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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 11 JUNE 2010

AT 2.04PM

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

ASSISTANT COMMISSIONER: Thank you. Please be seated.

MS RONALDS: I do have some things to tender but I'll wait unless you want them in now.

<PASQUALE ROMANO, on former oath

[2.04pm]

10 MR EURELL: Mr Romano, do you have a copy of the statement relating to the employment of Albert Becerra in front of you?---No.

Sorry, Commissioner, I'll just get the exhibit number, I'll get - - -

MR BLAKE: 289.

MR EURELL: Thank you. A copy of Exhibit 289 please could be provided to Mr Romano. You made that statement, have you got that open, Mr Romano?---Yes.

20

You made that statement during the course of these proceedings. Is that correct?---I believe so, yes.

And do you accept that there may be aspects of that statement about which you were confused?---No, I disagree.

You don't accept that?---No.

30

You would agree, wouldn't you, that as a result of sitting through six weeks of hearings your memory of these events has become somewhat contaminated?---By sitting on the stand I would agree with you but in the preparation of these documents I think they're fairly accurate in terms of content. I might not have got the precise detail correct but in terms of the intention and general situations and documents and so on, I believe them to be correct and true.

40

You see, in that statement at paragraph 97 you recount what you say was a conversation in which you told Mr Hullick that Mr Becerra was not to be paid for or was not to have performed work within the Burwood Council area. Do you agree?---I did say that to Mr Hullick, yes.

What I want to suggest to you is that you're - - -?---If I might clarify, the work that I was referring to was private - - -

Sorry, I just can't hear you, can you speak up?---My apologies. I did say that, that the work that I was referring to was work to the extent that he was involved in his private practice that made, that would extend into the

Burwood area. I didn't not want him doing private practice type work in the Burwood area. I believed that that was a conflict.

You certainly, are you saying you weren't talking about any of the work that relates to, or for which Mr Becerra submitted invoices to Council that are constituted in Exhibit 145?---Yes, that's correct.

10 You exclude that, do you, you say that that work was okay within the terms of Mr Becerra's contract and Mr Hullick's understanding of what Mr Becerra could, what work he could perform and then charge the Council for?---His contract remained silent on that issue and the reason it remained silent on that issue was because, it was my understanding and belief that his sole engagement was to deal with the library project so it was never intended at the outset that there would be other work that he would perform for Burwood Council.

20 It wasn't intended but it was, is it your evidence that you understood it, not, there was no prohibition about Mr Becerra doing any work for Burwood Council beyond the library precinct project?---Having looked at the contract I don't think that it was prohibited.

Yes?---However, the intention was from the outset that he would be exclusively working on the library project. I did not believe that he would have the capacity to undertake other types of work for Burwood Council.

That was your understanding at the time the contract was drafted?---At, at the outset when he was - - -

30 Yes?--- - - - first engaged, that's correct.

And you had reason to revisit that understanding during the course of Mr Becerra's employment?---Some many months later I, I, I found out that Mr Becerra had been engaged to perform other duties for Burwood Council and I was quite concerned about that, yes.

40 What do you mean you were concerned about it?---I was concerned on two parts, one that he was doing additional work which was taking him away from his core duties with the library project and secondly because he had complained to me that he had been performing these other duties and had not been compensated for it.

Well, you had asked him to do much of the work that, for which he rendered invoices to the Council in Exhibit 145?---I disagree.

Sorry?---I, I disagree with that.

Could the witness please be shown Exhibit 145. What is your understanding of the purpose of signing an invoice as the approving officer?

---Although there were no policies in place the practice was to ensure that there was a budget available for the works that had been produced and that the receiving officer had actually received the work. It was - - -

It was to make sure wasn't it that nobody outside of Burwood Council got paid for something they've been a party to?---Generally speaking, yes, but predominantly also there was budget and an approval.

10 I'll just stop you there. It was the function wasn't it of, well, this was the general understanding amongst the Executive, the approving officer would say, yes, I've requested the work and the receiving officer would make sure that the approving officer got what they asked for before anyone was paid?
---No.

No?---No. Usually the receiving officer was the one that commissioned the work and the approving officer was the person responsible for the receiving officer who would confirm, one, that the work had been completed, and two, that there was a budget involved.

20 Can you have a look at page 18 of Exhibit 145 in front of you?---Yes.

Do you agree that's your signature on that document as the approving officer?---Yes.

Now, well, doesn't that indicate that you had no difficulty with Mr Becerra being paid for work that he performed outside of the library precinct project?---The answer is yes, however, I qualify my answer by saying to you that by the time I'd signed these documents, the document had been commissioned and, and completed by Mr Becerra.

30 You were satisfied were you that all of the work for Mr Becerra got paid outside of the library precinct project he had actually completed?---In the invoices that I signed off on, I was satisfied with that, yes. But as I, as I said earlier, by the time I actually found out that he was performing these duties, those duties had well and truly been undertaken and in some cases completed. So this is an attempt to rectify a problem that had occurred without my knowledge.

40 And you say the extent of that problem is just a conflict of interest?---No. What I, what I said was that I did not approve and did not consider it appropriate for Mr Becerra to be taking on private business for his private practice in the local government area.

On the outside, on the outside the local of the local (not transcribable)?--- For private, sorry, inside the local government area for private clients. And in terms of his engagement at Burwood Council, I did not believe he had the capacity to do any further work, but more strictly speaking he was exclusively employed to do the library project. Does that make sense?

I'm sure it does in your mind, but - - -

ASSISTANT COMMISSIONER: I think, Mr Eurell, what Mr Romano is saying is that he didn't want Mr Becerra to do private work in the Burwood area because that would be a conflict of interest. That's one issue. The other issue was he didn't want him doing work for the Council that wasn't related to the library project because he thought he should concentrate on the library project and that's what he'd been hired to do. So they're two separate issues. He didn't think it was a conflict of interest for him to work on other projects within the Council, he just didn't want him to do it, because he, he, it's his evidence that he'd been hired to work on the library project?---Thank you, Assistant Commissioner. You said it much better than what I did.

MR EURELL: Is the Commissioner's summary of your position is correct, Mr Romano?---I beg your pardon? Sorry?

The Commissioner's summary is correct?---Yes. Yes, I believe so, yes.

20 And that's what you were intending to communicate, you say, in paragraph 97 of that statement, Exhibit 159?---Yes.

Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you.

MS McDONALD: I do have just one question arising just out of that. In the (not transcribable) somebody, because I didn't bring it with me, has a copy of the - - -

30 MS RONALDS: Tell me the number and I'll - - -

MS McDONALD: Thank you. No, no, no, it's all right. I just need to check this, if everyone can bear with me just for two seconds and I will not hold everyone up. If the witness can please be shown Exhibit, I think it's 294. Well, actually a better one is, because it's in the same place, 289, I think that, is that the statement of Mr Romano concerning the appointment of Mr Becerra, 289. And you have that in front of you, Mr Romano?---Yes.

40 Could you perhaps turn to tab 1 which is your third protected disclosure? ---Yes.

And if you could turn please to page 10 paragraph 81?---Yes.

You'll see there that you've deposed to a conversation you had with Mr Becerra about this extra work that he'd been doing, this is when you first became aware that he had been doing extra work. You'll see there that there is no reference in that there to Albert complaining about that other than in

the context of it was stopping him from doing library project work but he did not complain about not being paid for that work or that he had not been compensated for that work did he?---I can't be sure. You might be right, I just can't be sure.

Because it's the case isn't it that you requested Mr Becerra to submit first of all times in relation to the projects he'd worked on and then subsequently invoices for that work. Is that correct?---That is correct, yes.

10 Thank you, that's all I have.

ASSISTANT COMMISSIONER: Thank you, Ms McDonald. Yes, Mr Leggat.

MR LEGGAT: Mr Romano, is it your intention to provide reparation to Council financially arising from the losses that Council suffered due to your actions?---That's a broad question. I am in discussion with our lawyers and my wife in regards to some issues but there's no decision we've made at this stage, I'm still taking advice.

20

All right. What areas are you considering compensating Council for?---I don't know that the word compensating is the right word to use and I'm really not in a position at this stage to detail anything so I'd prefer, not that I prefer I just don't know that I can answer it fairly and correctly for you today.

So you're not in a position to say at the moment but you will be providing reparation for example in relation to the security device expenditure?---I'm currently considering my position with legal advice.

30

Similarly the expenses paid for the creation of a photo montage is there any intention to pay for that?---Again, Mr Leggat, I'm just not in the position at this stage to give you a definitive answer.

Thank you. This is perhaps the last opportunity that you may have to make a public expression of remorse or contrition or to apologise to the community. Would you like to take that opportunity?---Yes. I suppose I would've liked to have chosen my words if I'd had a little bit of notice, I probably would've prepared a statement. I, I have had a lot of time to reflect on the issues that have occurred over the last two, three years and I think some of my decisions were somewhat poor and if I'd had more time to reflect on, on those decisions before making them I may have made different choices at the time. I am very sorry that I have put people in the position that they've had to be here at this hearing and also suffer anguish for the last couple of years for some of my poor decisions and the fact that they've had to come here and, and in some cases give private statements in environments that were quite daunting. So, yeah, I, I, I think that circumstances could've been different.

40

Are there any specific actions that you have taken that you would like to express contrition for having taken those actions?---I'm not thinking clearly at the moment so I, I probably would've but being here in the stressful environment that I'm in I don't know that I would choose my words correctly.

Thank you. Thank you.

ASSISTANT COMMISSIONER: Thank you, Mr Leggat.

10

MS RONALDS: Thank you. Can the witness be shown Exhibit, sorry, I don't think there was anyone else, you didn't want to go back to that other -
- -

MR NEIL: I want to deal with this at some stage.

MS RONALDS: Well, do you want to do it now before I start?

20

MR NEIL: Yes, thank you. Commissioner, during the adjournment, after we adjourned this morning, Mr McKenzie was good enough to send me by fax a statement that I understand the Commission had only shortly before received which is dated today's date, 11 June, by Mr Romano dealing it is said with, in relation to a court order for surveillance and counsel assisting was good enough to show me about 2 o'clock on arrival the, the appendices to that statement although some are already in evidence, I had seen before. Paragraphs 4 to 11 of this statement, and for the purposes of my objection I don't mind if you see those, Commissioner deal with conversations and circumstances relating to Mr Baird and I want to object to this and to those paragraphs being led in evidence. Mr Baird gave evidence last at the week of 24 May and yet this comes in now, in my submission, it's prejudicial. It, for the extent of which it's controversial I haven't been able to fully assess but it would seem that one matter that needs to be looked at is whether or not Mr Romano has assigned a little too much of a role to Mr Baird that Mr Gardner would have had. But if, if, if this is to go in I would ask leave to provide no later than within seven days I would anticipate to be short statement by Mr Baird dealing with the matters if the objection is to be overruled.

30

ASSISTANT COMMISSIONER: What do you say, Ms Ronalds?

40

MS RONALDS: Well, I'd have to agree because, it's a matter I've raised before, that some of these statements address issues that could have been done weeks and weeks ago and we adjourned for, I think, four weeks to suit the convenience of senior counsel representing Mr Romano and the statement we got yesterday morning we'd been told we get on Monday morning and it had substantial matters in it that I needed to cross-examine about and this one addresses issues that could have been addressed a long time ago and I don't understand why that had to come in so late causing

massive inconvenience to everyone. Three weeks ago we got one Friday lunch-time that we had to deal with then over the entire weekend to make sure we could deal with it. It's been dealt with overall in the most unsatisfactory manner. I can understand my friend's problem because now there's conversations which assign responsibility, I mean, there's a consistent theme through the statements and it's matters that I put to Mr Romano before, that is, that he declined to take responsibility for any decisions or actions and assigns them to others, that's a constant theme through all the statements and in this one now some of it's being assigned to
10 Mr Baird which on the evidence as I understand it were things that Mr Gardner did so it either doesn't go in and, I'm sorry, and then the rest of the responsibility is now being, is also assigned to ICAC so it's a moving thing and of course we've had no opportunity to show this to Ms Legge and get any response from her in the short time that we've had it so it's a very unsatisfactory and either it doesn't go in at all or I think we should give Mr Baird an option to put a short statement in in response.

ASSISTANT COMMISSIONER: I think in the circumstances the best thing might be to admit it as a confidential exhibit and I'm certainly willing
20 to allow Mr Baird to make submissions in respect of it or provide a statement which will be provided to other parties of course and then we'll deal with the conflict as best we can. So this will be admitted as a confidential exhibit and it will be 323.

#EXHIBIT 323 - STATEMENT OF PAT ROMANO – COURT ORDER FOR SURVEILLANCE

30 MS RONALDS: While I'm doing exhibits perhaps I could also, this is material produced, this is really going back eons in time, by Mr Stanton who appeared for Mr Faker and there are a number of receipts that he wanted to put in evidence in response to the evidence given by Mr Faker in about 1998 as far as I recall so if I could tender that. This doesn't concern Mr Romano, it doesn't have to be shown to him.

ASSISTANT COMMISSIONER: Are these receipts produced by Mr Faker?

40 MS RONALDS: Faker yes, in response to his evidence. I don't know that anyone else needs them.

ASSISTANT COMMISSIONER: Yes. The receipts produced by Mr Faker will be Exhibit 324.

#EXHIBIT 324 - RECEIPTS PRODUCED BY MR FAKER

MS RONALDS: Sorry, there is another folder from HDY. Two more folders. There's, these are an extract from the confidential exhibit 245 that have been handed to me by Mr Blake in essence and they are, they could be called communications between the Executive and lawyers. Is that right, Mr Blake?

MR BLAKE: Yes.

10 MS RONALDS: If I could hand two copies of that up and I'll keep mine.

ASSISTANT COMMISSIONER: So there's no objection now to this being an open - - -

MS RONALDS: I understand Mr Leggat's been consulted and has no objections. Is that correct?

ASSISTANT COMMISSIONER: All right. Well, these extracts, you have no objection?

20

MR LEGGAT: That's true. Commissioner, my understanding is that you made a ruling at transcript page 1765 lines 20 to 30 and that ruling was explained at transcript 1762 lines 23 to 31 and the approach that's now occurred, that is a revisiting of that ruling, was an approach that you envisaged as noted by observations you made on the transcript. Counsel now is prepared to waive privilege in respect of those specific documents identified in the document that's just been handed to, to you, Commissioner.

ASSISTANT COMMISSIONER: Thank you.

30

MS RONALDS: And there are a number of other documents that have come out of the folder.

MR BLAKE: Can I just add one thing about this, Commissioner, we have prepared an index - - -

MS RONALDS: That you've not shared with us.

40 MR BLAKE: - - - that is not here through administrative error I think that will correlate the documents from the confidential Exhibit 245 with other exhibits.

ASSISTANT COMMISSIONER: Yes.

MR BLAKE: And I would seek when that's ready to add this to the front of this document so it's clear.

MS RONALDS: Is it going to arrive this afternoon or on Tuesday morning?

MR BLAKE: This afternoon I'm told.

ASSISTANT COMMISSIONER: All right. Yes. Well, that index will be added to the exhibit when it arrives and these extracts from confidential exhibit 245 will be Exhibit 325.

10 **#EXHIBIT 325 - COPIES OF DOCUMENTS - EXTRACTS FROM EXHIBIT 245**

MS RONALDS: Exhibit, I'm sorry, I've just been handed this so I've not had an opportunity to see it because it's only just arrived. Exhibit 163 is a statement, a confidential statement of Mr Romano and there has now been a redacted version with some of the annexures redacted as well though I'd have to say the last page is meaningless but we'll leave that aside, that they seek, I've not had an opportunity to review it but since I've got the un-
20 redacted one I guess my view doesn't matter anyway, to I think we should probably give it a new tender number. And then there is a redacted version of 164 which is the report of Dr Roberts which was a confidential exhibit so if I could hand up those two, they're in the same folder and perhaps they could have different numbers because they are different documents.

ASSISTANT COMMISSIONER: Well, I understand they were originally made confidential Exhibits because they referred to the matters - - -

MS RONALDS: Yes.

30 ASSISTANT COMMISSIONER: - - - (not transcribable) shouldn't be, but who is, who is, has satisfied themselves that they are now fit to be made public Exhibits, obviously?

MS RONALDS: Mr Blake has.

MR BLAKE: Yes. They relate to (not transcribable)

40 MS RONALDS: Mr Blake has undertaken, well, I'm sure not him personally, but he takes responsibility that those matters that Mr Romano considers should remain private have remained private.

ASSISTANT COMMISSIONER: Do they refer to any issues relating to Mrs Romano, that she might want to remain private?---Assistant Commissioner, if I may. My wife and I have discussed those documents and she's satisfied with the retractions that have been excluded.

All right. Well, on the basis of that assurance, I will make these, I'm not sure which is which, are they, are these two different ones? They seem to be - - -

MS RONALDS: No, no. Sorry. Ms Russell always wants two copies, so they're the two copies. If you open up inside you'll see on top is the Roberts report and behind that is the Romano statement.

10 ASSISTANT COMMISSIONER: So this whole thing will be Exhibit 326.

**EMAIL FROM MR ROMANO AND RELATED DOCUMENTS
DATED THE 25 SEPTEMBER 2009 EXHIBIT 326 - STATEMENT OF
MR ROMANO OF 9 APRIL 2010 AND DR ROBERT'S REPORT**

20 MR BLAKE: There's one other matter of housekeeping, the forensic letter. Commissioner, with Exhibit 317 tendered, I think yesterday although I'm losing track of time, which was the report about Mr Romano's computer, omitted from that unintentionally was the letter of instructions. So - - -

ASSISTANT COMMISSIONER: Yes. The forensic report is Exhibit 317. Do you just want that letter added to Exhibit 317?

MR BLAKE: Yes. Yes.

ASSISTANT COMMISSIONER: Yes. Well, that will be done.

30 MS RONALDS: Mr Romano, I just want to take you over a few matters. Do you recall that, yesterday or the day, I've lost time (not transcribable) time as well, we were talking about the withdrawals you'd made from the amounts you've salary sacrificed supposedly to purchase a car. Do you recall we were talking about that?---That's right. Yes.

And can the witness be shown 186, please. Now Mr Romano, if I could ask you, you see there's some little page numbers down the bottom?---Yes.

40 If you turn to page 29 and see an email from you dated 16 August, 2007 at 4.16pm. Do you see that?---Yes.

And it refers to, well it seeks that Mr Walker move \$5,500?---Yes.

Do you see that?---Yeah.

All right. Now I'm just going to take you through a series of accounts and, to just trace that money, just so you understand what I'm doing. All right? ---Yes.

Just bear with me for a second. I'm handing you a, a, just to explain to my friends, there's a fuller version, but we've just done the front page so you can see the details and on the back page of the Exhibit I'm handing to people is the actual just the page rather than the full document. You'll see there on the, see I've just opened it up at the page, you'll see on 17 August, there's a deposit from Burwood Council for the sum, and for those who have just been handed the single sheets, it's on the back of the page. You see 17 August, \$5,500?---Yes.

10 And what I suggest to you is that's the transfer in response to the request from you to Mr Walker on 16 August. Would you agree?---Yes.

And it's probably best if I just, I'll tender these in a group when I get there. And then what happens was, and I'll hand you this document. You'll see in the one I've just handed you, on 20 August, you see there's a transfer from your, what I assume is your sort of general account into what is I understand is your mortgage account of \$5,500. Do you see that?---Yes.

20 And then on 27 August, there's a transfer of \$5,832.66. Do you see that?
---Yes.

Which could or not include the \$5,500, that is it's part of the bulk?---Yeah.

And then I'll just hand you this. That's your credit card statement?---Yes.

See that?---Yeah.

30 And you'll see there's a transfer on 26 August, \$5,832.66. Do you see that?---It's my Visa Card, yes.

So in essence \$5,500 goes from your salary sacrificed amount account requested by you on 16 August, it transfers on the 17th into your general account, then to your mortgage account and then an equivalent, but slightly higher sum goes into your credit card. Do you see that?---Yeah.

So that's that source. And then if I could ask you to turn to - - -?---Ms Ronalds, I understand what you're saying, but I have a drawback facility on my accounts.

40 I'm sorry?---I have a drawback facility on my accounts and I don't rely on that transaction to pay my bills if that's what you're implying.

That might be right?---And I had more than enough funds available in my drawback facilities to pay my bills. And it's my practice to do that.

It might be right. I'm just showing where the money went?---Yeah. I, I thought I acknowledged yesterday and maybe the day before even that the processes that I followed in relation to managing that account were probably

in error. In fact I agreed that I would talk to my accountant, which I did and again this morning to provide you with his opinion on how I could've managed it better and what I did do and whether or not that, that was an issue and whether they could be rectified.

Thank you. And I'm sure you understand that there's, I'm sure Mr Blake or Mr Gorry has explained to you about evidence?---I understand.

10 Opposed to just statements. Do you understand that?---(NO AUDIBLE REPLY)

That's what these are. If I ask you to turn to page 32. You'll see there's a request to transfer \$7,000 into your account on 2 September, 2009?---Yes.

Do you see that?---Yes.

20 And I'll show you this document. I'll show you this document which is your account, into your general account, there's an amount of 7,134 which appears to be consistent with the \$7,000 request. Do you see that? Paid by Burwood Council into your account?---Yes.

If I could tender those four documents and I'll seek a suppression order, a non-publication order in relation to the otherwise contents of the accounts except for those entries to which I have referred, not on the copy you've got for the copy that's been distributed so just so you know, Mr Romano, the account number has been deleted so that's not in the public document?--- And the details contained within, the private details contained within the statement will be suppressed.

30 ASSISTANT COMMISSIONER: They're the subject of a suppression order except for the specific entries to which Ms Ronald has directed you? ---Thank you, Assistant Commissioner.

So that will be Exhibit 327 but subject to the suppression order I just made.

SUPPRESSION ORDER FOR EXHIBIT 327 EXCEPT FOR SPECIFIC ENTRIES OF MR ROMANO'S BANK STATEMENTS

40 **#EXHIBIT 327 - FOUR STATEMENTS OF MR ROMANO'S BANK STATEMENTS**

MS RONALDS: You gave some evidence yesterday about Mr Cummins' medical certificates. Do you remember that?---Yes.

Now, you had no reason to doubt I'd suggest to you that they were genuine medical certificates did you?---Not filed on 16 March, no.

And after 16 March you had no reason to suggest to think that either did you?---I disagree with that.

Because was it your view that Dr Timothy Shortus was knowingly signing false certificates?---No, I'm not saying that at all.

10 You're not suggesting that Dr Shortus would put his registration at risk to provide Mr Cummins with - - -?---No, I didn't say that at all, I just said that I doubted whether or not Mr Cummins was actually in the situation that he was advocating, I didn't say the doctor had made a wrong (not transcribable).

Just listen. There's two options, one is that Mr Cummins is foxing to Dr Shortus or one is, the second one is, that is, he's pretending to be sicker than he is to Dr Shortus or the second one is that Dr Shortus is prepared to sign or author a fake medical certificate. They're the only two options to support
20 your view. Would you agree?---Yes, I suppose so, yes.

So you didn't ever have a view that Dr Shortus might be involved in some sort of scam with Mr Cummins?---No, I wasn't suggesting that at all.

So you had a view did you that Mr Cummins was exaggerating his condition to the doctor?---I wasn't sure what Mr Cummins was doing but given the fact that I had received two letters on 16 March - - -

Yes, I understand that, Mr Romano. Now, let's not go back to, would you please answer the question?---I apologise. I apologise. I'm not sure what Mr Cummins would've been thinking.
30

Well, what possible foundation, a view did you have that he wasn't as sick as Dr Shortus was saying on his medical certificate?---I made that assumption based on the letters that I received on 16 March.

So you had none. Is that right?---No, I had the letters of 16 March, that's what I based my opinion on.

40 Excuse me a moment. Can the witness be shown Exhibit 155. And when you receive it, Mr Romano, could you open at page 30 please?---Yes.

You'll see at page 30 there's a letter dated 23 April - I'm sorry, if you go to page 29 you'll see there's an email from Mr Cummins to Mr Macklin dated 23 April. You see that if you've got a microscope? You'll see the dates up the top?---It's very, very small and I do have glasses but I can't read it exactly. I'll take your word for it. I agree.

And then attached to it was a letter, see it says it's got two attachments, one is the letter from Mr Cummins to Mr Macklin dated 23 April. See that?
---Yes.

And then over the page you'll see that there is a medical certificate?---Yes.

Which says, "How did the injury occur? Bullying, workplace harassment since uncovering corruption and maladministration and disguising these people to other people in the workplace." Do you see that?---Yes.

10

In the first block?---Yeah, I see that.

And it sets out - and then diagnosis, "Acute anxiety, depression secondary to workplace harassment." Do you see that as the diagnosis?---Yes.

Under the medical certification?---Yes, I see that.

And this was 23 April and the letter sent to Mr Cummins about the ITS material was sent on 24 April, right. So that Council was on notice as of 23 April that Mr Cummins was suffering from acute anxiety and depression secondary to workplace harassment. Do you see that?---Yes, I see that.

20

Was that a matter that you took into account in any consideration that you had of the letter of 24 April?---I was not involved in that letter and did not participate in sending it nor any considerations of it.

Well, I suggest to you you were fully aware of it and it was sent on your instruction wasn't it?---No, I disagree with that.

And that I'd suggest to you that that medical certificate was a critical factor to take into account before the letter was sent. Would you agree?---For someone that was involved in the events that you're talking about, yes, it would've been, yes.

30

And it was a very critical factor in terms of deciding to have it hand delivered wasn't it to his home?---I'm sure that that is true, yes.

But none of that happened did it?---Well, I don't know I wasn't involved in that process.

40

So you say?---Well, they're the facts.

When you saw this, did you see this medical certificate?---I don't think I did, I can't recall.

Because that would've influenced your view that Mr Cummins was, shall I say, pretending to be sicker than he was wouldn't it if you'd seen that he was suffering from acute anxiety and depression?---If I'd seen this medical

certificate and if I'd known what was being produced I certainly would've intervened as I did in other instances throughout 2009. I wasn't always appraised of everything that went on and in my view part of the reason why I still kept the finger on the pulse was to ensure that people that did slip up didn't slip up.

I'd suggest to you at all times you were completely across everything that was happening in relation to Mr Cummins weren't you?---No, I disagree.

10 And you were driving the campaign against him weren't you?---No, I wasn't.

I want to look at the issues of conflict of interest and there's several conflicts I want to go through with you, five of them and put each one to you and look at it, right. The first one is the ICAC investigation and the Council's support of it, all right. And what I'd suggest to you was that the Council had an obligation to its ratepayers to remain impartial with respect to the investigation. Would you agree?---Generally, yes.

20 Well, what's not generally about it?---Well, if the impartiality is in relation to my involvement and the allegations then I would agree with that, they would have to remain impartial.

And they had an obligation, Council had an obligation to provide unqualified support to the ICAC investigation. Would you agree?---I would've thought so, yes.

30 And I'd suggest to you that as the subject of the investigation or at least part of the investigation you had only a personal interest in the ICAC investigation. Would you agree?---Absolutely not.

And that you had no obligation in relation to Council's response to it because there was a clear conflict of interest. Would you agree?---I disagree in part and, and my reason for disagreeing is that there were aspects of the investigation that didn't involve me and as the General Manager and given that the Council had endorsed their support for me in April I felt obliged then and responsible to continue to conduct my duties to the best of my abilities and the boundaries that were being put in place.

40 The Council, I'd suggest to you, never endorsed its support for you did it? I've not seen those words at evidence?---Well, I, I, I took it as being implied and in my discussions that I had with the mayor and the other councillors I understood it quite clearly that they would support me until such time as those allegations were either proven or discounted.

And part of that was on the basis that you would nothing to do with the investigation, the allegations. Would you agree?---My understanding my

discussions with them that I wasn't to participate in any of the decision making but I would assist wherever possible which is what I did.

Well, I suggest to you that there has never been an open statement of support from Council, has there?---If you're referring to the statement that was produced, I don't think the statement reflects my discussions and the knowledge of what, what I understood.

10 There's never been an open statement of support to you by Council, has there?---I'm not sure. I can't remember the exact statement.

Well, I'd suggest to you there hasn't and that would be improper if they had because they didn't know whether the allegations were right or wrong, did they?---Well, I disagree with you. I hadn't, there had been no case put forward that proved any of the allegations at that point in time and they endorsed me to continue on with my employment, they didn't ask me to step down and leave the premises.

20 No, and you understand that I put that that's the first flaw but they didn't know whether the allegations were true or not, did they?---I don't think anyone knew at the time and, and, and - - -

Well, you did, didn't you?---Well, I then advocated my innocence and I still do today - - -

Yeah, you do?--- - - - qualified with the statements that I've made here so I think that they did make the right decision.

30 Do you say on the last day of the inquiry that the Council made the right decision because you didn't do anything wrong, is that seriously your position?---It's my view that I haven't done anything corrupt.

The second conflict of interest I'd suggest to you were the circumstances of the contracts of employment of Mr Cummins, Mr Child and Mr Giangrasso. These people had all made allegations against you, hadn't they?---Well, I understand that to be the case, yes.

40 And the investigations and other processes involved those complainants, didn't they?---Some of those investigations did, yes.

And anything to do with their status of employment I'd suggest to you was a conflict of interest for you to have any involvement in it, would you agree? ---I in part agree but the reason I say in part is that I was invited to participate in providing evidence for workers compensation claims and I'm - - -

Well, I'll move to the workers compensation claims in a moment, I'm only talking about their employment status. You see, I'd suggest to you - - -

I, I agree that there would have been a conflict if I was part of the decision-making process, yes.

Well, I suggest to you you should not have been part of the discussions about the matter, would you agree?---No, I disagree.

And you should not have attended any meetings about the matter, would you agree?---No, I disagree.

10

Because you see I'd suggest to you that you were an authoritarian leader and by expressing your views you made it clear to the Executive what you expected them to do, didn't you?---I disagree with that. I, I - - -

And it didn't matter whether you left the room when the decision was made or not, did it, because you'd already told them what you wanted them to do? ---That's not true. I - - -

20

And they were very obedient and they did it, that's correct, isn't it?---No, that's not true.

And in relation to the workers compensation claims of Mr Cummins, Mr Child and Mr Giangrasso, I suggest to you that you had an obvious conflict of interest and the only thing you should ever have done was put in a statement, would you agree?---I disagree. I took legal advice and I acted on that legal advice.

30

You understand that when you received legal advice, we discussed this the other day, you then have to assess it and make your own decision?---I took the advice of three different law firms and all three law firms gave the same or similar advice or answer to, to my questions and on that basis I made my decisions.

But you are responsible for your own decisions, aren't you?---To the extent that I took the advice that I received.

40

Mr Romano, I know from reading your statements you've gone to very elaborate and lengthy lengths to wrap yourself in lawyers' advice, haven't you?---Given the circumstances I think most people would have taken legal advice.

Well, I'm not interested in most people, I'm only interested in you?---Yes, I did take legal advice.

You have endeavoured in your lengthy and detailed statements to this Commission to say that at least part of it is the lawyers' fault because that's what they told you to do and you just - - -?---I'm, I'm not claiming

- - - did what your lawyers told you to do?---I'm not blaming anyone, Ms Ronalds. I, I took advice and decisions were made with that advice in mind. I don't blame anyone for, for what's going on here or, or the decisions that I've made.

Mr Romano, I suggest to you that evidence is patently false, isn't it?---I disagree with you.

10 That every single statement that you have given and all your oral evidence wherever possible blames someone else?---I strongly disagree with you.

It was never your idea, it was always someone else's idea. You didn't do it, someone else did it, that's your approach to the whole matter, isn't it?---No, that's not correct. I, I've stated the facts and supported the facts with, wherever possible with documentation.

20 And you've been here while substantial disputes of your accounts of conversations in your multiple statements have been given by everybody who was asked, haven't you?---I have been and I stand by the facts and the documents that support those facts.

Well, you understand because you say something doesn't turn it into a fact? ---I don't have to say it but the facts are the facts, there are documents that have been submitted. I've given my explanation, people other than me might have different views and that's fine but the, the documents are the documents.

30 You say you had advice from three law firms about how to handle the conflicts?---Yes.

And what I'm suggesting to you is that the conflicts were stark and abundant, would you agree?---It was a difficult - - -

Would you agree that the conflicts were stark?---No, I'd disagree.

They were not hidden, were they? There was no doubt about the people who were involved?---It's not as simple as what you're putting.

40 Well, it was very clear that Mr Cummins had made allegations against you? ---The issues were complex.

Mr Romano, it was very clear from the moment you read the Harmers' letters in March that Mr Cummins had made very serious allegations against you, hadn't it?---I agree with, I agree with you.

And I'd suggest to you from that very day you should have had absolutely nothing to do with the employment status of Mr Cummins, would you agree?---To the extent that I've given answers, I, I disagree with you.

And that you say you were given advice. Is that advice in writing?---There were many pieces of advice, some of it was in writing and some of it was verbal.

In terms of handling conflicts, of all the advices I've seen I've not seen any advice given to you from, for example, Henry Davis York, on how you should handle the obvious conflicts of interest. Do you say there is one which - - -?---The only times that - - -

10

(not transcribable). Would you please wait for me to finish. Do you say there is a written advice from Mr Gorry or Mr Blake or somebody telling you how to handle the conflicts of interest?---I don't believe there is, I'm not sure.

Do you say there is a written advice from Mr Baird or someone at Maddocks when Mr Baird was still at Maddocks telling you how to handle the conflicts of interest?---I can't be sure, I'm not sure.

20 Well, yes or no?---I don't know.

Do you say there's a written advice from when Mr Baird moved to Ebsworths telling you how to handle the conflicts of interest?---I can't recall, I don't know.

So there could be something that we've not seen. Is that right?---There were lots of documents around. I don't know whether they exist. I didn't specifically look for those.

30 You see, I'd suggest to you that in relation to the workers compensation claims that the only thing you should have ever done was provide a statement or be interviewed by the insurer, would you agree?---I agree that I should have provided a statement and I did - - -

And I'm suggesting to you it's the only thing you should have done?---No, I don't, I disagree.

40 Because Council's approach to the workers compensation proceedings had the potential to cause disadvantage to the complainants, didn't it?---I understood that at the time and I thought I took steps to mitigate that situation. The only time I was involved with conversations involving the people that you've nominated in the last few moments were in the meeting that were coordinated with the various lawyers and the two Acting General Managers. I did not deliberate, I don't believe I deliberated outside or gave opinion or made comments in relation to those people outside of that environment other than the emails that I've tabled or (not transcribable).

Well, you were all over all of it, weren't you? You received them all, you responded to them, you read through them, you read them, you were - - -?
---I, I thought it was - - -

- - - central to the flow of information about each of the issues, weren't you?
---I thought it was prudent that the management team worked together on the issues at hand. They were complex, they were many different permutations to the differing situations that were occurring. None of us had the experience or knowledge to deal with them adequately and we tried to
10 do our best in the circumstances.

Well, what I'm suggesting to you is that you should have had absolutely nothing to do with it, do would you agree?---I disagree. I was still the General Manager of the Council, the Council had bestowed it's, it's trust in me and I attempted to continue to conduct those duties to the best of my abilities.

And the fourth issue that I suggest to you was a conflict of interest was the
20 Saad ADB complaint because the Council interpreted it as a complaint against Mr Child when any fair reading of it was that it was quite a serious complaint against the Council itself. Would you agree?---No, I disagree. There were a number of elements to his complaint. I agree that - - -

Well, what I'm suggesting to you - - -?---I agree that, I agree that there were parts of his complaint that related to Council and his previous employment with Council but I think the genesis and the majority of his complaint related to his treatment by Mr Child and others.

Well, the others got lost along the way didn't they?---His principal
30 complaint was against Mr Child.

When was the last time you read the complaint, Mr Romano?---Oh, so many weeks ago.

Yes. I'd suggest to you a fair reading of the complaint shows that the basis of the complaint and certainly the remedies sought was about ending his employment with the Council?---I disagree with you.

And that in relation to the way Council treated it and Council's lawyers then
40 treated it, they turned it into a complaint against Mr Child, when the substantial part of it was against the Council. Would you agree?---I disagree with you.

And lawyers are then giving advice about allegations that are not even in the complaint. Would you agree?---I'm not sure that I can answer that. I don't recall all their advice.

Well, Mr Gardner gives advice about the fact that, it is alleged that Mr Child called Mr Saad a black C. Now that is never alleged in the complaint. Are you aware of that?---I understand that those statements were made.

That's not what is alleged in the complaint is it?---I believe those statements came out of some interviews with the staff.

10 It's not alleged in the discrimination complaint by Mr Saad is it?---Well, I, I probably agree with you, I haven't seen his statement. But I'm sure you're correct.

And the characterisation of the complaint as it being against, primarily against Mr Child was part of the reprisal action being taken against Mr Child because of the protected disclosure and the Sydney Morning Herald articles against you wasn't it?---I disagree with that.

You were looking for something to vilify him with. You've been looking for ages?---I disagree.

20 And then finally Mr Saad's complaint fell into your lap. In June, Mr Macklin had been told that the fact that Mr Child might've spoken to a Sydney Morning Herald journalist wasn't going to sustain the suspension. So you scurried around looking for something else. And then there was the Saad complaint. That's what happened isn't it?---No, it did not.

Well, it was used to suspend Mr Child wasn't it?---From my understanding of the briefings obviously, that's correct.

30 And I'd suggest to you that the Saad complaint on any fair reading would never have sustained the suspension of an employee. Would you agree? ---I'm not an expert on those issues, but the lawyers that we engaged did give us advice and I believe the staff acted in accordance with the advice.

Were you aware of the Premier's memorandum in relation to when, within the New South Wales public service or public sector employment, people can be suspended?---No, I'm not.

40 And the fifth issue of conflict of interest I'd suggest to you was depot reform. That is in particular the focus of the depot reform on restructuring Mr Child's position. You, I'd suggest to you, had an obvious conflict of interest in relation to any of those decisions didn't you?---Without having more specific information, I, I would disagree in part. The depot reforms stated in mid, mid 2008.

Can I just stop you there. Would you please listen to the question. The part of the depot reform that was looking at the restructure of Mr Child's position, I'm suggesting to you, was a conflict of interest for you to have any involvement in. Would you agree?---After the Sydney Morning Herald

articles came out, it's a possibility, but it was never clear to me who made those allegations. So, I can't agree.

Mr Romano, you knew very well it was Mr Child didn't you? You hadn't sent those texts to anyone else had you?---I'm, I'm an engineer. I work with facts on black and white issues. I had not received anything from the ICAC saying that he (not transcribable)

10 Mr Romano, listen to the question. The front page of the Sydney Morning Herald had three text messages. You had not sent those text messages to anyone other than Mr Child had you?---I don't know where the Herald got those text messages.

That's not what I'm asking you is it Mr Romano? Would you please answer the question?---I don't know if, if it was - - -

Mr Romano, had you sent those three text messages to anyone other than Mr Child?---Only Mr Child.

20 Thank you. So you had, it had to be that Mr Child had at least some involvement in the Sydney Morning Herald wasn't it?---It wasn't clear to me whether he was or wasn't involved.

And I suggest to you the way of dealing with the obvious conflicts of interest was this. You used your position as general manager to access all documents and information in relation to the matters that I've just set out. Would you agree?---I apologise, would you mind repeating that question, please.

30 You used your position as general manager to access all documents and all information in relation to the matters that I've just, the five matters I've just indicated to you that you had an obvious conflict of interest. Would you agree?---I did access information, but I don't believe that I had a conflict of interest.

And you kept yourself fully informed at all times didn't you?---I tried to keep abreast of the issues, yes.

40 And as general manager you had all the authority that that position brings, which is in effect the CEO of the organisation?---I respectfully disagree. Under the Act, the Local Government Act, the CEO is not recognised. I am, I was the general manager of the council and I did exercise my duties within the limits that were bestowed me by the Council at various periods in time.

And whenever you had an opportunity you expressed your views about how the matters should be dealt with didn't you?---I think it would be fair to say that I always had a view issues that were presented to me.

And I'd suggest to you that although you say you were not involved in any decision, that you directed all decisions. Would you agree?---I did not direct decisions involving Mr Child, Mr Saad, Mr Cummins, Mr Giangrasso. I stayed well away from those decisions and ensured that the lawyers where possible guided me and I actually gave instructions to the lawyers to ensure they stepped in and excluded me where I overstepped the mark. And I believe that occurred.

10 Can the witness be shown 197. Look, can I ask you to turn to page 6?
---Yes.

Now what do you understand the word involvement to mean?---I suppose it has different meanings in different situations.

Well, read that sentence - - -?---But I would generally say participation. But in this instance, I had discussions with the Council, the elected Council and I understood exactly what I was to do and what I wasn't to do.

20 Well, just read that sentence. You know the one I mean. The general manager has indicated to me that he will voluntarily step aside from any involvement in the management of issues relating to the allegations in the Sydney Morning Herald. Do you see that?---Yes.

It doesn't say decisions does it? It says involvement. Do you see that?
---Yes, I see that.

Were you present when the Mayor read that out?---I might've been. I was outside of the Chambers for a while, so I'm not sure.

30 At any stage after that did you take it back to Council and say, that's not right, I'm having a very significant involvement in these issues, but I'm just not involved in the final decision?---No, I didn't.

Why not?---Because I didn't think I had a significant involvement. I spent the majority of my time deliberating on other matters other than these issues.

40 But that's a very clear statement of intent isn't it? Based apparently on what you'd told her?---I didn't just tell the Mayor on the day. I had discussions with all of the elected representatives.

Mr Romano - - -?---And I, I based my actions on what I understood from directions that I got from the entire elected representative.

But you've voluntarily stepped aside from any involvement in the management of the issues, but you never did that did you?---I believe I did and I've given through this hearing and in my statements an explanation of how I did.

You have indeed. And I'd suggest that your own evidence shows plainly that you were involved in the issues from day one and kept your hand very much involved in it all. Would you agree?---I have given my answer in the statements and my explanations.

Well, I'm asking you the question now, Mr Romano, that's not the answer to a question. Do you understand that?---I, I believe that I was involved to the extent that I've given answers in my statements and here in this hearing.

10

Well, just turn to page 9. You see this is an email from Mr Macklin and you had input into this email before it went out didn't you?---I can't recall if I had any input but I certainly gave in my statement that I had prepared and I don't know - - -

Sorry?---I don't remember or I'm not sure whether he took the words out of my statement and showed me this email or it just went out but he would've been aware of my statement.

20 You see, it was very important that the staff knew what was going on wasn't it?---It was important that there was stability within the Council, we wanted to ensure that the operations at Council continued with the minimum of disruption and the morale of the staff was important to that happening.

Just go down towards the fourth last line. "The General Manager has voluntarily stepped aside in relation to these processes." Do you see that? --- (NO AUDIBLE REPLY)

30 And then, "His only involvement will be in providing information to the ICAC." Do you see that?---I see that.

Well, that's not correct is it, that's not what happened over the ensuing year is it?---Look, they're Mr Macklin's words, I'm not going to try and decipher what he meant with those words but to say - - -

Well, it's pretty clear isn't it?---But only to say that what I said earlier there were many complex decisions and issues that were occurring at the time - - -

40 Mr Romano, just listen to the question. That is not an accurate statement of what happened in the ensuing 12 months is it?---I, I can't answer that because these aren't my words.

Mr Romano, read the sentence, it's not in Swahili is it?---They're not my words.

That doesn't matter whether they're your words or not they're in English, read them. "His only involvement will be in providing information to the ICAC." Now, what can't you understand about that?---I acted within what I

understood were the guidelines that were issued to me by the elected representatives.

What can't you understand about the sentence?---I disagree with what you're implying.

10 I'm not implying anything, I'm putting very clearly to you that that is an incorrect statement and does not reflect what you did over the next 12 months from the date it went out. Would you agree?---Well, if it was incorrect then it would be attributed to Mr Macklin. I, I didn't write this - -
-

So it's his fault?---I'm not blaming him, you've blamed him, you made that statement just a few moments ago.

The question - - -?---All I'm saying to you is - - -

20 - - - you're saying it's his fault if it's wrong?---If I have made a mistake it is my fault - - -

Well, did you issue a statement - - -?--- - - - and I take full responsibility - -
-

Did you issue - - -?---I, I did act in accordance, I believe I've acted in accordance with what was expected from the Council, elected Council of me.

I'm not asking you that am I?---I'm not sure what you're asking.

30 Did you issue a statement after 17 April on 5.27pm saying Mr Macklin was wrong, my only involvement will not be in providing information to the ICAC?---No, I did not.

Because you were happy that people thought that's all you were doing wasn't it because you wanted to manipulate from behind the scenes and not take responsibility. Would you agree?---I'd disagree.

40 Can the witness be shown 307. You'll see this is an email that starts from Macklin to Hullick and then Hullick sends it on to Baird and you. See that?---Yes, I see.

And attached is an agenda. Now, you've given evidence yesterday that you were the person who initiated and organised and co-ordinated as I understand your evidence these meetings. Is that correct?---The ones that were held at HDY or possibly Maddocks.

This is one of them as I understand it?---Yes, it would appear to be that, yes.

And so did you draft the agenda or did one of the legion or lawyers do that?
---What, the attachment?

Yes?---The one that says proposed agenda items?

Yes?---No, I, I believe and I stand corrected here it was prepared by Mr Macklin.

10 All right. Well, just look through it. What I'm suggesting to you is that the first matter you had a conflict of interest insofar as it related to Mr Child. Would you agree?---No, I disagree.

In relation to Mr Cummins I'd suggest anything involving Mr Cummins, his employment status, his capacity to attend work and Harmers matters you had a conflict of interest. Would you agree?---Again, with all respect there's been evidence given by me and others that the times that I had a conflict I actually left the room.

20 Mr Romano, would you please just answer the question?---Possibly there would've been a conflict in relation to the Cummins, yes.

Well, there's no possibility is there?---Well, depends on what was being discussed.

Well, look what's being discussed. You had a clear and stark contrast in relation to the matters listed. Would you agree?---Possibly, yes.

30 And in relation to Mr Child I'd suggest to you on the matters listed there you had a clear and stark conflict of interest. Would you agree?---Possibly.

And Mr Giangrasso you had a clear and stark conflict of interest on the matters listed there?---Possibly not.

Why not? You knew he'd made a protected disclosure about you by then?
---Because one of the dot points refers to a workers comp claim.

40 Yes. And I'm suggesting to you you had a conflict of interest in relation to the workers comp claims in particular because they were determining what their benefits were and Council's strategic position in responding to the workers comp claim?---As I responded earlier I was invited to make submissions in regards to the workers comp.

No, you were invited to make a statement weren't you?---I was invited to make a statement, yes.

Yes?---And there were changes along the way that occurred as well what I did then and later on.

And I've acknowledged that that was an appropriate role?---And also, also in relation to those matters being discussed at that meeting. Now, where it deviated from that I would've left the meeting.

What I'm suggesting to you is that any of the matters listed there was a conflict of interest. Would you agree?---No.

10 In relation to the matters involving Mr Child's substantive position under depot structural changes you had a conflict of interest. Would you agree?
---Again, the way you've put it is rather broad, I agree but disagree.

And the workers compensation issues for all three of them I'm suggesting you had a clear conflict of interest but your only role should've been in providing a statement to the insurer. Would you agree?---I agree but disagree.

20 And what I'm suggesting to you is it is clear when one looks at this agenda that for every issue you had a conflict of interest and it is a clear indication that at least on 19 August you should not have attended the meeting. Would you agree?---I strongly disagree.

And that most of the matters on the agenda were matters that you should not have participated in any discussion in. Would you agree?---I disagree.

30 Well, do you say you left - so you'd all sit there and talk about it would you and everyone would put their view in and you'd put yours in and then what, you'd go out the door while they made a decision. Is that your evidence?
---No, where there was a conflict that was indicated by the lawyers I would leave the room entirely, there would be no discussion.

Mr Baird suggested that you left the room when you got upset and then he'd take you outside and calm you down and then you'd come back and behave properly. That was his suggestion of the only times you left the room as I understood his evidence?---Mr Baird has an eloquent way of putting things and I respectfully disagree with this evidence.

What, you didn't become upset?---I did at times become upset, yes, but not in the circumstances that you're describing.

40 You became obsessed about this material, all these matters from 4 April, 2009 didn't you?---I disagree with you.

And indeed in relation to Mr Cummins you became obsessed after 16 March, 2009 didn't you?---I disagree.

And you spent a lot of time plotting and planning about how you could get even with them?---Ms Ronalds, my role as the General Manager was quite

extensive, I did not have the time to do the type of things you're suggesting so I disagree.

So when there was to be a final decision made is that when you left the room?---I, I can't recall every single instance but I don't believe I left the room when the decisions were being made at all times, no.

Well, just looking through this when did you leave the room on 19 August?
---I, I can't recall.

10

Why not? It's not that long ago?---Because my memory's not that good, I'm sorry. I'm not trying to be smart, I'm, I'm just trying to help you.

Well, you've produced a legion of statements with perfectly recollected conversations in them. How are you able to do that if your memory's not that good?---I reconstructed a lot of that memory from documents that I put together and from the transcripts.

20

So they're not reliable accounts of conversations at all they're just what you think or maybe hope you said at the time?---I think they are reliable.

Well, no one's agreed with any of them have they?---Well, I disagree with that point too.

Mr Azer agreed with I think two paragraphs of one statement and everybody else who's had them put to them have disagreed. Would you agree?---No, I disagree.

30

So you don't know when you left on that agenda?---There were a number of times that I would've left throughout a meeting. And there were a number of meetings, as I said, there would've been half a dozen to a dozen meetings. I can't recall all of them.

Well, what I'm suggesting to you is on any fair analysis of what is a conflict of interest you should've been outside the whole meeting apart from hello at the beginning and good bye at the end. Would you agree?---Well, I disagree with you.

40

Now in relation to Mr Giangrasso's employment and indeed the endeavour to terminate his employment. You suggested yesterday and I think the day before that the reason it stopped was because you stopped it. Do you remember that?---There was a point in time where I became aware of correspondence that had come from the ICAC.

Yes, that's right?---That had been sitting in an email inbox for some weeks. And when it was drawn to my attention I knew it was happening because I'd been briefed, immediately sent out some emails and made some phone calls.

See what I'd suggest to you is that yesterday your, in your evidence you sought to suggest that you had stopped it at your own initiative. That is you were in effect the hero by stopping it happening?---Look, I'm sorry, if I mislead the Commission, I do apologise (not transcribable) and, and profusely. But what happened was what I just described.

10 Yes, that's right. What happened is just what you described wasn't it?---
And I'm not trying, and I'm not trying to be a hero. I just pointed out that when things came across my desk that concerned me and I thought that the organisation was at risk, I made my view known.

Well, we can all read the transcript, we can all read the transcript, Mr Romano, but I suggest that you conveyed and you intentionally endeavoured to convey that you'd stopped it. And what's clear when you read your email and the attachment is that a letter came from Mr McKenzie and then you said, see the first page, 25 September, 2009, was an email reflecting on that letter and then putting stopped to it until you decided on a path forward. Do you see that?---That's correct.

20 And then if I could ask you to turn to the third page. You'll see at, on 12 October at 9.33 Mr Leggat expressed extremely strong views about what should happen. Do you see that? From Council's perspective the position is untenable and needs to be resolved quickly. The ICAC presently take a different view and that will be (not transcribable). I suggest a telephone call and request in no uncertain terms that we must discuss and resolve this?
---Yes, I see that.

Do you see that?---Yes.

30 So that was Mr Leggat's advice to you?---Yes.

And then Mr, or to the Council. Then Mr Baird sends one to you and Mr Hullick?---That's right.

Do you see that?---That's right.

Saying, please confirm you're happy with this approach?---Yes.

40 And is that what you confirmed? That is that the view of Mr Leggat, which was that it was untenable?---I shared that view, yes.

That accurately reflects it. But what I'm suggesting, sorry, I'll withdraw that. If I could tender that document.

ASSISTANT COMMISSIONER: Yes. The email from Mr Romano and related documents dated 25 September, will be Exhibit 328.

#EXHIBIT 328 - EMAIL FROM MR ROMANO AND RELATED DOCUMENTS DATED THE 25 SEPTEMBER 2009

MS RONALDS: And the only thing that stopped the termination of Mr Giangrasso at that time was the intervention of ICAC saying you can't require him to answer the questions in the investigation isn't it?---I believe that a number of witnesses here at the Commission, sorry, at this hearing - - -

10

No. Just please Mr Romano, we're almost there, just answer the question? ---Sorry, I again apologise, would you repeat the question?

The only thing that stopped Mr Giangrasso's employment being terminated was the intervention of ICAC saying you couldn't require him to answer the questions in the investigation because they were matters that the Commission was investigating?---I agree with that. I think that, that letter from the ICAC was in response a request from the staff.

20

Now, in relation to the role of Henry Davis York as your legal adviser, that, they became involved because Mr Baird properly indicated that he had a conflict between the Council's position and your personal position, would you agree?---That's correct, yes.

And that you needed separate legal advice?---That's correct.

And I'd suggest to you that during the course of that there has been a complete blurring between your role as General Manager, your personal role, would you agree?---There has been a lot of confusion, yes.

30

And that the allegations made by Mr Cummins were made against you in your personal capacity acting in an unauthorised way as General Manager, would you agree?---Well, they were made I think both to me personally and as the General Manager of the Council.

Well, I'm suggesting to you that the actions alleged against you were outside had they all occurred, or some of them occurred, outside your authorised actions as a General Manager, would you agree?---The majority of his claims revolved around decisions that were being made by me in my capacity as General Manager.

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So you disagree. Is that the answer?---I, I disagree that - - -

Thank you?--- - - - to the way you've put it, yes.

And in relation to the allegations that have become known as the Sydney Morning Herald allegations, they were allegations against you in your

private capacity, weren't they?---Some of them were. Some of them were in relation to my employment arrangements at Council.

And what I'd suggest to you is that at all times the only role that you should have been responding to, sorry, I withdraw that. Did Henry Davis York ever give you any advice about how to carefully dichotomise what was your personal interests and what was seen to be the General Manager's interests? ---There were discussions but it was very difficult to give any written advice because - - -

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Why?---Well, the lawyers weren't there in my office every day and I was making decisions on a daily basis so it was, I did get some advice and the, the, the beacon that I used in terms of guiding principles was where in doubt ring the lawyers and that's what I did.

And you've sought, before this Commission, to, as I've suggested to you before, clothe yourself in that advice as an answer to any question that you've made a wrong or inappropriate decision you say, well, the lawyer said it was okay, so it's okay. That's your approach, isn't it?---I disagree with that.

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I have nothing further.

ASSISTANT COMMISSIONER: All right. Well, I think that concludes these proceedings. Mr Romano, you're excused from further attendance? ---Thank you, Assistant Commissioner.

THE WITNESS EXCUSED

[3.27pm]

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MS RONALDS: Sorry, Mr Blake wants to have the final word.

ASSISTANT COMMISSIONER: All right.

MR BLAKE: No, no, I did tell Ms Ronalds that I anticipate I'd be about three more days with Mr Romano but no, I won't go there. I do have an index.

40 ASSISTANT COMMISSIONER: Yes, all right. Well, that's the index - - -

MR BLAKE: To be added to Exhibit 325.

ASSISTANT COMMISSIONER: Yes, all right. Well, we'll take that.

MR BLAKE: Yes, yes, certainly you may.

ASSISTANT COMMISSIONER: All right. Well, we've already made orders in respect of the next stage of written submissions so I will now adjourn this inquiry.

AT 3.28pm THE MATTER WAS ADJOURNED ACCORDINGLY[3.27pm]