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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION RICCO

Reference: Operation E14/2586

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 15 MARCH 2016

AT 10.25AM

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, good morning. I'm sorry about that delay. Could I just advise everyone that I have to, that I have to take an adjournment at 11.15, so Ms McNaughton, you might get the benefit of the 15 minutes.

MS McNAUGHTON: Thank you, Commissioner.

THE COMMISSIONER: But we'll see how we're travelling.

10 Yes, Mr Moses.

MR MOSES: Can I formally provide to the Commission two folders of the credit card statements that were located in the office of the Deputy General Manager. They fall apparently within – the documents fall within three categories – there are accounts for Diners Club, MasterCard and American Express for the former General Manager, Mr Fitzgerald, and there's a MasterCard there for the former Mayor, Mr Hoenig, as well. There also is what appears to be a handwritten note concerning leave payouts to the former General Manager, Mr Fitzgerald, as well, and what appears to be an
20 extract from a register concerning leave payments. With the leave of the Commission we provided copies of those folders only this morning to Mr Fitzgerald's lawyers and Ms Cullinane's lawyers as well so that they may have an opportunity to review them before those individuals give evidence, but again they were documents that were found in the office of the Deputy, of the former Deputy General Manager. On one view they should have been produced earlier to the Commission, but it is what it is.

THE COMMISSIONER: Do you want them marked or tendered, Mr
30 Moses?

MR MOSES: Could they be tendered, please, Commissioner.

THE COMMISSIONER: Yes. That will be Exhibit R70, those two folders.

**#EXHIBIT R70 - FOLDER OF COPY OF DOCUMENTS LOCATED
IN THE FORMER DEPUTY GENERAL MANAGER'S COUNCIL
OFFICE ON 12 MARCH 2016 & FOLDER OF CREDIT CARD
STATEMENTS LOCATED IN FOLDER IN THE DEPUTY
40 GENERAL MANAGER'S COUNCIL OFFICE ON 12 MARCH 2016**

MR MOSES: Thank you. And subject to your views, Commissioner, could they be at this stage marked as being restricted to access to the lawyers acting for Mr Fitzgerald and Ms Cullinane and their respective clients and of course lawyers acting for the Commission until further notice. It's just that we haven't had an opportunity to go through it completely but there appear to be a number of items on there that may relate to personal issues so

it's a matter for them once they have a look at it to see whether they wish to take any objection to the release of the material.

10 THE COMMISSIONER: All right. Well, at this stage I'll, as I said I've marked them as an exhibit but that exhibit will be restricted to the legal representatives of Ms Cullinane, Mr Fitzgerald Senior and the Counsel and those persons. Just so that there's no dispute about this when it becomes an open exhibit, Mr Moses, I'll make an order now under section 112 of the Act that any personal identifying information such as private addresses and phone numbers and bank account numbers be redacted from those exhibits.

MR MOSES: Yes, thank you. Thank you, Commissioner. The other matter was my learned friend Mr Overall, Counsel for Mr Goodman, raised with me this morning, on his review of Exhibit 64, which is the folder that was shown to Mr Gary Goodman yesterday, there are identifying features there in respect of addresses and telephone numbers of a number of individuals including Mr Goodman and Ms Baccam and others and my understanding is that a similar order is sought in relation to that issue as well, Commissioner.

20 THE COMMISSIONER: Well, I'll make that order expressly in relation to Exhibit R64.

MR MOSES: If it please the Commission.

30 THE COMMISSIONER: Any identifying information such as private addresses, bank account numbers, telephone numbers and matters of that nature be suppressed from publication but could I just indicate that for all of the exhibits that non-publication order applies in respect of personal identifying information.

ANY IDENTIFYING INFORMATION SUCH AS PRIVATE ADDRESSES, BANK ACCOUNT NUMBERS, TELEPHONE NUMBERS AND MATTERS OF THAT NATURE BE SUPPRESSED FROM PUBLICATION BUT COULD I JUST INDICATE THAT FOR ALL OF THE EXHIBITS THAT NON-PUBLICATION ORDER APPLIES IN RESPECT OF PERSONAL IDENTIFYING INFORMATION

40 MR MOSES: If it please the Commission.

THE COMMISSIONER: Thank you.

MR MOSES: Yes, thank you, Commissioner.

THE COMMISSIONER: Yes, Mr Thangaraj.

MR THANGARAJ: Ms Marshall.

THE COMMISSIONER: Yes, just come forward, Ms Marshall. Mr Korn, you seek leave to appear for Ms Marshall?

MR KORN: I do, Commissioner.

THE COMMISSIONER: Yes, that leave is granted. Have you spoken to Ms Marshall about the effect of a section 38 order?

10

MR KORN: I'd be grateful, Commissioner, if you would take her through.

THE COMMISSIONER: I'll explain it.

MR KORN: In general terms, yes.

THE COMMISSIONER: All right.

MR KORN: And we have received a notice to produce, to attend and produce and we are here in response to that.

20

THE COMMISSIONER: All right. Thank you.

MR KORN: And items have been produced.

THE COMMISSIONER: Ms Marshall, can I just explain something to you. Because you do not, excuse me, because you do not have the option of refusing to answer questions even if those answers should involve you in some form of wrongdoing, the Act allows you to take an objection which covers all of your answers and effectively that means that your answers can't be used against you in any future civil or criminal proceedings. There is one very important exception to that and that is that if it should be found that you have given deliberately false or misleading evidence to the Commission your answers could be used against you to prosecute you for an offence under the ICAC Act. Do you understand that?

30

MS MARSHALL: Yes, I do, yes.

THE COMMISSIONER: All right.

40

Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT
ALL ANSWERS GIVEN BY THIS WITNESS AND ALL
DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS
DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS
PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN
GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO
NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT
OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR
10 **THING PRODUCED****

THE COMMISSIONER: Do you wish to be sworn on affirmed, Ms
Marshall?

MS MARSHALL: Affirmed.

THE COMMISSIONER: Can we have the witness affirmed please.

<LYNDAL JOY MARSHALL, affirmed

[10.29am]

THE COMMISSIONER: Yes, Mr Thangaraj.

MR THANGARAJ: Ms Marshall, could you give the Commission your full name please?---Lyndal Joy Marshall.

And you have a business with Mr Robert Floudas?---I do.

10

And that's gardens2nv?---That's right.

All right. Now a few – earlier this morning about an hour ago you gave us some documents in relation to that company and Botany Council?---I did indeed.

I'll just show you this and I'll tender that.

THE COMMISSIONER: Yes. That folder will be Exhibit R71.

20

#EXHIBIT R71 - FOLDER OF GARDENS2NV DOCUMENTS

MR THANGARAJ: I'll go through these later but I just wanted to tender it so that they could look at it while I'm taking you through your evidence - - - ?---Ah hmm.

- - - before we get to that. At some point gardens2nv started work for Botany Bay Council?---That's right.

30

And you in the course of your work with Botany Bay Council got to know a few employees there?---A few, a few, ah hmm. I personally didn't do much work there so I only knew a few.

But the people that you met included Malcolm Foo?---That's right.

Marny Baccam?---Yes.

40

All right. Now, I want to start with Ms Baccam. Did gardens2nv do any work at her, at where she was living?---Yes, we did, ah hmm.

And do you remember what sort of work it was?---Laying turf, delivering some pebbles, a bit of gardening work.

All right?---Mmm.

At the beginning were you paid for that work by her?---Yes, we were, in cash.

All right?---Mmm.

And then did you – did the company continue to do work for her?---Yes, on a couple more occasions.

10 And did you ever go to her house to do work yourself?---I think I went twice or three times.

Okay?---Mmm.

And other times your business partner went?---Yes, that's right, mmm.

And you'd have workers?---Yes, we always had workers with us, mmm, generally, mmm.

20 All right. Now, after the first couple of times when she paid you, were you paid after that by her for the work immediately?---No, she stopped paying.

All right?---Mmm.

And was there some solution to that non-payment?---Yes. The solution was to produce an invoice and charge it to Botany Council.

And did you produce the invoice?---Yes, I did, ah hmm.

30 And how were you – who told you that that was the plan?---Robert told me.

Right. And then did you - - -?---No, I think with intimation by Mal, Malcolm Foo as well, mmm.

Well, the first you heard of it was through Robert?---Yes, ah hmm.

And then in due course you came to discuss – I'll come to it, but in due course you came to discuss invoices directly with who else?---Sorry, you mean in due course - - -

40 Coming, going forward - - -?---Yes.

- - - you ended up speaking to, who did you speak at Council with, with respect to false invoicing?---Malcolm Foo.

And anyone else?---Not very often with Marny.

All right?---Mmm.

All right. So we'll go back to the work that was unpaid for her house?
---Mmm.

Did you put in an invoice to cover that?---Yes, I did.

And who did you send it to?---Marny.

All right. And was that - - - ?---And I might have sent it to Malcolm but I
can't remember to be honest.

10

So it was to Malcolm Foo, Marny Baccam, or one of them?---That's right,
one of them, that's right, exactly, mmm.

And that work was paid by Council through that false invoice?
---Absolutely.

Right. Was, were you ever asked to provide cash to Ms Baccam?---Yes.

20 And how did that first arise, when did you, when were you first told by that?
Sorry, who, maybe the dates are hard, who first raised that with you?
---Look, to be honest I can't remember but I believe um, it was brought up
with Robert and then Robert discussed it with me.

All right?---Okay, mmm.

And did the company end up providing cash to Ms Baccam?---Yes, with a
lot of resistance.

30 Right?---Mmm.

And what happened, how was the cash given back to her?---It was
withdrawn from ATMs et cetera, our earnings were retained dependent on
the amount and how frequent it was.

40 And would you give the money to Robert or would you give the money to
Ms Baccam or both?---Most of the time Robert would give it to Ms
Baccam, I would actually put it in an envelope and tell him the amount and
he would give it to her. Oh, and a couple of occasions I did, I did give her
cash.

And was the company reimbursed for those moneys that were advanced?
---Largely, yes. So I used to keep um, a box with the money and tried to
make it up in a credit or deficit scenario, and often I'd have to boost it up
from our own cash.

All right. And were you told how to reimburse yourselves for that money
that was paid, that was given to her - - -?---No.

- - - that was given to her privately?---No.

All right. How as the company repaid for the parts, the parts that were repaid?---Through producing invoices.

Right. So on top of the false invoicing for the work done at her house, these were further false invoices to cover - - -?---That's right, so the demands increased and got more demanding.

10 Was there time where – were there occasions where money was deposited into your account from Botany Bay Council where you had not put in invoices?---Yes.

And did you work out then how that had happened?---That, yes. They were invoices that Marny had produced herself.

And where did she get the template from, do you know?---I - - -

20 Did you, and you emailed her a - - -?---To be honest, I don't know. But I used to use, I mean I used to use a word document because the purchase orders, if they weren't provided to me they had to put those in to the documents. So I don't know if she edited one of my documents or that she did what with one.

All right?---Mmm, yeah.

So it may be that she edited an invoice or it may be that you sent her a blank invoice?---If I did it was not intentionally, to be honest.

30 All right. But you worked out in due course that invoices had gone through that you were not aware of that were not part of your records - - -?---That's right, exactly.

- - - and the money was in your account?---Yeah. Absolutely. Especially, to be honest and that would happen especially when we refused or denied actually making payments to her.

Right. So I was going to ask that later but I'll ask it now?---Oh, sorry.

40 No, that's okay, we'll ask it now. So there were times of resistance?---Absolutely, a lot.

And what would then happen with respect to the company?---Our invoices for our legitimate work would not be paid. We'd be bullied, we'd be harassed, they'd be indications that we wouldn't be able to continue work at the Council, a lot of repercussions.

All right. And were these – did you – were you told these consequences directly or did they come through Robert to you?---Through Robert and directly through Malcolm Foo.

All right. Just give us an example of Mr Foo speaking directly to you about ramifications or appraisals?---He used to tell we were no good, our workers were no good. That we actually were not doing the jobs that we were told to do. He used to say that if we didn't do the work that he, you know, indicate if we didn't comply then we'd lose the contract work that we had.

10

All right. When you say comply, what do you mean comply, with what? ---I would presume that infers to giving him cash.

All right. Now I'll come to that in a moment. Were you told that money was asked for on behalf of Mark Goodman?---Malcolm Foo asked for money on behalf of Malcolm, Mark Goodman.

20

And did he ask you or did that come through Robert?---No. He'd ask me. Most of the time he'd ask me about that. But it did come both ways but, you know.

Was cash provided back to Malcolm Foo purportedly for Mark Goodman? ---Yes, and others.

All right. And when you say and others, who else besides Mark Goodman? ---The list, well to be honest, you could never believe what he was actually saying, but it would be indicated that there were others that he was providing cash to including Gary Goodman, some of his workers, some other people.

30

All right. This is what Malcolm Foo is telling you?---Yes, that's right, exactly.

The money would go back to Malcolm Foo?---Mmm.

And then you don't know what he did - - -?---And he would, he's purportedly distributing amounts.

40

But you don't know whether he in fact did that?---No, I don't know where it went.

That's just what he said?---That's right.

All right. And the money that was – do you remember roughly how much money went back to ostensibly to Mark Goodman through Malcolm Foo? ---No, well, no, because I couldn't give you an exact figure on that because
- - -

Because of the blurring of, all right?---Lines and boundaries and individuals and all the rest of it.

All right. Did you – was the company reimbursed for that money through false invoicing?---Yes, it was.

All right. And who did you discuss the false invoicing with respect to the Mark Goodman advance with?---Malcolm Foo

10 All right?---Mmm.

All right. Now, there was a person by the name of Anmol who you might have known as Adam or Andy?---Yes, ah hmm.

And did you inquire at any stage with Robert or anyone else about the number of hours that was being put forward for your invoices?
---Repeatedly, mmm.

20 Who did you raise that with?---Ah, ah, Malcolm, Robert, it was very hard to keep – to be honest I'll – no, you do not engage a worker on the basis of somebody else actually saying that they did, so we were told that Adam was working at the Airport doing various tasks because he was a good worker and he was much better than our workers and that we should, excuse me, employ people from third world countries because they were much better workers and much cheaper. And so Adam, I'm not quite sure if he assisted or didn't assist half the time, but he would actually provide me either an email or a text message the hours that he completed at the Airport. I would then have to confirm them with Malcolm.

30 Right?---Many times they were big, big hours, they seemed to grow quite quickly, and then I would refuse to pay them.

All right?---Mmm.

So at first Malcolm Foo said he was doing legitimate work for Council and, but it was going through your invoice?---Yes, that's right.

40 Right?---And to be honest there were a few occasions where he did do work for us and a couple of contracts and - - -

Okay?---Mmm.

Did you make a note in any of your documents, which I'll come to in a moment - - -?---Mmm.

- - - about his hours and whether they were relating to gardens2nv or otherwise?---I'd be able to tell you by um, yes and no, yes.

So some of the time you can and - - -?---Yes, ah hmm.

Now, did you have a particular code that you started using on some of your documents?---Um, if Adam did work for us we actually paid him cash.

Right?---Mmm.

So you didn't transfer money for gardens2nv work to him?---I, no, I don't think so.

10

So that's how you separated the - - -?---Yes, ah hmm.

Okay?---Mmm.

Was there a time where – I think the bill – I'll come to this if we need to, but I think there was a bill for about \$1,240?---Yes.

And then the invoice total had a typographical error and said 12,000 or something?---Ten thousand two hundred and something, yes.

20

So a zero was, so there was a problem and then so - - -?---Mmm.

- - - gardens2nv had been paid 9,000 too much?---Above our charge rate, mmm.

And did you raise that with someone to repay it?---Yes, we did.

And were you given an account number?---Yes, we were.

30 And I'll take you to the document, but - - -?---Mmm.

- - - there's a document where there's a payment from your company back into an account?---That's right, which we believed was Botany Bay Council's account.

And, okay, all right?---Mmm. Or we were told that.

40 And do you remember who gave you those account details?---We were given a contact name through Marny and I presume it was at Botany Bay Council and to be honest, my recollection is I spoke to somebody with a name like Cheryl or Diane or somebody like that.

All right?---Mmm.

Okay?---Mmm.

Now, you were – Marny was being, cash was being provided to, you've told us, through Malcolm Foo to - - -?---Various people.

Whoever?---Yeah, whoever, mmm.

Now, what about cash going to Marny Baccam?---Yes.

How was, how was cash being given to her?---Cash was given to her the same way, in a brown envelope and largely Robert would hand that over after I gathered up enough of it.

10 Right?---Mmm.

And what about Malcolm Foo, was any difference with how Malcolm Foo was being paid cash, given cash?---He was given – he – can I step back from - - -

Yeah?---Malcolm Foo would actually largely try to garnish or expect cash from us virtually every week over and above any other demands as well, so he used to expect a minimum of say 200, \$250 plus some, usually more than that.

20

And you've kept some records which I'll come to - - -?---Yes, ah hmm.

- - - which indicate various people who may have - - -?---Mmm, received that money.

- - - who received cash?---Ah hmm.

Now, because, as you've explained, cash would be given to someone and they might say it's going somewhere else but some of it's for them or we don't know - - -?---Yeah.

30

- - - you don't know what they were doing with it?---No.

So it's not, you're not able to be as precise as you might have otherwise been?---No.

But having been through those records over the last few days or maybe – however long you've been looking at them for - - -?---Ah hmm.

40 - - - are you able to estimate how much cash went to Marny Baccam?---I, I believe in excess of 100,000, maybe more, maybe 110,000.

All right?---And likewise with Malcolm Foo.

All right?---Plus on top of that I would estimate at least, you know, 200 to 250, 500 a week for Malcolm Foo especially 2014/15.

So - - -?---But there's a lot of times I also resisted paying and would refuse to pay.

All right?---Mmm.

All right?---Mmm.

And were there other gifts - - -?---Gratuities, yes.

10 Yeah. What were you expected or what did you do?---Was treated, was treated like the – to be quite honest I felt like I was treated like an ATM machine. We were asked to purchase white goods and electronic goods. We were asked to actually buy flowers for special occasions.

Gift cards?---Pardon?

20 Gift cards?---Gift cards. I used to – to be quite honest we were asked to buy gift cards for him to give to people but I also tried to eliminate the cash crisis will I say by actually giving him gift card vouchers as well. So some weeks I'd be buying \$1,000 worth of gift card vouchers in order to try and manage the cash flow crisis.

All right?---Mmm. Mmm.

I'll take you to some documents which - - -?---Yes, certainly.

Go through some of these things. Were these cash payments covered by false invoicing?---The large ones, yes.

30 Okay?---Mmm.

And are you able to say how much was false invoicing and how much you had to pay out of the company's account itself?---No.

40 All right?---No. But all I can say is the false invoicing would, would cover – not always but would generally cover the cash payments. But there were some weeks where there were, say for instance if he wanted \$1,500 for Mark, there might be a demand made early on in the week and one made later on in the week which meant that there was sort of, will we say double-dipping into the false invoice which meant that we were actually haemorrhaging a lack of cash too. Mmm.

So your evidence is that you were going backwards, not maintaining - - -? ---Absolutely. Mmm.

All right. There was a time where there was a direct deposit – rather than cash a direct deposit into Garden - - -?---Absolutely. Mmm.

And why did you do that?---It was deliberate and intentional.

Because?---Because how do you actually start – I actually tried to create a couple of deliberate intentional signals and alarms as far as audit trails are concerned and I was feeling in a position of powerless and I actually deliberately put that in so that - - -

All right?--- - - - it would come up at some date I hope.

10 The evidence, and Mr Floudas was asked this - - -?---Mmm.

- - - and it was pointed out to him that the annual totals for the invoices rose from 2012 onwards from about 4,000 at the beginning to 42,000 to about 320,000?---Mmm.

Part of that is explained by more work but - - -?---Mmm.

- - - a significant portion or a large amount through false invoicing as well. Is that right?---I, I would say significant amount but I also have to state very clearly that we did do a lot of work especially last year and we did do a lot of large contracts.

20

All right?---So we were largely the supply of labour to the Business Unit for a great period of time.

Do you remember providing the money to repay a loan to James Seng's mother?---Sorry, I don't know who James Seng is.

30

Sorry. Sorry. Leong, Leong Seng?---Oh, no.

A Council employee?---No, but um - - -

You might have known him as Sam?---As, no - - -

Stewart?---Sam, Leong.

Mr Seng, do you know the name Mr Seng, a Council employee?---No.

40

All right?---Sorry.

All right?---Is it for a particular amount?

3,800?---No. Did I pay that? Sorry.

It's possible that you were asked to repay it and - - -?---No, I don't know anything about it.

All right. I want to take you through these documents?---Certainly.

Okay. You've got the folder?---Yes, I have. Ah hmm.

All right. In your folder you folder you have different sleeves?---I do.

10 And what we've done is we've photocopied them in bundles according to each sleeve so we'll go through them sequentially. The first sleeve has, I'm going through it with you for the first time or most but you've highlighted some particular entries in the first sleeve?---Yeah. The remittance advices, mmm.

So can you tell us, firstly, if we go to the first page?---Yes.

This is an invoice dated 11 December, 2013?---That's right.

And the first highlighted entry is actually the first entry, 1 December, 2013, and you've got MB there?---I do.

20 Can you tell us firstly what these say the first page represents, then what the coding means and why you've highlighted it?---Okay. I have actually been able to highlight the coding for false invoices produced for Marny because I'd set up a deliberate and traceable code from the very start.

For your own records?---Not only - - -

Sorry, in your own records, I mean?---Yes.

Yeah?---In my own records.

30 Yeah?---Mmm.

All right. So the highlighting?---Mmm.

The MB means Marny Baccam, does it?---It does indeed and then after that's the date which is zero one, 1 December, so 01/12 which is the date of the invoice.

40 Right?---And then it's for 475. So that would be for work we actually completed at her place.

Okay. So the highlighting means there's something wrong with the invoice?---It is. And it means that's it actually a fraudulent invoice, mmm.

Okay. And from the amounts you can tell what it was and you can tell that the first one was work at her house?---Yes.

What about the second one?---It's actually a fraudulent invoice.

Sorry?---Sorry.

Can you tell whether it's work at her house or - - -?---Oh, I know it's not work at her house because we wouldn't have charged that amount.

Okay?---We didn't do that amount of work.

All right?---There was only little, like little bits.

10 All right. Then the next page there's a highlighted entry, so do we take it that the – that anything over a couple of hundred dollars or do we take it that anything from 2014 onwards is just - - -?---Is actually, is actually fraudulent.

So a completely false invoice?---Absolutely.

And they're the ones you've highlighted?---That's right.

20 You've got a question mark on page 2?---I have. Because - - -

Oh, that's next to the third last entry, is it?---No, the third last because it's actually, I think that might be for some work of hers at her place. But I'm not sure, but I don't have an invoice for that, that's fine.

That's why you have a question mark?---Yes, ah hmm.

Right. But the question mark relates to the entry for \$295?---That's right.

30 You're confident that the entry for 5,100 is a false invoice?---Absolutely.

All right?---Ah hmm.

Okay. Now and does anything change throughout your highlighting for that?---Some of them to be quite honest, I wasn't able to actually highlight because - - -

Can we take it this way that - - -?---Yeah.

40 Anything that has MB next to it is false in one way or another?---That's right.

That is it's either work at her house or it's a false invoice to get cash to her? ---Absolutely.

Okay. All right?---However are some invoices, I would say and you'd have to go to – there are some actually were produced by her that actually don't have that code but it's kind of similar.

Okay. Go to the entry on page 4, sorry, go to page 4, please?---Are we on 2013?

The same first sleeve?---Yeah, ah hmm.

The fourth page. You've got a different code for the entry of 19 May, 2013, which was M just M and you've highlighted that?---Yeah, I have.

10 Does that represent something perhaps different?---I actually don't think that relates to Marny at all.

Okay?---I actually think that as such relates to one of the child care centres.

No, I'm talking about the one you've highlighted?---I know. But I'm just looking – because I'm looking at the ones underneath there and I'm looking at – these would actually be for the Hillsdale and the Coward Street invoices. So they actually don't even relate to the Business Unit. I beg your pardon, that's my mistake.

20 There's one on the next page as well - - -?---Mmm.

- - - with just M?---Yes, but I think that's for Marny, mmm.

Sorry, the one over the page - - -?---Mmm.

- - - dated 29 June, 2013 - - -?---That's right.

- - - also discussed M?---That's right, mmm.

30 Did you ever highlight anything – sorry, did you ever have a code of M meaning money or they're all MB for - - -?---Well, there were M, I started off with M and then I actually, the first couple I started off with M and then I put her second initial there to make it much clearer.

To make it MB?---Yes.

Right?---Mmm.

40 So you're not sure - - -?---To make it quite obvious and deliberate.

Okay?---Mmm.

So does that mean that the M that's on 29 June, 2013, it might be a fraudulent invoice for Marny Baccam or it may not be?---It may not be.

Okay?---And one of my problems I have to be honest is that because she was producing invoices herself at times.

It upset the audit?---Yeah, that's right, exactly.

All right. All right?---But if we actually, likewise if you go to the last page in that packet, on that one - - -

Yes?--- - - - and there's, see there's two that are 30/11 and 29/11?

Yes?---Where there's no MB, but I know for a fact that they are, mmm.

10 They're false?---Yes.

All right?---Mmm.

Okay. All right. If we go to the second sleeve, okay, sorry, in that first sleeve you had two bundle of documents, so the second bundle in the first sleeve?---Yeah, how about we go year, 2014 or 2015.

All right. 2014?---Yeah, ah hmm.

20 Just so that we're all making sure that the transcript properly - - -?---Ah
hmm.

- - - identifies what we're looking at, the first, the top of this page says 6 January, 2014, and it has \$2,489.01. Looking at that bundle of documents?
---Yes, ah hmm. No.

Yeah, sorry, that's - - -?---So that's not, that's a creditor account.

30 That's an account, sorry, that's an account, not an amount, sorry?---Mmm.

And the first entry is 26 June, 2013, \$2,649.60?---Yeah, ah hmm.

All right. So we're right on the same right bundle. So you've highlighted in that bundle a series of entries and in this bundle you're now – they're all MB?---That's right exactly.

Okay?---And they're all – and increasingly they're getting to be larger and larger amounts.

40 Yeah?---Mmm.

All right?---Most of the time, mmm.

So we'll go then to the next bundle which is 2015?---Ah hmm.

So the first page is an entry for 25 January, 2015 for \$2,360?---Yes.

All right. And that first entry you've highlighted says BB/BR?---I have no idea - - -

Right?--- - - - because it wouldn't be one of my, wouldn't be one of my invoices because all our, will I say our legitimate work, will I use that word, was I had to code for the location and then later on it would be for other SACL works, Centennial Park works, working at Port Botany, et cetera, et cetera.

10 Okay?---So I can't work out where that is, but it's such a strange thing, mmm, but I would presume because of that time over the December/January period, very money-hungry, mmm.

Now, is it that you've highlighted that because you don't, you don't recognise the code because it's not one of your invoices?---That's right, I don't, it's not one of my invoices.

Okay?---Mmm.

20 Now, you've got series then of MB?---Mmm.

If we go down to page, well, 6 August?---Yep.

It's a few pages in, there's only one entry on that page. It's 3 August, 2015 in the amount of \$12,375?---Um, yes.

And you have Botany Bay but then you have GC - - -?---Yes.

- - - with a date?---That's right.

30 Why do you have GC there?---It's G for Gary Goodman because I was told it was money that was going to Gary Goodman or to Adam, Anmol, blah, blah, blah.

Right?---Mmm.

And who told you that?---Pardon?

40 Who told you that?---Malcolm Foo, mmm.

All right. Okay. And so then there are a couple of entries going forward - - -?---Ah hmm.

- - - or quite a few entries going forward with the same - - -?---That's right.

- - - initials and for the same explanation?---Absolutely.

All right?---Mmm.

If we go then to the next sleeve or the next bundle of documents this starts with 19 May, 2013, Mal Foo - - -?---Ah hmm.

- - - with an invoice for \$180?---That's right.

All right. Now these are - - -?---All invoices that were produced at the request of either Marny or Malcolm.

10 Okay. And let's look at the codes?---Ah hmm.

So the code for the first one is - - -?---Is M.

- - - 2 June, 2013 is M-1-9-0-5?---That's right.

And why do you have the code M?---For Marny.

Okay?---As, sorry. Mmm. Mmm.

20 And so you've got – it looks like you've got almost all of them if not all of the others are M-B?---That's right.

So on the first page you've got an invoice – sorry, you've got a date at the top 19 May and then a date a few lines below that of 2 June?---Due date.

Okay. So one is the date of the invoice, the earlier date?---Mmm.

And then the bottom one is the due date is it?---Ah hmm.

30 Okay. And you can see the date of service is a long time before the date that the - - -?---Which I think is incorrect. I think I've got the wrong year in it.

Okay. So that's - - -?---Or I might have the wrong month.

Okay. All right. Well, that's happened a few times?---A lot of these used to have to be produced under pressure and in haste and - - -

40 Okay. All right. And why have you put these particular, these particular invoices into this category, is it, are they all false?---Yes, I believe them all to be false.

Okay. So these are the false invoices for 2013 and 2014 - - -?---And 2015.

- - - that are in this format?---The – I'll also have to add to that that these are the false invoices that are in my possession.

Yeah. No, we understand that?---Ah hmm.

All right. Okay. The next bundle. Now you kept a record – this looks like a record of cash payments for over a period of a few years?---This is for just last years.

Sorry, this bundle of documents?---Yes, that's just for 2015.

It goes – if you go through it, it looks like it has – maybe I'm wrong about that. Maybe these are months. All right. So this is just 2015?---Yes.

10

I see. The 10 means October. All right?---Mmm.

And what can you tell us about this cash payment log?---The last column represents cash demands that actually were made to me from various people at Botany Council or for the reasons of needing the cash too sometimes.

THE COMMISSIONER: Is that the column headed "Total BB"?---Yes.

20

And those amounts don't bear any relationship to the other amounts on the other columns, they're just separate are they?---They are.

All right?---Ah hmm. It's because the cash demands were very, very hard will I say and I actually had to try and actually keep a note of it in order to manage that in some way.

MR THANGARAJ: Okay?---Mmm.

30

And the entries are frequent for Malcolm. We take that to be Malcolm Foo?---That's right, exactly.

You've got an entry a few pages in I notice 15 February. If we could go to that, the top of the page?---Mmm.

There are a couple on that page where you have Malcolm and then Mark? ---Because that's what he told me.

That's what he said. Okay?---Yeah. So, you know, and I think you'll find one there that says Malcolm bacon because he needed bacon.

40

He wanted what, sorry?---Bacon.

Okay?---Mmm.

And what's the – on that same page that has Mark a couple of times there's one Malcolm (J)?---Don't know.

Okay?---I really don't. So it was – look, to be honest I blanked out a lot and I really didn't want to know. Mmm.

THE COMMISSIONER: Can I – sorry. Can I just ask you there’s one entry, excuse me, on 19 January – no, sorry, take that back. On the – it looks like 23 or 24 January and it’s just – there’s a column – sorry, there’s an amount of 1,800 in the column BB and it is against - - -Botany wages.

- - - Botany wages?---Botany wages.

10 What does that indicate?---That indicates that that was money we had to pay to cover wages.

But you weren’t given – you weren’t told what purpose that money was being attributed to?---No. Look, I just tried to make as many notes as possible in order to get some detail.

MR THANGARAJ: Okay. And how frequently would you make these entries?---I tried – look, I, I tried to do it every day – I tried to do it when it happened.

20 Yeah?---Or when the request was made of me because often the request was made in advance of us having the cash but it doesn’t list everything.

All right. Now then there are entries - - -?---Mmm.

I don’t need to take you to them but there’s an entry 20 May for a gift voucher?---Yes.

There’s an entry for 25 June for flowers for someone?---Yeah.

30 And then a number as we’ve said or as you’ve said for Malcolm Foo and there are days where it seems when there are multiple payments to Malcolm Foo?---That’s right.

And so you’ve itemised – you’ve particularised the individual payments? ---Mmm.

Okay?---Where I could.

40 And then they’re starting to get into the thousands?---That’s right. Mmm.

Often every week it seems?---Often twice a week.

Yeah?---So there’s thousands actually demanded of – there’ll be in excess of, you know, there’d be like 2,000 – it seemed to go in magic amounts and I’m sorry for my sarcasm but it seemed to be like 1,800 or 2,200 and 2,200 and then when we would deny the request it actually ended up being more, you know, and harder.

So what would happen, he would just say I want – would he just – what – how – what would happen – say you paid him for last week and then now it's this week - - -?---Well, you could be paying him for last week and he'd be talking about next week in the same breath.

Saying I want X money on X day?---Yeah.

All right?---Mmm.

10 All right. Can we go to the next bundle please?---Ah hmm.

Now what's this?---Okay.

I've got – the bundle – the page starts work – the bundle starts “Work Summary Botany Council - - -?---Ah hmm.

- - - Week Ending 15 May”?---Well, that's right. It's our claim.

20 Okay. So can you tell us – take us through this bundle?---In order for me to – I used to keep a level of detail so I knew where our, where our workers were, how many hours they did and, and the number of staff because as you're aware we actually invoiced per hour per individual.

Yes?---So this one is actually – and what would happen a lot was not only it was part of it skimming off on various works but also we would be at one particular location and then told we were not allowed to invoice for there. Mmm.

30 All right?---Sometimes that location would be moved to another location, sometimes we would have to take a hit on it.

All right. And - - -?---And this one has actually got on 22 May where we were doing the taxi base which happened frequently I was told that I had to invoice for domestic grass cutting at Cooks River bicycle lane, blah, blah, blah.

So your – so you've kept – is this a document that's kept a record of what you've done and then in hand –then the pen - - -?---Yes.

40 - - - changes is what you are then told to invoice?---That's right, exactly.

Okay?---And sometimes – and not only that but it would be the individuals, the hours we had to work so, you know, it was complicated.

All right. Go to the second, second page please. Is there anything – does that mean something?---The second one. I think that's just - - -

Asphalt and road base?--- - - - another example of actually where we were having to change things. In actual fact if you look at 22 April we undertook litter control at T1 that we had - - -

Sorry, where do you have 22 April?---On this one. Now I'm holding up the document.

MR KORN: I don't think we've got that one?---Have you not got that?

10 MR THANGARAJ: Which – what's the, what's the top of the page?---It's a work summary.

Is that in that bundle?---Yes, it is.

MR KORN: Counsel, I don't think it's been reproduced in the bundle.

MR THANGARAJ: All right. Is it 19 April, is that the first entry?---Yes, it is.

20 Okay. It's the second-last page of that, the copied bundle?---Mmm.

All right. So on 22 April you have the - - -?---So it's - - -

- - - fifth entry is litter control?---It's actually an example – I'll tell you – maybe it might be better if I speak to that document on 25 April okay where we're supplying staff to Kyeemagh Beach to clean up after the storms.

Yeah?---You'll see that I've had to actually put four people for 32 hours.

30 And that's just – that's an inflation is it?---Yes.

Okay?---Mmm. Mmm. So some of this actually provides an insight into how we – it was – invoices were inflated.

All right?---Mmm.

And who gave you the, the instruction and the detail of that?---Malcolm Foo, mmm.

40 All right. So if we can go back to the third page of the bundle which has blue highlighting on it and the first entry under "Works performed by gardens2nv and not previously charged", the first entry is Sunday, 30 August, 2015. Have you got that page?---Yes, I have.

All right. What's that, what does that highlighting indicate?---This actually – this document was handed back to me by Malcolm Foo. It's actually where he is, was asked by somebody, I think, undertaking an internal audit into the Business Maintenance Unit. Where he asked me to account for our

invoicing that actually had been inflated through the – if you look at this blue column - - -

Yes?--- - - - this is where he's actually claimed for hours worked that hadn't been worked.

And what's the green highlighting?---I think over on this side there is, they were accountable. So there was actually hours worked where these ones were actually inflated.

10

No, no, sorry. Just there's one entry that you have highlighted in green?---I don't know it's not my green – this is actually a document that was given to me.

The highlight, it was given to you highlighted?---Mmm.

I see. And did Malcolm Foo tell you why he wanted that information from you?---Because he couldn't – I think because he couldn't understand or justify his own misdoings.

20

But had he told you that someone at Council was looking at it or had he - - - ?---No, he needed – he asked me to explain where, where we were actually working. So and once I actually checked the invoice I could tell that it actually wasn't us working.

Okay?---Mmm.

THE COMMISSIONER: So do I understand that when you said this was a document he produced, so it was generated from - - -?---Internally.

30

- - - from Council records, was it?---Yes, internally.

Right?---Mmm.

MR THANGARAJ: How often were you meeting with Mr Foo?---Oh, weekly.

Okay. You've got an invoice in that same bundle dated 12 October, 2015? ---Mmm.

40

Why do you have that in this bundle?---Oh, that's because that relates back to the previous document \

Oh, that - - -?--- - - - with the blue highlighting.

Right. I see?---Mmm.

Okay. And then so does the one after that?---(No Audible Reply)

All right. If we can go to the next bundle please. That's – the first page of that is an invoice with the date at the top of 28 July, 2014?---Yes.

No, this, okay, so this relates back to what I was asking you before. You sent an invoice for 10,240 which had the zero added?---Yes.

10 Okay. And then over the page that's your – that's what – you told us you took – you told - - -?---Yes. We spoke about previously. Where we – because it was a \$9,000 over payment.

Right?---And we returned – well we believe we returned that \$9,000 to Botany Council.

Can I just ask you this?---Mmm.

You knew by this stage that Marny Baccam was stealing from Council?--- That's right.

20 You wanted to make a reimbursement. You didn't know, I presume whether you could trust the account details that she had given you or could you?---No.

Sorry, I just want to ask this question?---Do I know if it went back to Botany Council?

Or you don't know but - - -?---No.

30 - - - the question is if you wanted to reimburse the money to Council which you did here?---Mmm.

Would you – why didn't you speak to someone who you could trust to get the – to ensure that the account details - - -?---We were given a name.

Is that what you – sorry, that's the name you were saying before?---Yes, that's right. So we were provided with a contact at Botany Council in order to actually to get the account details.

40 Okay. I'm not saying – I don't know - - -?---I know what you're saying.

Yeah, no?---Mmm.

I'm not saying – this money may well have gone back to Council because - - -?---But I don't know.

Yeah?---And I mean – and to be quite honest, how do you know that the person I spoke to - - -

Wasn't part of it?---Yes, that's right.

Yeah. All right?---Exactly, mmm.

Okay. The next bundle. The next bundle says "Internet payment received from 13 March of last year to 12 March this year"?---That's right.

What's this, this has a lot of entries for Anmol?---Yes.

- 10 So what does this represent?---This represents payments made on our behalf for him purportedly working for us or at Botany Council. And there's a – there's some significant amounts and I believe - provided documentation previously where Anmol was repeatedly asking us to settle large amounts owing that also we believed he did not work us or you know, at, mmm.

And you've given evidence before, sorry, earlier this morning about speaking to Malcolm Foo about these hours?---That's right. And it was a constant battle and it went on for a long time too.

- 20 So do these payments on the first two pages represent payments to Mr Rajbhandai that was for work not done through gardens2nv or by or for gardens2nv?---It was work done by Botany – for Botany Council or what I was told where he was working.

And what I mean is it does not include work that you had him using yourself?---That's right, exactly, mmm.

Okay?---Ah hmm.

- 30 And then over the page, that's his brother?---Brother-in-law, I understand but I'm not sure.

Brother-in-law, sorry?---Mmm.

Page 3 and is in the same category?---No, because, the larger, ah, there's like two – like the large amounts I would question. The smaller amounts he actually did work for us.

- 40 Okay. So the two entries for 150 you're confident he did work for - - -?--- That's right, exactly.

- - - gardens2nv?---Yes, absolutely. Ah hmm.

The three larger ones you're not sure?---Yeah. So (not transcribable) used to work at Botany Council. They couldn't give him work, he then worked for us, he then went back to Botany Council.

All right. Okay. The next bundle. It's looks like a bank statement to start. The first entry, this is for a period 9 August, 2015 to 8 September, 2015 and the first entry is 17 August, \$190.32. Is that the bundle you have?---No.

Do you have a bundle that has this page and I'll put that on the record in a moment?---Is it in relation to purchases?

You have a highlight for 19 August, Bing Lee?---That's right.

10 All right. So can we go to that bundle?---Ah hmm.

And can we just check. This is – the top right-hand corner, statement period 9 August, 2015 to 8 September, 2015?---That's right.

Okay. And you've highlighted an entry 19 August for Bing Lee, \$600?---That's right.

And why have you – and you've got an attached - - -?---I've got the attached tax receipt.

20

- - - tax receipt for that?---Mmm.

And why have you highlighted that?---That's because I was, I had to go shopping with Malcolm Foo in order to buy what I call and it's actually in other records, a selfie camera for Mark. I don't know what it was. It was a camera that goes on your head.

THE COMMISSIONER: A GoPro.

30 MR THANGARAJ: A GoPro?---Yeah, that's it, sorry, mmm.

All right. And so he told you to buy - - -?---And it was for Mark Goodman.

Well that's what he told you?

THE COMMISSIONER: So Malcolm Foo went with you for the purchase of the - - -?---Oh, absolutely, mmm (not transcribable)

40 MR THANGARAJ: All right. And was this money recovered by a false invoice?---No.

Okay. And then you've got an entry highlighted 24 August?---Mmm.

What's that about?---Oh, my God, yeah. Okay. This one I understand - - -

Sorry, just before you've got some supporting documentation relating to that as well, I should've pointed that out?---Yes.

So what's that about?---This is where we were asked to pay for some plumbing work.

Okay. And - - -?---Mmm, mmm.

Right?---Mmm.

So if we go to that No.1 Plumbing Services invoice?---Yes. Ah hmm.

10 Well, okay. So you, you were given this invoice, were you?---Not that invoice, no.

All right. Where did you get that invoice from?---From Malcolm Foo.

Okay. And then let's go to that email on the preceding page?---Yes.

I'll just read it?---Mmm.

20 All right. Well, that's self-explanatory?---Mmm

Who asked you to pay this invoice?---Malcolm Foo.

And who – is that your handwriting on the - - -?---Yes, it is.

And do you know, it says, "Paid 24 August '15," with an address there. Do you know - - -?---[REDACTED].

Yeah – do you know – if that could be suppressed?---Mmm.

30 Do you know - - -?---Sorry, mmm.

- - - whose address that was?---Suman's.

Okay?---Mmm.

And how do you know that?---Only because we used – we were often asked to actually attend the site there and actually mow lawns, do gardening.

40 Okay?---I never went there personally but I'm aware of it, mmm, mmm.

Okay. And then sorry, you've probably said this, who asked you to pay that?---Malcolm Foo.

And that entry – this is your bank, this bank statement, that's - - -?---That's my bank statement.

- - - your company bank statement, is it?---That's right exactly.

Right?---Mmm.

All right. And was that reimbursed by a false invoice?---Yes, it was.

Okay?---Mmm.

How do you know which ones were and which ones weren't when I take you through this?---Well, to be honest, the ones that weren't I wouldn't even bring up as documents or evidence but you know in your memory - - -

10

All right?--- - - - and I've had time to reflect and - - -

Okay?--- - - - there's a lot of things I haven't been able to find too.

All right?---Mmm.

Okay?---Mmm.

We'll go to the next bundle?---Mmm.

20

This statement - - -

MALE SPEAKER: I thought the Commissioner needed to take an adjournment?

MR THANGARAJ: Oh, sorry.

THE COMMISSIONER: Well, I'm just wondering, we've got a fair way to go, have we?

30

MR THANGARAJ: I don't. I've only got a few more documents.

THE COMMISSIONER: Okay, can we just finish this?

MR THANGARAJ: Yes. All right.

This is statement period 9 June, 2015 to 8 July, 2015. You've got an entry Bing Lee Alexandria, 19 June, for almost \$300?---Yes.

40

Just quickly tell us what that is?---It's to - I understand it was to buy a clothes dryer for Mark Goodman.

All right. And who, did someone go to the shop with you to do that or were you told to do it?---Actually Robert went to the shop and purchased it and I understand that Council staff delivered it, but I'm not, I don't know any more than that, mmm.

All right. And was that recovered through a false invoice?---I don't think so.

Okay. All right. And then the next bundle is a Visa business card statement, I assume for your company?---Yes.

An entry highlighted 16 Feb, transaction date 14 Feb for Click Flowers?
---That's right.

10 And there seem to be a couple of entries for florists, or these are all florists?
---They're all florists' invoices, statements.

Okay. And do you know, who asked you to pay for these?---Malcolm Foo.

And do you know where they went, the flowers?---Various people, I think either relating to his workers or staff, mmm.

Well, if we quickly go - - -?---And I think in one circumstances to Suman's.

20 Yeah, that's what I was about to take you to?---Mmm.

The 5th, the October entry has a suburb which is the same as the suburb - - -?---Yes, that's right, mmm.

And [REDACTED] - - -?---Mmm.

Okay, well, do you know that that's in fact her birthday?---No.

30 You didn't know that?---No, no, I don't. I wouldn't know that.

All right?---I've never met the woman.

And we'll suppress that too, please, Commissioner.

THE COMMISSIONER: Yes.

MR THANGARAJ: And the final one is, it's a BAS for Gardenextra Plant Nursery and Landscape Centre?---Mmm.

40 For the first quarter, the first calendar quarter of 2010?---Yes.

What's this about?---These, this bundle of documents were provided to – a lot of our struggle in trying to resist was that she's saying that we couldn't actually provide cash, that we, you know, and that we did not want to provide cash and so it's my understanding that these documents were given to us in order to produce fraudulent invoices to negate, offset our tax difficulties.

So there are, there are blank invoices for Gas Motorsports?---Yes.

Who gave them to you?---I believe Marny gave them to us.

And what did she say you could do with them?---I don't think she really knew.

Okay?---I'm not quite sure. She said, "Use these," so to speak.

10 What did you understand that that – well firstly, did you do that?---No.

All right?---I never used them.

What did you, what did you understand the - - -?---I think she thought that if she provided us with these then she could actually garner more cash out of us.

All right?---Mmm. That's my understanding of the situation.

20 Right. I have nothing further.

THE COMMISSIONER: All right. I'll just take a short adjournment and then we can deal with Ms Marshall's cross-examination.

Thank you.

SHORT ADJOURNMENT

[11.24am]

30

THE COMMISSIONER: Yes, thank you. My apologies for that delay. Yes, Mr Thangaraj.

MR THANGARAJ: Commissioner, just before we start, can I correct one thing. There were two entries in those gardens2nv invoices that referred to Ms Mishra's address and I said one of them was her birthday and in fact it's the other one. Just for the record.

40

THE COMMISSIONER: Well that's suppressed in any event. The other one.

MR THANGARAJ: The other highlighted entry, sorry.

THE COMMISSIONER: Yes, all right. Thank you.

MR THANGARAJ: And just for this morning, well Mr Moses has some questions of Ms Marshall and then Mr Subeski and Mr Gajic's respective lawyers have some questions of Mr Goodman. And at least one of them

needs to get away. So what I'm proposing is once Ms Marshall finishes, we'll bring back Mr Goodman so that Mr Subeski and Mr Gajic can ask questions. I'll ask a few questions, then we'll go to Ms Rai and then back to Mr Goodman.

THE COMMISSIONER: All right, thank you. Right. Yes, Mr Moses.

MR MOSES: Yes. Thank you, Commissioner. Ma'am, I act for the Council. I have a few questions to ask you. In 2012/2013 the total of
10 Council payments to gardens2nv was \$42,493 in 2013/2014 it dramatically escalated to \$321,875. And then in 2014/2015 it went up again to just under half a million dollars, okay. So between 2012/2013 and 2013/2014, was there an uplift in the services which gardens2nv was providing to Council?--
-Yes, there was.

And can you inform the Commissioner how many employees or contractors you were using in 2012/2013 compared to 2013/2014?---It would – to be honest, our supply of staff would depend on the job itself.

20 Okay?---Okay. So I mean we did quoted works which mean we'd have to arrange for a number of contractors or employees or staff to come in to do a job. Other jobs were done on a per person job. So it varied dramatically.

Okay. Did you have labourers or contractors that you made cash payments to that weren't recorded as employees on the books?---Could you repeat that, please?

30 Did you make cash payments to people that you had as contractors rather than put them on the books? Just trying to - - -?---Yes, there was cash payments.

Yeah. So you wouldn't record them. So if we went through your books we wouldn't have, we wouldn't have a true number of the amount of labour that you had because there was some that were in effect off the books, is that right?---No.

Okay?---Because I actually declared those to the ATO.

40 You did?---Yes.

Okay. Now 2014/2015 it went up again?---Yes.

Is that because you increased work?---Yes.

Okay. Now when did you actually start receiving demands from Ms Baccam for you to give her cash payments? I don't want to ask you any questions about work done at her home, Counsel Assisting has dealt with that?---That's right.

But in respect of cash payments, when did you start receiving demands from her that you pay her cash, was it 2012 or 2013?---I believe it's 2013.

Okay. Could the witness be shown page 59 of volume 9 of the ICAC Brief. This is subject header "Additional invoice"?---Yes.

And that was sent on 14 October, 2013?---That's right.

10 And would this be the process that if Ms Baccam wanted money from you or Gardens - - -?---2nv.

- - - 2nv, then what you would do would be to create an invoice which would then be submitted to Council in order to get the cash that you could then give to her?---Yes.

So this one at page 60, if we go to page 60, which is attached to that email. That invoice is dated 13 October, 2013 and it relates to an alleged, it's supply of additional labour on 11 October, 2012?---Yeah.

20

Okay. So what you would do would be to create a false invoice to then facilitate the payment, correct?---That's right.

And what you've done in the bundle of documents you've provided to ICAC is you've tried to as best you can - - -?---Retrace those.

- - - work out which is the false invoice, correct?---That's right.

30 Which were a part of the payments that you were giving to Ms - - -?--- Absolutely.

- - - Baccam?---Mmm.

Just at the end of the bundle that you provided to the Commission, do you have the bundle with you?---Yes. Yes, I do.

There are some blank pages relating to Gas Motorsport like tax invoices that are blank?---Yes.

40 Do you know what's that about?---They I believe, were given to us in order for us to create invoices to actually offset tax liability or GST or whatever, I'm - - -

Well can you explain that to the Commissioner, who gave you the tax, blank tax invoices - - -?---Who gave those?

- - - from Gas Motorsport?---I believe it was Marny.

Thank you. And did you fill in these tax invoices?---No.

You didn't?---Never did anything with them.

Okay. Thank you. Now in relation to the amounts of money that were paid to gardens2nv by way of the false invoices did you keep any of the money that was the subject of the false invoices?---No.

10 So is it your evidence to the Commissioner that all of the money that was the subject of false invoices or inflated invoices passed from you into the hands of Ms Baccam?---Or Malcolm Foo.

Or Malcolm Foo?---Yeah.

And if we were to go through the bank records of gardens2nv would we be able to see that on the day that payments came in from Botany Council in relation to a fraudulent invoice within a period of time you are withdrawing an amount of money and giving it to Ms Baccam, how would you facilitate the payment, just so that we know when we come to track it down later?
20 ---That's right. You wouldn't be able to track it all down through bank statements - - -

No?--- - - - because I had to retain cash from other means.

Yeah. So moneys that were coming in from the false invoices would remain in your bank account?---No, not necessarily.

No. Well, explain it because it's not going to be done in these proceedings
- - -?---No, I know.

30 - - - but it will be done later so give it your best shot now to explain what you did?---That's right. So a lot of the cash that – a lot of the cash came out, was withdrawn and generally that was the case. However, the more cash I had – took out of the bank I had to then manipulate our other incomes by actually creating the box of money for, for Botany Council through manipulating out money. Does that make sense?

Not really?---No.

40 So let's start again?---Okay. Sorry. Mmm.

No, let's start again?---Mmm.

Money comes in from Botany Council through the payment of false invoices. Correct?---That's right.

And what did you then do with the money that came in?---Cash would largely be withdrawn.

Through an ATM?---Through an ATM or through the bank or however.

And how would you get the cash to let's start with Ms Baccam?---Okay. We'd put it in an envelope and generally Robert would give that to her.

So that's Robert your business partner?---Business partner, yes. Ah hmm.

Mr Floudas, F-l-o-u-d-a-s?---Yes, that's right.

10

Okay. And what about Mr Foo, how would you give money to him?---Cash in an envelope.

And would he collect it from you?---Yes or Mr Floudas. Mmm.

Okay?---Mmm.

Okay. And you say generally that's how it occurred?---Generally, yes.

20

And other times it didn't happen that way because you needed maintain a cash flow?---That's right, exactly.

Okay?---And so we were using – I was using personal cash.

Okay?---I was using cash from my mother to be quite honest.

Okay?---And I was using cash - - -

Okay?--- - - - from other parts of the business - - -

30

Okay?--- - - - to try and - - -

So the payments of money that came from you personally and your mother - - -?---Mmm.

- - - would that be out of your bank account accounts?---Sometimes or sometimes it was actually – I pay a lot of accounts for my mother at times or just money.

40

Okay?---Yeah.

Okay?---Mmm.

Thank you?---So I was creating a cash flow by doing - - -

No, that's fine. That's sufficient for our purposes?---Yeah.

Because that will help us with chain of inquiries later?---Mmm.

Now in relation to your role as a supplier, can I just show you a letter that the General Manager sent to the suppliers of Council on 31 May, 2012?
---Mmm.

I just want to see - - -?---This?

Do you have a copy of it? Yes, you've been given a copy?---Ah hmm.

10 So do you recall receiving such a letter from the General Manager on 31 May, 2012?---No, I've never sighted it before.

Are you denying that you've seen it – haven't seen it before or you just can't recall sitting here today?---No, I am telling you I have never seen this statement before.

You've never seen it?---Never seen it.

20 Never. Okay?---I have never seen it. I have never received it.

What about Mr Floudas, would he get mail or just you get mail for the company from - - -?---We have a post office box.

Okay?---So we'd get – everything would come to the post office box. I actually would have received it.

Okay. Go - - -

30 THE COMMISSIONER: Mr Moses.

MR MOSES: I'm sorry, Commissioner. I apologise.

THE COMMISSIONER: Sorry. No, no, no, that's all right. Could I just indicate that Mr Floudas indicated to the Commission that he had some literacy issues.

MR MOSES: Thank you.

40 THE COMMISSIONER: So I think this witness - - -

MR MOSES: Thank you, Commissioner.

THE COMMISSIONER: - - - is the only one.

MR MOSES: Thank you. Now can I just show you another document Statement of Business Ethics, July, 2013?---Ah hmm.

Have you seen that document before?---No, I haven't.

No. Okay. So you – as a supplier to Council did you understand first of all that you could report any unethical or corrupt conduct on the part of a Council official to the General Manager?---Yes, I do.

Yeah. And you didn't do that did you?---No, I didn't.

10 And is the reason you say you didn't do it was because you were afraid that if you did what would happen? I'm just trying to understand why, why you wouldn't have reported this matter?---Yes, because I was fearful.

Okay?---It was indicated that there was a lot of people connected in a lot of ways and - - -

Yeah, but who told – let's just take one step back if we can?---Ah hmm.

The reason you told the Commissioner why you paid these payments was, and Mr Floudas said the same thing - - -?---Mmm.

20 - - - was that what they said to you, what they did was - - -?---Mmm.

- - - they would delay making payments?---Mmm.

That is, Mr Foo or Ms Baccam would delay payments being made. Correct? ---That's right, ah hmm.

30 So you felt you needed to in effect engage in a power game with them by submitting false invoices to keep them happy so your invoices could be paid on time. Correct?

MR THANGARAJ: Oh, I object, it was a bit more than that.

THE WITNESS: I, yeah, I, I, yeah.

MR MOSES: Sorry, that was Mr Floudas's evidence.

MR THANGARAJ: No, he went further than that too.

MR MOSES: Yeah.

40

THE WITNESS: No, I'm sorry, I don't agree.

MR MOSES: So, well, well, why did you determine, because you know of course sitting here today, and you're accepting that you prepared in effect false invoices and submitted them to a Government agency to get payments - - -?---Mmm.

- - - for your company, initially that you were not entitled to. Correct?

---Yes.

You know that's what you've done, correct?---Yes, mmm.

Yeah. And so I'm just trying to explain or understand why, why you felt you should commit in effect what was an offence. Can you explain that?

---No, I can't.

You can't, can you?---Well, I could, but - - -

10

Yeah?--- - - - I'm - I could but I don't think there's any sympathy coming from you at this particular circumstances.

Yeah?---It's complex and it's demoralising.

Mmm. Okay?---I've been bullied, I've been humiliated and, mmm.

Yeah, okay, okay. Thank you. And your company, gardens2nv, no longer provides services to Council?---Hasn't since earlier this year.

20

Yeah?---Mmm.

Okay, thank you. Commissioner, could I just have marked as an MFI at this stage, given the witness's evidence, the letter dated 31 May, 2012 from the General Manager to supply - - -

THE COMMISSIONER: Yes, MFI4.

30 **#MFI4 – LETTER FROM LARA KIRCHNER TO DEAR VALUED SUPPLIER DATED 31 MAY 2012**

MR MOSES: And the Statement of Business Ethics dated July 2013?

THE COMMISSIONER: MFI5.

40 **#MFI5 – BOTANY BAY COUNCIL STATEMENT OF BUSINESS ETHICS JULY 2013**

MR MOSES: Yes, thank you, Ms Marshall.

No further questions.

THE COMMISSIONER: Ms Marshall, can I just ask you, was, over this period of time was Council your major client?---(not transcribable) yes, in regard, yes, I'd say so, yeah, mmm.

You had other clients?---Oh yes, we have a range of clients, we have a lot of customers and clients.

Were they private individuals or institutional clients or business premises?
---A range of private individuals, domestic, commercial, stratas - - -

10

Right?--- - - - disability organisations, we run garden programs.

Did you at any time estimate the percentage of business that you received from Botany Bay Council?---I could tell, yes.

You, you could?---Yeah, yes, you'd grab an estimate based on the weekly, yeah.

20

Well, what would be your estimate?---As far as legitimate or the - - -

Well, no, in terms of the whole cash flow, what would be your estimate?
---I think that's - actually I don't think I could answer that at this minute.

All right?---But um, yeah.

MR MOSES: Commissioner, could I just ask a question arising out of the matter you've raised?

30

THE COMMISSIONER: Yes.

MR MOSES: So what would be the income for instance in 2014/2015 of gardens2nv?---Oh, I can't tell you from, at this moment, no.

No, okay?---I'm sorry.

Well, if you agreed with the proposition that I put to you earlier - - -?
---Mmm.

40

- - - that 2014/2015 you earned just under half a million dollars from the Council - - -?---Mmm.

- - - what would have been the takings for the company overall for that year?---Um - - -

Just give it your best shot?---750, 850 perhaps, mmm.

Okay. And how many employees did you have?---As I said before, it varies. On some days we might have four or five teams of three, three, three

plus, plus, we have cleaning teams as well as gardening teams and actually lawn mowing crews.

Okay. So we'll be able to check that out in terms of your payroll records and the like?---Mmm.

You'll have all that set. Is that right?---Mmm.

Yes?---You'll be able to check, yes.

10

You'll have to say yes or no. Yes?---Yes. Mmm.

Okay?---Mmm.

Thank you. No further questions.

THE COMMISSIONER: Any other questions of Ms Marshall at this stage? No. All right. I think we can't excuse her though, Mr Thangaraj, is that right?

20

MR THANGARAJ: I think we can.

THE COMMISSIONER: All right. Nothing, all right.

Yes, thank you, Ms Marshall, you may step down, you are excused.

MR THANGARAJ: Sorry, I should indicate, I see what Your Honour was saying or the Commission was saying. We've informed representatives of both Ms Baccam and Mr Foo that they should read the transcript of this witness and Mr Floudas and so I see, yeah, perhaps you should not be excused, and then if they - - -

30

THE COMMISSIONER: She might be recalled.

MR THANGARAJ: Yes.

THE COMMISSIONER: We'll stand you down for the present, Ms Marshall?---Okay, thank you.

40

And it may be that you'll have to come back. Thank you.

THE WITNESS STOOD DOWN

[12.24pm]

THE COMMISSIONER: Thank you, Mr Korn.

MR KORN: I can be excused, your Honour?

THE COMMISSIONER: Yes, certainly.

MR KORN: Commissioner, thank you.

THE WITNESS: Yeah, do I leave - - -

THE COMMISSIONER: Just leave that there, thank you.

10 MR THANGARAJ: I'll recall Mr Goodman, briefly. There's a couple of questions that have arisen that are relevant to Ms Cullinane and Mr Goodman and it would be better if I asked them now before they start cross examination.

THE COMMISSIONER: Yes.

MR THANGARAJ: I'll do that briefly before Mr Subeski and Mr Gajic.

20 THE COMMISSIONER: Yes, thank you, Mr Goodman. You are on your former oath and you are still subject to the section 38 order. Thank you, yes.

<GARY WILLIAM GOODMAN, on former oath

[12.25Pm]

MR THANGARAJ: Mr Goodman, I omitted to ask you this about the Cabcharge. We know that you were required to repay moneys under, with respect to the Cabcharge. Who required you to do that?---I think both Lorraine and the General Manager.

10 All right. And do you remember roughly how much it was?---\$20,000.

Okay. Have you ever bought jewellery or a watch for Ms Cullinane?---Years ago, yeah, a watch.

And perhaps more relevantly, was Council money used to do that?---No.

Yes, just on the last witness. We've heard that Mr Foo told representatives of gardens2nv that some cash was for you?---I heard that.

20 Yeah. And I just wanted to ask you, did Malcolm Foo ever give you cash purportedly from or from gardens2nv?---No.

All right. All right. I just want to play you a call and ask you one question about it. It's session number 2004.

AUDIO RECORDING PLAYED

[12.27pm]

30 MR THANGARAJ: All right. Now I tender that.

THE COMMISSIONER: Yes. That recording will be Exhibit R72.

#EXHIBIT R72 - TRANSCRIPT SESSION 2004

MR THANGARAJ: Was by July of last year inquiries were being made about these super payments within Council?---In what regard?

40 Well, on the second page you're talking about someone and you're talking about there were scant details on the file, so was someone looking into this at Council?---Oh, no, I'd discussed it with the current General Manager.

No, no, before we get to that in the telephone intercept, it seems that someone was making inquiries - - -?---Oh, sorry, yeah.

- - - personnel manager, was that the case?---Yes. Now I'm following the bouncing ball.

Right?---Yeah, it was, yeah.

So what happened?---I think we, I think I might have, what I did, I charged Lorraine's superannuation payment to our superannuation account and that totally threw out the end-of-year balance - - -

Right?--- - - - of the super account because they had no record of that money going into super through the super payments we made each month, they had to be balanced every year.

Right?---And they had no record and it might have thrown the whole thing out because I - - -

Okay. And then that – so someone was trying to get to the bottom of that. Is that right, to correct that. Is that right?---Sorry?

Someone was trying to – someone was looking into that to correct that?
---Oh, no, no, we had to balance our super every year.

Yeah, but someone else was talking to you about that?---Yes, that's right, personnel manager.

And who was that person?---The current personnel manager.

Okay. And then that's what you were discussing at the beginning of this conversation with Mr Fitzgerald Senior?---That's right.

And then you point out that Ms Kirchner started to look into this, as we know?---Yeah.

And then you say, sorry, you say, "It doesn't matter whether she knew or not, that's between you and Peter," you're relaying a conversation, and then Mr Fitzgerald says, "But more importantly she doesn't have to know." And you say, "That's right, exactly." Now, the person you're talking about who doesn't need to know is Lara Kirchner. Do you need to see the screen again?---Yeah, you'd better show it to us, yeah.

We should bring it up on the screen – page 3 and then page 4?---I can't recollect the call so I've got to just go on what's here.

No, of course, of course. So if you can just go back to – so you see about halfway down the entry starting, "It doesn't matter?"---Yeah.

Just read from there onwards to yourself?---Okay, yeah.

All right. So the person that you, that the two of you did not want to know, as the words that were used, was Ms Kirchner?---No, I don't think that's

exactly the case. I was under the impression that the previous General Manager had told the new General Manager of all the, for want of a better word, these types of perks that were in the place and he hadn't, he hadn't told her that.

Right?---He hadn't told her anything actually.

10 THE COMMISSIONER: But why would you assume that though?---I just assumed that one General Manager leaves and there's a number of things happening she'd pass it on to the new GM. I just assumed it. That's why I never raised it. I only raised it when I wanted to pay her, with the new GM.

MR THANGARAJ: All right. Well, you worked out at some stage, whether it was this call or - - -?---Yeah.

- - - otherwise, that he had not told - - -?---That's exactly right.

- - - Lara Kirchner - - -?---He hadn't told her.

20 - - - what was happening?---Because I was talking to Lara about it.

Yeah, but - - -?---And I sent her, I actually sent her an email about it.

Yeah, but you certainly didn't tell her what you've told us on Friday night about these superannuation payments?---No, no.

What you told her was, well, innocuous – could I use that word?---Yeah.

30 And so let's go back to this call. What you were, you were talking about the fact that you had spoken to Ms Kirchner?---Yeah.

And then you say, "Well, it doesn't matter whether she knew or not, that's between you and Peter," meaning you said to someone else it was between you and – you told Ms Kirchner that's between her and Peter Fitzgerald to sort out?---That's right, because Peter didn't tell her, that's nothing to do with me.

Yeah, no, no?---That's between her and, her and the, the - - -

40 I accept that, that's got nothing - - -?--- - - - the old GM.

I understand that?---Mmm.

But I'm just asking about this next entry, the next comment from Mr Fitzgerald, to which you agreed, "But more importantly she doesn't have to know." Now, firstly the person that he's talking about, the "she" is Ms Kirchner?---Would be, would be Lara, no doubt.

Okay. And now what is it that the two of you did not want her to know?
---I don't know.

MR LATHAM: I object to that. That's not what the transcript says, Commissioner. The transcript says, "She doesn't have to know," not that we do not want her to know.

MR THANGARAJ: All right.

10 THE COMMISSIONER: All right.

MR THANGARAJ: What is it - - -

THE COMMISSIONER: Well, why is it, why is it that you didn't think she had to know?---I don't know what it is she didn't have to know because I sent her an email, a very detailed email, of how this thing was calculated and the problem was there was nothing on the Council file, there was nothing on the - even though the auditor had approved it and other people had approved it, there was nothing on Council's file.

20

But, Mr Goodman, that in itself points up the problem doesn't it. I mean as I understand your evidence you're claiming that these were all legitimate payments to which she was entitled under her conditions of employment?--- Ah hmm.

And yet this is an arrangement she comes to with the General Manager which is not committed to writing, which isn't in her personnel file, which isn't relayed in any intelligible written form to the person responsible for paying the payments, this just is completely undocumented isn't it?---I believe when the auditor looked at it - and unfortunately he passed away, he's dead, he passed away - there was documentation then when Norm looked at it.

30

Where did it go?---I don't know. I don't hold the personnel files.

Well, just - - -?---It might have gone - - -

Did you understand that the documentation when it did exist was on Ms Cullinane's personnel file?---I didn't know. I saw it because I gave it to the Auditor. That's the last I saw of it.

40

MR THANGARAJ: All right. Well, regardless of all that we know that there's a significant difference between what in fact happened with these payments and what you told the external auditor for example?---Yeah.

We've been through that. There was a significant difference between what was happening and what you told Lara Kirchner about it. We know that. Right?---I don't entirely agree with that but, yes.

All right. Well, you've told us about the fact that – everything you told us on Friday night about the tax - - -?---Yeah, no.

- - - not being paid et cetera?---Absolutely. Yeah, all wrong.

But not only, not only wrong you had not told Ms Kirchner of those details, what you told us on Friday night. We know what you've told her. It was in that email?---Yeah. Have you got a copy of the email I sent her about that?

10

I do somewhere. We can find it. But what I'm asking you is - - -?---Yeah, I don't need to look as long as you've got a copy.

Yeah. No, we've got it. What I'm asking you though is – see this is not simply a comment from Mr Fitzgerald, you agreed with it so he says but more importantly she doesn't have to know and to which you agreed. So what is it that you understood he was saying that Lara Kirchner did not have to know?---Can you put it back. I want to just go to the - - -

20

Yeah?---Maybe the sentence before it. I've got no idea.

So the context of this is – before you – can I – I'll just put something before you read it again?---Yeah.

The context of this is someone at Council is looking at this. You've just given evidence about that?---Yes.

30

So – and you know that there's been improper benefits being derived from the way superannuation or this in lieu of super payment had been made, right?---Yes.

So there's a, there's obviously a risk if someone delves into it too deeply and something might be exposed, right?---True.

And you told us on Friday that the same super in lieu payments that were being made to Ms Cullinane had been made also to Mr Fitzgerald Senior? ---True.

40

So it's not only a risk to Ms Cullinane and to you but also to him?---True.

Now that's why – that's the context - - -?---Like I said it's the context you're asking the question in.

So that's the context of this. So then read to yourself again please however much you need to – maybe read from the top of page 3 and we'll go back to 2 if you want to?---No, no, this one's fine.

All right?---Okay. I understand now.

So you understand the context of - - -?---Yeah.

- - - what was at risk and so what did you understand Mr Fitzgerald Senior to be saying when he said but more importantly Lara Kirchner doesn't have to know?---The, the, the full calculation of and probably the fact of his super.

10 Okay?---That's just reading this. I don't remember the call but that's just reading the - - -

Yeah?--- - - - the documentation on the call.

Right. All right?---And I talked about the, the calculation of it based on – I think I mentioned it before, a previous director John Maree's - - -

Yeah?--- - - - superannuation. I think - - -

20 All right. Well, we've been through that and we don't need to go through all that again?---Yeah. I think it was, it was that part.

I'll just provide that transcript. And can we bring up volume 37, page 1 please. This is the email - - -

THE COMMISSIONER: Sorry, Mr Thangaraj.

MR THANGARAJ: Sorry.

30 THE COMMISSIONER: Did you want that tendered?

MR THANGARAJ: Yeah. I'll tender that.

THE COMMISSIONER: I'll join that with Exhibit R72.

#EXHIBIT R72 - TRANSCRIPT SESSION 2004

40 MR THANGARAJ: Yes, please.

MS McNAUGHTON: If I could have a copy I would be grateful, thank you.

THE COMMISSIONER: Yes.

MR THANGARAJ: I'm just bringing this up because that's your – is that the email you're talking about?---(No Audible Reply)

I just want to confirm unless there's another one you're talking about?---I think that's it, yeah. It looks - - -

Okay?---Like it's obviously one I sent but I think that was the one.

Okay. And is that an email that you drafted?---Yeah.

Sorry, is that a memo you drafted?---Yes.

10 All right. And did you have any assistance drafting that from anyone?---I don't think so.

All right?---It looks like something I'd write.

Okay. All right. And nothing further at this stage.

THE COMMISSIONER: Yes, so, yes. We're back to, yes, go on.

20 MS SATHANAPALLY: Mr Goodman, I act for Mr Subeski. I just have a few questions for you. You've known Mr Subeski for a long time, is that right?---Yeah. True.

And you've asked him for money on many occasions?---Yes.

And you've asked him to help you out because you've been short of money or because you've been helping someone else?---Yes.

30 Yesterday you gave some evidence about Jovane and Green Thumb invoices?---Yes.

Before all that started you owed Alex a large amount of money, right?---Yes.

And you owed this to him personally?---Yes.

And he wanted you to pay him back?---Yes.

And you still owe him money, don't you?---Yes.

40 In fact you owe him more than you did before the Jovane invoices started? ---I haven't spoken to him so I don't know the exact amount. He did help me out with house payments, some repairs and so on, so, yes, I acknowledge I owe him money. And I told him that.

Yeah. But you don't know how much you owe him exactly?---I don't know how much, no.

Okay. Because you started to pay him back through the invoices, the Jovane invoices and the Green Thumb invoices but you've kept asking for money, didn't you?---I don't believe that's exactly how it worked. I think everything he, he gave me, off memory, was sent, anyway sent somewhere else, sent overseas.

Sorry, if you could just repeat that?---I believe everything he gave me was sent overseas.

10 All the money that he was lending to you was sent overseas?---Yeah. If not all, the majority of it, yes.

Okay. So your evidence is that most of the money that you asked him to send to places was sent overseas?---Most of it, yes.

THE COMMISSIONER: But that was still for your purposes though. I mean you - - -?---Yeah. Absolutely. I'm not saying it was for something else.

20 All right?---I still benefitted, there's no doubt, no doubt about that at all.

MS SATHANAPALLY: I might come back to that in a second. Did Mr Subeski sometimes say that he didn't have money to give you or lend you? ---Yeah, sometimes, yeah.

Yeah. But you knew that he was getting money from, the payments through the Council?---Yes.

30 So you would keep asking for money because you knew that money was coming?---Yes.

Okay. And you received money from him in various ways, so cash and cash cheques, yes?---Yes.

And other people who picked up money, we've already covered this?---Yes.

Yeah. But you were struggling to pay various debts, mortgage payments, is that correct?---Yes.

40 Yeah. And he paid those for you?---On a couple of occasions, yes.

And you had him send money to Jenny McCormick?---Yes.

Yeah. And to pay for expenses relating to Jenny?---Yes.

Yesterday you gave evidence that you didn't get any money in your pocket but you weren't including these various payments that Alex was making to other people or banks?---No.

No. You weren't including those?---No. I just said to the Commissioner, obviously I benefitted. What I did with it was beside the point, I still benefitted.

Right. So if we add all the money that Alex gave you in cash, in cash cheques, and all these payments he was making on your behalf - - -?---Ah hmm.

10 - - - because you asked him to. That would be more than \$700,000, wouldn't it?---I would say not much more.

On what basis would you be saying that though?---Just on what I know. Just on what I've worked out that was sent to particular places and what bills were paid.

Mr Goodman, there's a lot of documents, there's bank statements, there are cash cheque stubs?---Yeah.

20 So I'm putting to you that if you add all those together it comes to more than \$700,000 and do you accept that or?---I would say not much more than 700. I need to look at all the documents myself.

Right?---Before I can say yes.

But you can't say here now how much it was?---No, I can't say here now exactly, but if I go through the documents I will be able to say exactly.

30 Okay. Finally, you suggested yesterday that Alex has benefitted from all of this. That isn't true, is it?---He's definitely benefitted, definitely.

But in the end you said that you still owe him money?---That's right.

So he's no better off?---I think he's substantially better off.

40 MR MOSES: I object. I object to that. I mean seriously? I mean, I mean if my learned friend's got instructions she should put to him expressly what her client alleges, and he's had a shifting sands approach to this, what he alleges he gave this person as his cut from the Jovane theft. I mean seriously, let's put it directly to the witness.

THE COMMISSIONER: Well - - -

MR MOSES: Because they're two separate things.

THE COMMISSIONER: Well, I - - -

MR MOSES: His evidence was he loaned him money - - -

THE COMMISSIONER: I appreciate that, yes.

MR MOSES: - - - and stole the money from Jovane, so let's be blunt about it.

THE COMMISSIONER: Yes, I - - -

10 MR MOSES: What are the instructions?

THE COMMISSIONER: Well - - -

MR MOSES: If anybody can believe what comes out of that person's mouth?

20 THE COMMISSIONER: Well, I think, I think, Ms Sathanapally, it's one thing to say well, your client loaned him a lot of money, not all of which he got back, so that I suppose in terms of a net/net position you say he's no better off, but I think the point Mr Moses is making is that you can't then
20 make a submission to the Commission that your client didn't benefit in the sense that he received proceeds from some of those false invoices?

MS SATHANAPALLY: I understand the distinction. Yes, thank you.

Maybe let me put it this way. You accept that Mr Subeski is still owed money by you?---Yes.

30 Yes. And that he has been paid for some work that he did for you?
---Yes.

Yes. But other than that, all the money that he got either went to you or went to causes directed or people that you directed him to pay?---No. All the money he got, no. He kept a substantial amount himself.

But was that to pay down debt?---No, no, he kept a substantial amount himself.

40 Mr Goodman, I put it to you that insofar as he kept money, it was to pay down a debt and that money was then paid back to you to create new debts?
---No. He kept a substantial amount himself.

I have no further questions.

THE COMMISSIONER: Thank you.

Yes, Mr Dhanji.

MR DHANJI: Thank you, Your Honour.

Mr Goodman, you understand I act on behalf of Mr Gajic?---Yes.

Mr Goodman, you were asked some questions in relation to some companies related to Mr Gajic?---Yes.

And in particular yesterday you were asked by Mr Moses on behalf of Botany Bay Council in relation to Highland Pty Limited?---Yes, I remember that.

10 And that's a company associated with Mr Gajic?---Yes.

Similarly Cube D&C?---Yes.

Now, those companies you said provided invoices to Botany Council for work done?---If that's what I said, yes. I can't remember the Highland one, that's all, but it might be, might well be the case.

20 All right. Well, I'll get to the point. You also were asked some questions in relation to Speedy Ceilings?---Yes.

And you know that that's a company associated with Mr Gajic?---Yes.

And Speedy Ceilings in fact invoiced you personally for some work that was done. Correct?---Yes.

But Speedy Ceilings did not invoice Botany Council for any work. Is that correct?---That's what I believe, yes.

30 Thank you.

THE COMMISSIONER: Yes, yes, Mr Overall.

MR OVERALL: Mr Goodman – sorry, there are others?

MR THANGARAJ: We can do that at the end.

40 THE COMMISSIONER: Well, I mean I think the problem is that until Ms McNaughton and Mr Latham deal with this witness you're probably better off - - -

MR OVERALL: Sure, I'll wait.

THE COMMISSIONER: - - - waiting to hear what they have to say.

MR THANGARAJ: Just before we stand down Mr Goodman, I'll just ask one question that's arisen out of the Subeski questions.

THE COMMISSIONER: Yes.

MR THANGARAJ: Do you agree with this, that there were repeated occasions where you would organise for a false invoice to benefit whoever was benefitting from it, and then you would say in the same breath, I want some more money, and then you'll say, well, put in another invoice?---True.

10 So there was a recycling of money going through Mr Subeski and other contractors whereby it would almost be someone's catching up from the previous invoice or the next invoice. Do you agree with that?---Yes.

I think that was the trust of what the questioning was about?---What I was concerned about was - - -

Then I understand there's a dispute between you and Mr Subeski - - -?
---Yeah.

- - - as to who profited from the - - -?---Yeah, absolutely.

20 - - - from the inflated or false invoices, that's a matter which will be determined in due course, but that's the context in which the money was distributed, there was that recurring - - -?---Yes.
Right.

THE COMMISSIONER: Yes. I mean I should just observe for the benefit of that line of questioning that the question of ultimately how this money was distributed and where it went bears very little on the - - -

30 MR THANGARAJ: Yeah.

THE COMMISSIONER: - - - on the fact that practice was engaged in willingly and voluntarily by a large number of contractors so I don't know that arguing about the amount really gets us very far.

40 MR THANGARAJ: And from my position we're not – we haven't explored, otherwise we'd be here for months, explored where money has ended up so there might be disputes between contractors and Mr Goodman as to liability or findings but from my perspective I'll be making submissions as to the fact that Council was defrauded.

THE COMMISSIONER: Yes.

MR THANGARAJ: And then others can make submissions then about where it is on whatever evidence there is available to them which presumably will either be their client or Mr Goodman.

THE COMMISSIONER: Yes. It might ultimately be an imponderable that nobody can resolve.

MR THANGARAJ: That's right.

THE COMMISSIONER: All right. Now - - -

MR MOSES: Just on that point. My friend is quite right and the position of the Council will be that it will be difficult in this inquiry for the Commission to make findings as to what part as it were of the money that was obtained fraudulently has gone where. There may be some general
10 findings made but ultimately in terms of the proceeds of the crime that's occurred that will no doubt be left to other authorities and there are also civil proceedings on foot to hunt down exactly where that money will be recouped from in due course. So we'll be putting some submissions about where this should after here. If it please the Commission.

THE COMMISSIONER: Ah hmm.

MR THANGARAJ: That might – Mr Goodman can stand down, Commissioner, for the time being I think.
20

THE COMMISSIONER: Yes. So sorry, after the luncheon adjournment are you able to start, Ms McNaughton?

MS McNAUGHTON: Yes, I am.

MR THANGARAJ: Well, we should call the - - -

THE COMMISSIONER: Or you're going to interpose - - -

MR THANGARAJ: We call Natasha Rai first because she has a little bit of evidence relating to Ms Cullinane so it would be - - -
30

THE COMMISSIONER: I'm sorry. Yes, I remember you did say that.

MR THANGARAJ: So we'll start with her after lunch.

THE COMMISSIONER: All right. Well, Mr Goodman, if you can step down and we'll resume at quarter to 2.00. Thank you.

40

THE WITNESS STOOD DOWN [12.52pm]

LUNCHEON ADJOURNMENT [12.52pm]