.

MR PATTERSON: If you please, Commissioner.

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THE COMMISSIONER: Thank you.

MR SHARIFF: I'm sorry, Commissioner. Sorry, Commissioner. It seems to me that the events or the information that's been released in the media overnight or this morning has taken a number of us and our respective clients by surprise.

THE COMMISSIONER: Yeah.

MR SHARIFF: My respectful submission would be that, I know there's a pressing public interest in having this inquiry and its associated

investigation concluded expeditiously but it does seem to me that everyone, witnesses and practitioners included, might just need time.

THE COMMISSIONER: Yeah.

MR SHARIFF: And I appreciate the inquiry was due to conclude today or perhaps next week but the realistic assessment is, from what I can see, it's unlikely to conclude next week and we may just all need to reflect on that. Commissioner, could I invite you to really reflect on that. I appreciate I'm
10 seeking that indulgence. We have had shifting witness lists that, through no fault of anyone's.

THE COMMISSIONER: No, no. I understand that.

MR SHARIFF: And this is taking a lot more time and there's a lot more material, as I can see, is emerging. It may be that the Commission may need to consider whether it should be adjourned more than just for a day, for some time, so we can come back with a more coordinated and targeted witness list, so people can both recover from the news that's come to light
20 this morning and so that perhaps there might be more a structured, coordinated way of proceeding. And I'm not saying that because I think what's happened to date hasn't been structured or coordinated. It's just that things have shifted a lot for reasons beyond everyone's control.

THE COMMISSIONER: I mean, today's Friday. I'll ask Counsel Assisting to respond now. My view is that we should adjourn for the day. My preliminary view, subject to what you wish to say, is that we should proceed on Monday, so Friday, Saturday, Sunday and we should proceed on Monday unless something else arises, and by that, I mean, if there are
30 witnesses which are to be called on Monday or Tuesday as a consequence of Mr Sansom not doing so, then that's going to happen. I sympathise with everyone's position in this but there's a public interest also in resolving this investigation expeditiously.

MS HEGER: Commissioner, I certainly think it's appropriate to adjourn today.

THE COMMISSIONER: Yeah.

40 MS HEGER: Could I reflect over the adjournment on the plan for next week and revisit that shortly?

THE COMMISSIONER: Yeah. All right. We'll do that. Can I just also say just, for the record, that the information concerning this tragedy did not come from the Commission. The Commission would never put that out there, but, of course, other persons involved in or having an interest in determining what happened may do so. I just want that to be on the record, so there's no suggestion whatever that the information that now appears on the front of The Sydney Morning Herald came from this Commission. I hope that's understood. I'll adjourn.

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SHORT ADJOURNMENT

[10.50am]

THE COMMISSIONER: Yes.

MS HEGER: Thank you for that time, Commissioner. What I propose is this, the Commission does not sit today or on Monday. We will resume at 10 o'clock on Tuesday with Mr Uy's evidence. Now, we've had at least one application to cross-examine Mr Uy but could I ask the legal representatives to indicate by 1.00pm today whether they also intend to cross-examine Mr Uy. Now, I understand that we're only partway through Mr Uy's evidence.

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THE COMMISSIONER: But they must have some idea.

MS HEGER: They must have some idea of the topics that the balance of his evidence is likely to address, and that will assist of course us in planning the witness list for next week. We've had some applications to cross-examine arriving the morning of, and I'm not being critical about that but it does make things difficult in terms of assessing how long a witness might be required in advance. So that's why I'm asking for those applications to be made by 1.00pm today, at least an indication of whether parties are likely to cross-examine Mr Uy and, to the extent they can, identify the topics and to the - - -

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THE COMMISSIONER: And the time.

MS HEGER: - - - extent they can, the time.

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THE COMMISSIONER: Yeah.

MS HEGER: Accepting that there may have to be some variation to that once Mr Uy's evidence is complete. Of course, Commissioner, it will be obvious that we haven't completed Mireille Hindi's evidence or Wensheng Liu's evidence. The plan is that they also be recalled next week and if there are to be any applications to cross-examine them I would also ask that they be made by 1.00pm today, appreciating that their evidence is largely complete insofar as I am concerned and again with an indication of topic areas and timing, to the extent possible. That will assist us in finalising the witness list, which we hope to do today.

THE COMMISSIONER: All right. Is there any opposition to that?

MR PATTERSON: Commissioner, could I just ask, is it possible for Counsel Assisting to give her present estimate of how much longer she may be with Mr Uy?

THE COMMISSIONER: That may be difficult but I'll ask anyway.

MS HEGER: My present estimate, based on the progress to date, is that I would take most of Tuesday with Mr Uy.

MR PATTERSON: Thank you.

THE COMMISSIONER: Right. You've heard what Counsel Assisting has said and I request that the legal representatives of the parties provide a written indication of their intent to cross-examine Mr Uy, Mrs Hindi and Mr Wensheng Liu by 1.00pm, including the topics they wish to cross-examine on and their current estimate of the time it will likely take, bearing in mind that there will have to be some flexibility with that.

MS HEGER: And I should also say, Commissioner, my current expectation is that the cross-examination of Mr Uy would commence immediately after my questions have been completed.

THE COMMISSIONER: Right. Yeah. All right. Thank you. All right, then. We'll adjourn until Tuesday morning at 10 o'clock.

MR FAHD: Commissioner, just for the record I'm instructed and I also wish to pass on, on behalf of Mrs Hindi and myself – this is the solicitor for Mrs Hindi, our condolences to the family of Mr Wong for his sad passing.

THE COMMISSIONER: Thank you.

MS HEGER: Yes, Commissioner, I would like to also personally convey my condolences to Mr Wong's family.

THE COMMISSIONER: Thank you. Thank you. All right. We'll adjourn.

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AT 11.30AM THE MATTER WAS ADJOURNED ACCORDINGLY
[11.30am]