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THERESA HAMILTON ASSISTANT COMMISSIONER

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AT 2.10PM

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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.

<DAVID JOHN BAIRD, on former oath

[2.10pm]

10 MS RONALDS: Now, Mr Baird, before we start there's just two small things I've been asked to draw to your attention. One, would you please not remove exhibits from the room, they remain here. Those with the exhibit number on the stamp are official Commission exhibits. Secondly, would you please not write on the Commission's exhibits which you also seem to have done. Fortunately what you had was not an original and we've been able to replace it but I'd be grateful if you didn't decorate the Commission's exhibits as well?---I apologise for that indiscretion.

And remove them?---It was an accident.

20 You'll be frisked by an investigator at the end of your evidence to ensure that you haven't taken any with you. Got the best laugh all week, so there you are. Now, if I could just go back to two things. One is, in the discussion that you, oh, sorry, in relation to file notes that you keep of your conversations, they were not matters that were produced and I'm not critical of Maddocks because I don't think they were requested, do you keep separate file notes or your own file notes?---I keep a daybook which has general scribbles in it and anything that is considered important sometimes I write up as a, as a file note and it's put onto the file.

30 So we have some files that have been produced in relation to say this matter and a couple of others that we'll get to eventually but there don't seem to be anything that I would call diary notes or instructions, handwritten - - -?
---Yeah.

- - - and I'm bearing in mind that you're saying you were out at the Council itself. Do you carry a BlackBerry or an iPhone that you - - -?---Well, I had a daybook but some of the file notes are taken by other solicitors assisting me and might be in their handwriting and there, there are, I saw those in the files that came over but one particular file note wasn't on the file and there were other documents that had been misfiled so I wonder whether they had been misfiled but I - - -

40 No, we don't seem to have any in particular and I'll take you in a moment to a conversation between yourself, Mr Faker and Mr Romano, would it be likely that you would have a written rendition of that?---I can't, I looked for it, I couldn't find it but I remember writing something out at the time and I also remember requesting Mr Romano prepare a file note which - - -

Well, that's a separate issue. I'm just exploring with you, sir, whether you would have - - -?---Yeah, but I couldn't find one.

Do you have a bound daybook?---Yes, I, I looked in the, I've checked my records, I couldn't find a record of it, of the, of the date and that surprised me but my only explanation for that would be that it was probably because it might have been a, a quick meeting with the Mayor that wasn't planned at that particular time.

10 But even so, it was a matter of some significance?---Yes, indeed but that's why I requested at the end that we prepare a Council file note. I didn't, I, I agree with you, my recollection is I did write out a file note, I've looked for it, I can't find it and it wasn't on the file delivered to me.

Do you still have the daybook for, for around this period in 2007?---I have and I've looked at it and there's no record of it.

Do you have it with you?---No, I don't.

Would you be able to produce it?---I can, yes, I think I can, yes.

20 Sorry, Commissioner, I just have to confirm that Exhibit 29 is the statement of Yasmin Malouf dated 17 February, 2010.

ASSISTANT COMMISSIONER: Yes, that is Exhibit 29.

MS RONALDS: Sorry, Mr Baird, it's nothing to do with you?---Ah hmm.

Now, I know this is a monumentally riveting topic but if we could momentarily return to parking, to parking?---Of - - -

30 You know, the cars go still and they stop in a spot, it's called parking?---Yes, yes, car parking, yes.

Do Ebsworths offer the same service as Maddocks?---No.

They don't. So the claims for parking if Mr Romano was at Ebsworth would be a valid part of the claim?---Well, that would be at the client's expense.

40 Right. Now, what's the process in relation to parking for Maddocks? You say that you reimburse it is it or, or was, sorry?---The practice was that there were, I think, voucher tickets that the reception desk had and when a client parked in the building they received a voucher which was in some way honoured by the parking station attendant. That was my understanding so - - -

Billed back to the client?---No, I don't believe so, I don't think we ever did. That was in fact, I'm pretty sure that the answer's no.

If I could just show you this list. Now, I just ask you to accept from me that this is taken from expense claims from Mr Romano and you'll see that there, sorry, I'll just pass this along to my friends, you'll see this is just a, this is a list that's been produced by the Commission not by Mr Romano I hasten to add and you'll see there's \$3,766 of parking alleged, well, purportedly at Maddocks from 25 January, 2007 through to 19 May, 2009?
---Yes.

10 And these are claims by, made by Mr Romano, now the process that you've explained to me that, or to the Commission, that doesn't sort of make sense. Do you have any way of determining whether on the days listed Mr Romano was with you at a meeting?---I had an electronic diary, which I don't have access to, Maddocks would have it. I would have to manually check against each entry to see whether there was a Burwood related matter. But often, Mr Romano would ring me and say, hi, David, I'm in the city, do you want to come down for a cup of coffee? And he did that quite regularly and, and I would come down and we'd have a cup of coffee and he was, he said he had some other business in the city. And I assumed that it was Council related or that was there for a seminar or something.
20 there was request, do you mind if I park here? I said that's fine. But - - -

So that would be using the Maddocks parking system (not transcribable)?--- Yeah. Sometimes I offered him, I said go up and get a voucher. Sometimes he said no, no, I'll pay. And he did, I am aware he did on occasions himself, yes.

Right?---But I couldn't verify these - - -

30 No, no. I was just seeking to whether there was any way you could. If I could tender that.

ASSISTANT COMMISSIONER: Yes. (not transcribable) Exhibit 35.

#EXHIBIT 35 - LIST OF MR ROMANO'S PARKING EXPENSE CLAIMS FOR MADDOCKS MEETINGS

40 MS RONALDS: Mr Baird, when you gave the vouchers to clients, does that mean that your firm was then billed for, and they handed the voucher to the parking people?---I believe so.

Eventually your firm would've been billed for the parking?---My understanding was that we bought booklets of - - -

You'd already paid - - -?---Prepaid, yes.

- - - combining the vouchers?---Yes.

Now you've given some evidence about a meeting with Mr Faker and Mr Romano about the alarms?---Yes.

Are you able to recall whether it was prior to the production of the draft advice on 7 November or between the draft and the final on the 15th or some other time?---My best recollection is that it was probably close to the 7th itself. Because I checked the records and especially the billing records and there was an hour attendance on the 7th and that seemed to me to be pretty correct, that if I was out there and I spent time with him going through it, that could've been on the 7th because I had the draft. My recollection was I had the draft in my hand or with me when I went through it with him and then he said (not transcribable) lets talk to the Mayor about this as well.

All right. Now doing the best you can, what do you recall of the conversation when the three of you were present, leaving aside the social chitchat?---Can I also refer to my statement just as a (not transcribable)?

No. Just doing the best you can on your memory at the moment?---There was a, a, a general discussion which I think I lead into the discussion or Mr Romano lead into the discussion that I had prepared some advice relating to concerns, security concerns and he then quickly reiterated the threats and security issues that he had outlined to me. And he, and I think the Mayor joined in generally into the conversation by (not transcribable) yes, he had had from time to time threats and or calls to his house. And we were talking about the nature of local government and that it was sad to think that senior officers and the electorate representatives are, are exposed to this type of activity. We were talking about, I said I was providing some advice on the power of the Council to reimburse for an upgrade of security and surveillance at the residences. And that, we talked about, I think we probably mentioned the suspects. Mr Romano probably outlined who he thought were involved. And the Mayor commented that he had a few disgruntled ratepayers from time to time who caused him difficulty. I think that was the general tenor of the discussion. Because I did, I know I, I think I outlined at that time that it was very important to establish the connection between the two. And the Mayor was very conscious of, I remember the Mayor being conscious of the fact that we were spending public money and, and that he was conscious that it be done properly. And then I think I told them about the process and procedure, and the reason I believe that I had that because I remember reading from a document, which I believe was the first draft and pointing out the processes I wanted them to undertake, because there was concern that we were heading into the Christmas period and if the Mayor, with the Council being on vacation and if the Mayor or the General Manager had their Christmas delegations, which is a standard over the vacation period, where the Council delegate functions back to either the Mayor or the General Manager, if they had to exercise those powers as a matter of emergency, that there'd be transparency in that. And that's why I know I made the comment or I, it could've been that it came

from the Mayor, because he was concerned that he didn't want there to be any suggestion that they're approving each others expenses for this type of expense, hence my suggestion was, well, I think, I think I was talking about, well, you know, it would be, it would, from a perception point of view it would be more appropriate for the Mayor, well, not for the General Manager to be signing off on his own expenses, therefore the Mayor should be approving that and, and vice versa. But went into a general disclosure regime and consistent with Council's policy on reimbursement, on Council reimbursement. That was the amalgam of the, the discussion leaving it with the suggestion that I made that, you know, to do it properly this discussion should've been file noted. And my understanding was that Mr Romano was going to do that on, on the file, that they were, then, then make the, follow the process which was set out in the, in the draft advice, which was I think at paragraph 26 or thereabouts. And we left it at that. My understanding was they were going to follow through on that. The Mayor was happy with that. Mr Romano was happy with that. And then - - -

Can I just stop you there? You'd agree that that was an important step wasn't it how they were to be or how the payments were to be authorised if they were indeed to be authorised?---Absolutely.

And was it your understanding that you advised that it should go to Council for full Council approval?---Yes.

And you'd agree that that was an important step?---Yes.

Now, that step is not traversed in your written advice. Do you agree?---No, I believe it is.

Well, is it your view that - and then follow Council processes, process for the reimbursement of costs is what you mean by that?---I believe it's - but if you go to paragraphs 25, 26 and 27 in Exhibit 10 which I have - - -

I have my own copy?---Yes, sorry, I've got yours too. "Council's policy provides that no upfront payment of expenses should be made to Councillors in payment of expenses in advance will not occur at Burwood Council unless there are extenuating circumstances. Payments in advance will only be approved by the General Manager." Now, my very strong recollection was that there had been no works done at that time therefore it was a prospective work - - -

Despite the fact at the beginning of your advice says it's been done?---Yes, I know but there was confusion, it was a draft and I think Pat was later corrected. I can't remember, perhaps some of it was done, I don't recall exact facts, I just don't remember but I agree that there's a slight inconsistency there but I said we advise that in keeping with the intention of the (not transcribable) this is you and the Mayor. Now, I deliberately put that in, you, the General Manager and the Mayor. My advice was that Mr

Romano should put himself in the same position of the Mayor in relation to payment - - -

10 But the focus here is payment, what I'm talking to you about is Council approval and I'm suggesting to you that there's nowhere that you spelt out that it's your view that it would be inappropriate for them to authorise each other if this indeed was your view as expressed at the meeting and that it go to full Council for approval?---And then follow Council process for the reimbursement of costs, that's what I meant by going to Council because I think that the policy itself required it to be reported to Council or approved by Council. That was my recollection.

There's no policy finding Mr Romano?---No, that's right, that's why I said you and the Mayor.

Right?---I wanted Romano to voluntarily put himself in the position of scrutiny and disclosure that the Mayor was subject to under the Council policy, that was the intention.

20 I'd suggest to you that if that is your intention that sentence is somewhat opaque, would you agree?---Just if you'll give me one moment please. Yes, opaque is a word but my, the, the intention is that it were to, that for Council processes to be observed included processes consistent with the policy which my understanding was a report to Council and for Council to approve it.

Now, after the draft was circulated you understood that there was some discontent amongst the executive about the quality and content of the advice?---Yes.

30 And Mr Cummins expressed certain views?---Yes.

Were you privy to those views, did you see his email?---I can't recall that I did but I was aware of his concern because Mr Romano rang me and told me.

40 Right?---And I remember that he said that Mr Cummins is, is, Mr Cummins doesn't agree with your advice and I, and I said, Well, which part? And he thinks that it's, it's, I think he said he's got some concerns. And I said, Look, I, I'd like to speak with him about it because I want there to be, I want the client to be comfortable, not comfortable - I want the client to be assured that we're looking at every angle and that we are listening to concerns if they had concerns. I mean, that's why it's a draft advice for that type of discussion. So I remember, I'm pretty sure I rang Mr Cummins and we had a discussion and it was a lengthy discussion and both debate and discussion about the philosophy of disclosure and the issues that he raised with me and I considered and we discussed it and I made some suggestions and a lot of those matters which he raised were then incorporated into the

final document. That's my recollection. And he seemed very happy at the end of the discussion providing that these amendments were undertaken. To me they didn't seem to be totally fundamental but more a matter of emphasis. And I think we were both looking at it from the same perspective our concern as to disclosure and accountability.

10 Wasn't one of your concerns establishing that there was sufficient nexus to justify the payment in the first place?---Well, I, I remember that before lunch I indicated that was a concern and probably not as well articulated in the first cut as it should've been but in the second cut - - -

And that's Exhibit 10 when you say the second cut?---Which is - - -

Exhibit 14, sorry?---Yes. The 15 November at paragraph 4.6 and 4.7 there was an attempt to broaden that. Now, you may not believe or say that it achieved the full articulation of the, of the principle and - - -

20 Just perhaps if you concentrate on your evidence and I'll come to that (not transcribable)?---Yeah. 4.6 and 4.7 were sought to address that issue and I thought that we did that with Mr Cummins's agreement.

And you still got the factual error that security systems have been installed whereas by the 15 November that's not right?---Well, I can't, I just can't remember whether I was told that they were or they weren't but I assumed that I was told that they were and therefore it may not have been right.

30 As I understand the facts they hadn't been at that stage so - - -?---But I can't, I, I don't know whether I knew that. I know that now but I don't know whether I knew that then.

Right. Now, when you, if I can just go back a step. In terms of what Mr Romano had told you about what was happening to him and of the harassment did he ever say that he thought someone was following him? ---I, I don't remember. He may have, I don't remember.

So now could the witness be shown Exhibit 16. These are the accounts from Maddocks for this advice?---Yes.

40 You see there's two pages and on the back of each is the listing of what's happened?---Yes.

If you look at the 15th of the 7th you'll see that it's recorded that Mr Todd Neal, who I understand was your, a solicitor in your team - - -?---Yes.

- - - had a telephone conference, attendance on Robert Cummins for half an hour?---Yes.

And there's no record of you having any discussion with Mr Cummins?

---Yeah, no, I, I, I am aware of that and I, I am also aware that Mr Neil did discuss the matter with Mr Cummins as well.

But you clearly recall you having a conversation as well?---I clearly recall I had a conversation with him, yes, and I may not have recorded it because I didn't record everything that I did, believe it or not.

With the size of the bill, no, sorry, I withdraw that?---Well, that, I was sensitive to that and on that subject if I may - - -

10

No, well, we'll just continue. So there's a conversation between Mr Cummins and Mr Neal and then you and Mr Cummins either before or after the conversation with Mr Neal?---Yes, and I, I, the reason I, I recall it was that I promised to Mr Romano that, and I knew that Mr Cummins was a, legally trained, that was my understanding and that if he was critical of the advice it was a matter of professional pride that I wanted to appease or, not appease but to meet his concerns I think would be a better way to (not transcribable).

20

But even with the amendments it didn't set out in clear terms what your view was about the payment regime and the authorisation regime?---(NO AUDIBLE REPLY)

It doesn't say, for example, that both should send, it doesn't clearly set out, does it, that both should send, that the whole matter should be sent to Council for approval?---Well, I voiced - - -

30

Apart from the (not transcribable)?---No, it doesn't say that but I think that the intention was there to pick it up as part of the consistent policy, the process under the reimbursement policy.

Right?---That was my intention.

Now, after the 15th when the advice goes, as you understand it, and if you look at the bill there's still some further matters happening - - -?---After the 15th, yes.

40

Now, it's recorded that on the 22nd of November, Mr Neal draft amendments to advice. Now, the only one we've ever seen and it seems to pop up in various places is this second one of 15 November, 2007?---I think I have an answer for that because that - - -

Doesn't, chronologically it doesn't seem to fit?---It doesn't, it doesn't fit but I think that the answer to that is simple, that there was an email dated the 22nd attaching the final advice dated the 15th.

The 15th, yes?---And I - - -

I've seen that, that's why it doesn't make any sense why it says Mr Neal's still working on it on the 22nd but it seems to be dated the 15th?---It would appear the date hadn't been updated and that's a word processing issue that probably escaped all of us but it was ongoing.

So the final iteration is the one that we have as Exhibit 14?---That, that's my understanding, yes.

10 That, that's the final iteration which was attached to the email of the 22nd but I just couldn't quite work out how that had come about?---Yes, I think that's, I think that's the explanation, yes.

Right. And after that advice went in did you have any further discussion with Mr Romano about the processing and authorisation of the installation of the home security systems?---I don't recall any great detailed discussion after it, it seemed to be that matter was now complete and we moved on.

20 And were you aware or are you now aware that Mr Romano authorised payment for the Mayor's premises, the Mayor's home?---I wasn't, was I aware at the time?

Mmm?---I can't recall whether I was or I wasn't but my assumption was, correctly or incorrectly, that they were going to follow the process that had been outlined.

30 I'm just trying to work out do you have follow through with clients that you work with all the time on matters like this?---I, I don't follow through when we give advice to say you should follow this policy and follow these steps, we don't actually go back and audit, we're not required to go back and audit the steps, no.

I just wondered, you're there all the time, you're chatting to him often, you having a couple of drinks, you - - -?---My assumption was yeah, that - - -

- - - say did the home alarm go in, did Council approve it for you?---I don't think I ever asked the specific question but my assumption was that it was all in order.

40 Right. And do you now understand that Mr Romano approved the Mayor's expenditure?---I understand that, yes.

And have you only learnt that this week?---Yes.

And do you now understand that Mr Romano approved, approved his own expenditure?---Yes.

And do you, did you only learn that this week?---I believe so, yes.

And do you now understand that it never went to Council?---Yes.

And that the Council remained perhaps until this week or sometime recently unaware that that expenditure had been incurred?---Uninformed, that's correct.

And would you say that that was not consistent with your advice?---Either in the letter or in spirit, absolutely inconsistent.

- 10 And not consistent with your expectation of the way that Mr Romano would behave in relation to, or conduct himself in relation to this matter?---That's correct.

And do you, do you attend, or during the course of the end of 2007, early 2008 do you attend all Council meetings?---At Burwood?

Yeah, sorry, at Burwood, I have a mono focus?---I know but I go to so many Council meetings. I, I'm only attended, in attendance upon invitation.

- 20 So the fact that it wasn't discussed in your presence wouldn't necessarily have given rise to - - -?---Not at all.

I just wasn't sure if you went to every one and therefore you would have noted that it wasn't ever done?---No.

And in terms of calling an extraordinary general meeting of the Council, what's your understanding for Burwood Council of what that process is? ---Well, I, it's a mechanism to usually advance the urgency of matters - - -

- 30 Right?--- - - - and they were regularly called at Burwood because it's a small Council and it's easily, easily and administratively not inconvenient to do so.

It's no big deal, is it?---Not really but some councils culturally feel that it is a big deal because it's extraordinary and - - -

- 40 And would you consider, based on your experience, that the authorisation of \$50,000 worth of payments, 20 and 30 roughly, was a matter sufficient to warrant calling an extraordinary general meeting?---Well, can I answer that in two parts. I wasn't aware of the cost of the expenses and my, my understanding from what Mr Romano had put to me was that these were not terribly expensive issues and I assumed from that it might be a matter of a couple of thousand dollars. I was shocked to find out how much this week it all cost.

So it was not until this week you found out the quantum?---I believe so, yes, and there is a procurement policy at Burwood, as there are at most councils, which would normally govern the way in which councils procure and

contract for the provision of goods and services and my expectation would have been that this type of expense would have been administered consistent with that procurement policy. Now, that may have been, it could have been dealt with under delegated authority but, you know, these are administrative matters as to how the Council wishes to proceed so I had no understanding of that factually.

10 But I'm just querying with you as a, you worked closely with Burwood, you know how it works, in terms of a quantum of \$50,000 for an expenditure by a council of that size with that budget that you well understand - - -?---Yes.

- - - would that warrant a calling of an extraordinary general meeting to approve - - -?---I, I don't think that in itself would warrant an extraordinary meeting but it would, would have in my view warranted the disclosure and reporting at an ordinary meeting because - - -

20 Right. But if an ordinary meeting wasn't going to be held because this was say the beginning of December and the next ordinary meeting wouldn't be till February, what would your advice be if you'd been asked?---If, if it was a question of disclosure and the only method available was an extraordinary then often extraordinary meetings were called but I'm only speculating. It's not, it was not unusual for Burwood to have extraordinary meetings to discuss matters.

And transparency was, in your view, an important matter about this, wasn't it?---Yeah, it was indeed and I know the Mayor shared that concern.

30 Now, you've made some reference to a statement that you made - - -?---Yes. - - - in December 2009?---Yes.

Now, I note it's got on the bottom, this is protected disclosure, you understand, it's not a protected disclosure in relation to the Act itself?---Yes, it's not.

40 What was the purpose of that then?---I think that Mr Leggitt was advising me at the time and we were having a debate amongst ourselves as to whether it did or didn't or would or would not constitute a protected disclosure and it was typed on it - - -

No, it's handwritten, so you don't just mislead yourself?---Oh, well, it probably, could I see it?

Yes. I'll hand you a copy?---I might've just made a - - -

It's a hand notation from you at the bottom. I'm just trying to explore how it was that you thought that could be so. I see you're going to shift the blame to someone who's got, not on speaking terms?---Well, no, I think that

when I went, Mr Leggitt and I went down to the Commission together with this and we were debating as to whether it could or would, would or could be a protected disclosure and, and I said, I would prefer if it were. And I just wrote protected disclosure and I appreciate that it's not, but that was just my, I guess obvious concerns to maintaining some degree of I guess confidentiality. But nothing really (not transcribable)

10 All right. Now could I ask you to turn to paragraph 8. You set out there a conversation that you say occurred between yourself and Mr Romano. Do you see that?---Paragraph 8, yes.

So it starts, sorry, properly at paragraph 7, on 17 December, 2009 at approximately 3.00pm Mr Romano phoned me?---Yes.

And do you recall that happening?---I, absolutely, yes.

It's not that long ago?---No. No.

20 And requested that we meet urgently for a cup of coffee. Today, I think you've given evidence that you regularly went for cups of coffee, so there was nothing in it about the cup of coffee that rang any bells?---No. No, I think the point was that he, he was in town. He rang me, he said, I want to come down and have a talk to you. Lets have a cup of coffee, sort of thing. That was - - -

And you note then he sounded distressed and quite agitated?---Yes.

30 Now understand their conclusions and that's not in a proper form, so could you describe his manner that led you to conclude that he was distressed and quite agitated?---I guess it was the timber of his voice. The, the, his speech patterns. I know him very, very well and he seemed quite agitated and, and insisting that we speak. And it was the urgency and the, I guess the tenor of his voice that gave me the impression that he was quite agitated. That's the only way I can describe it.

And had you seen him often agitated like this?---I've seen him, yes, I have, over a whole range of issues. And, so I think I know him when he's worked up.

40 And then in paragraph 8 you've set out a conversation and I'll take you through it, but did you say about it that this is to the best of your knowledge and accurate rendition of the conversation?---Absolutely.

Did you write a note about it afterwards?---Yes.

A handwritten note?---A handwritten file note, yes.

And do you have that with you?---I don't have it with me, but I'm pretty sure I transcribed virtually that handwritten note into this statement.

And when did you write that note?---About three minutes after he left. It might've been even one minute after he left.

And why did you do it?---I was, I was at that stage very upset with what I had discussed with him.

10 And why was that?---Well, he had told me things that he was aware of that I believe he should've told me a long, long time earlier because he, the tenor of the conversation was that the, the person who he had told me at the time was, was, sorry, the suspects at the time he had told me were people who might've been developers. The gentleman that I named before. Or people that, that had a real interest in a matter before Burwood Council.

Right?---I'd always assumed that these were the types of people that could have been causing him grief. That class of persons. He then tells me effectively that the person who had been identified as causing this issue was
20 unrelated to Burwood and had been a co-colleague or co-worker with his wife. And he'd known that within a matter of weeks of the surveillance concluding, which was around that time towards late 2007. So I was extremely disappointed that he had not disclosed that to me because I wasn't aware that he actively mislead me in relation to the original instructions until this week. But this set off alarm bells in my mind that despite my discussions with him and despite laying out the legal principals of, which were relevant in the advice, he, he had known for all this period of time that this person was unrelated to Burwood. And that's why I asked him who
30 Council. And I thought to myself, well, to me that was, this is my reaction, not necessarily a legal opinion, I hope you appreciate that. But my evidence is, I was just shocked to think that he had allowed this to occur because it seemed that it might not have been the correct and proper thing to do to authorise payment for the costs which he said were, I think in the order of 10 to 15,000. It seems that they might've been more from the evidence this week. And that, I said, that's, I remember I was nodding my head, I said, this is very problematic.

40 And if I could just take you to the sentence that says, on your statement, it's the top of page 5, I was informed that after a few weeks if not months of surveillance, Mr Mailey was able to confirm the identity of this man?---Ah hmm.

And the context in which he worked. Now you've, I'm not sure if you were present this morning and yesterday - - -?---Not this morning, but I heard most of yesterday.

Which suggests that whatever version of events one wants to believe that that's not an accurate statement. Are you sure that's what he said to you?
---Which part again?

Starting from the third line down on the top of page 5. Do you have that?
---Yep.

I was informed that after a period of weeks if not months - - -?---Yes.

10 - - - of surveillance, and Mr Mailey indicates that by on the first day or even before then, the employment place was known and conveyed to Mr - - -?
---No, this is what he told me.

I'm just checking with you. Are you sure that that's what he said to you?
---This is what he's told me on, on the, when was it?

The 17th of December?---The 17th of December. This is what he told me.

20 So I'm just confirming with you that that sentence you're sure was absolutely correct of what he said to you?---Yeah.

I'm stressing to you it's factually incorrect?---Yeah, well - - -

I just wanted to confirm with you that - - -?---I believe this is, this is an accurate expression transcription of what he said.

30 Right. Thank you. And you say, you say, sorry, in paragraph 9 you said, I said to him, this is problematic and you may be required to repay that amount of the bill?---Yes. You see I, I thought that from the moment that he realised that, I accepted what he said to me was that he started, and I think, I think the inference was he started from the premise of there may have been a connection with Burwood.

40 Ah hmm?---The investigation went forward and then he was told this particular chap had no connection with Burwood. I thought that he may have to apportion the investigation from the point where it was established that there was no connection with Burwood and offered to repay that. And, what I would have, I had a, a process in my mind that should've been observed but obviously hadn't been observed.

In terms of reimbursement?---Well in terms of what perhaps he should've done.

And did you put that in writing to him, now you've told me this - - -?---No, no, no. No, I didn't. This was racing through my head at the time. I was - - -

Did you do any further then what you've said here, go and speak to your lawyer and he says I've already done that?---Yes, that, that surprised me

too. Because I thought he, yeah, and then, and then I said, I'll have to speak to Craig about this and - - -

By that you mean Mr Leggitt?---Mr Leggitt, I beg your pardon, Mr Leggitt, yes. But I would've said Craig to him. And we left it on that basis. And he was very emotional and he was saying some other things which - - -

10 And you see, just go back a step to the beginning of the paragraph 8, I've just received information that the ICAC, did you understand that he meant that day or very recently?---It seemed to be fairly recent because, and the interference I drew was that it might've even been that morning or the night before, but he was - - -

And you drew that conclusion would it be correct and I don't want to put words in your mouth that the level and degree of his anxiety and anguish appeared to reflect recent acquisition of news?---That seemed to be the impression, yes.

20 I mean it was no secret this Commission was conducting an investigation into various - - -?---None whatsoever.

Sorry, if I could just finish?---I beg your pardon.

30 Into various allegations about Burwood Council but this was a different matter that had not previously been ventilated?---Correct. I said earlier that when he rang me he said it was urgent and I had, there were three or four matters which I thought he wanted to talk about and there was a very pressing matter relating to the relocation of the Burwood Council Chamber which was then current and some building issues and I thought that might've, there might've been a blow up there and because we already had had I believe a meeting relating to that so I thought it was something to do with that, I was only speculating.

40 Right. If we could turn now to another matter. I think you were present yesterday when Mr Romano gave some evidence in relation to a conversation that I put to him that Mr Child, that he had a conversation with Mr Child about the use of some staff or - well, there's two versions of the conversation - but essentially it's about whose, what, to whom about - - -? ---I remember.

- - - staff on election day and whether they should be Council staff or could be Council staff et cetera. And Mr Romano, and I'm sorry I haven't got the transcript reference, I'll provide it later but he says that he contacted you in relation to that over the phone prior to the election?---Yes.

Have you had occasion to review your matters in relation to that?---My file records?

Yes?---Yes, I, I was able to, yeah, I was able to do that this morning. I have a clear recollection of what happened.

Right. Well, doing the best you can can you tell the Commissioner what happened?---My best recollection was that he did call me and I believe I was in the car and speaking to him over the phone. It was just prior to, it might've been the Friday before the election but it was very close, the election was the weekend, I think it's Saturday.

10 The 13 September so - - ?---Which I think was Saturday?

Yeah, Saturday?---So it would've been on the 12th or thereabouts, I'm pretty sure it was the 12th, might've even been the day before, I don't know. But he rang me and he was, he said words to the effect, it was a typical Mr Romano instruction, words to the effect, Look some of the Councillors, and I think he might've said some of the Labour Councillors but, Some of the Councillors wanted me to get a couple of the boys from the depot to go down and hand out How To Vote cards. I told him this is ridiculous, I told him it's illegal and I said I'd just ring you and get your views on this. And I said, It's too ludicrous to even comment, Pat, it's just outrageous, you can't do it, you know it's unlawful, tell them it's just ridiculous. (not transcribable) think twice about it. The, the, my recollection is that the discussion took no more than 30 or 40 seconds and we were laughing about the silliness of the idea. That's my recollection. I didn't diary note it, I didn't put it down, didn't charge for it, it was just one of those free oral advices and I didn't really think much more of it.

30 Do you recall after the election, that is, on Monday, the 15th that Mr Romano contacted you in relation to a person who claimed to be on the electoral roll but doesn't live within Burwood?---Yes.

And what, can you tell the Commissioner what you recall about that?---This is, I think, in relation to concerns that Mr Romano raised about one of the candidates who was Councillor, now Councillor Sidoti, John Sidoti, that's my understanding. And the line of inquiry was, I think I recall that he said, Look, I've, I've got some information from Councillor Chris Christo-George who, who's complaining about one of the candidates. I, I, my recollection is that there may have been an inquiry made about this prior to the election and you're saying it occurred after the election?

40 Well, that's what I'm trying to clarify with you whether A, you recall it happening and B, whether it happened before or after the election?---Well, I do recall it happening and I think that the line of inquiry might've occurred just prior to the election as well. And, but whilst I can't give you the exact date I can recall reasonably vividly what happened I believe. Concerns had been expressed by Councillor Christo-George, it was put to me, who's another Councillor at Burwood, Chris Christo-George, Christo-George that one of the candidates John Sidoti may be acting improperly in relation to his

inclusion on the roll and therefore his eligibility to be a candidate for the election. And Pat asked me to get some advice on that basis as to eligibility of candidates and his role under the statutory framework for, his responsibility for compiling the electoral roll and the residential roll. And I said, Sure, not a problem we'll look at it. And I went back to the office and started looking at the statutory provisions and I rang up, I probably would've rung Mr Romano and said, Look, this is, I've got a view about this but I won't double-check it with Council. And he said, That's all right. And I rang up Mr Leggitt who was regularly briefed for Burwood Council and all I had, one of my solicitors sent Mr Leggitt an email, I can't remember, I usually rang Mr Leggitt to talk about issues before sending him something or another practice was I would ring him and make an appointment, take some material up to his Chambers and we'd go through it together to review the material. Now, it could've been one of those three examples but I'm pretty sure that we sent him some copies of some legislation because I found the file note from Mr Neal and it was a bundle of copies of the legislation and I think Mr Neal is sending an email to Mr Leggitt and I haven't got it in front of me.

20 Well, if I can show you this document. I haven't copied the copy of the regulations but you've provided this to me earlier today?---Yes, that's the one.

The handwriting as I understand it is Mr Leggitt?---I can't confirm that. Mr Leggitt may be able to confirm that. But it's an email from Mr Neal to Mr Craig Leggitt, it's cc David Baird and Burwood Council; Electoral Fraud. I didn't entitle it Electoral Fraud I might add.

30 Can you just note before I go any further that it's the 15 September so it's the Monday after the election?---Yes.

Just casting your mind back do you recall any conversations or advice prior to the election if you accept from me the election was the 13th?---There may have been, this is why I'm saying (not transcribable) I think there may have been a conversation I had prior to the election when Mr Romano may have put me on notice that there'd been a concern raised by Councillor Christo-George.

40 Okay. If I can just stop you there. Did Mr Romano prior to the election discuss with you the possibility of obtaining a private investigation company to put any candidate under surveillance?---I don't believe he did.

Would it be likely that you would remember such a conversation?---I think I would because it would be an extraordinary proposition and that's why my view would be I'd remember it. I don't think I, I don't think that was discussed - as this matter unwound it was always put to me Councillor Christo-George has been able to find things out or there's been some information that's been forwarded to Councillor Christo-George, that's how

it was put to me. But I'm, I'm extremely certain that I didn't know about the investigation or any investigator and - - -

10 And it was never told to you at the time?---No, I don't believe so. There might've been, it might've been put, there may have been a discussion that could've been along these lines because should Councillor Christo-George get an investigator to look into the matter and I can't recall the accuracy but I think that is probably something that could've been said because these things happened years ago and (not transcribable) conversations here and there and, and my recollection was well, Councillor Christo-George can do whatever he wants to do out of his own pocket but, you know, I, I can't make any comment about that, I just want to deal with, you know, you tell me what the facts are and I'll tell you whether there's an issue that should be put to the correct authority including the ICAC, the police, the Electoral Commissioner and any other.

You now understand that Burwood Council paid for surveillance of candidates?---Yes.

20 Was your view, legal view ever sought in relation to whether that was an appropriate expenditure of public monies by the Council?---I don't believe it was.

But your view was sought?---That I was ever asked.

30 And if your view had been sought whether that was an appropriate expenditure for Council, what would your view had been?---I could give a robust answer now, as opposed to a thin answer. And the answer would be that it would not have been within the (not transcribable) of the act in my view to, for that sort of expenditure to be undertaken to surveille the candidates during an election. I think it's offensive to the principals that we're supposed to observe in a democratic system. And I would've been, I would've been, I think (not transcribable) view that it was entirely inappropriate.

So it wouldn't be likely that you've had a conversation about it and you would've forgotten it?---Well, I don't know. I don't recall any conversation.

40 But given the views you're expressing, it's likely is it not that you would've remembered any such conversation?---I'm pretty sure I would have.

If I could tender that, oh, sorry, and tender Mr Baird's statement as well.

ASSISTANT COMMISSIONER: Yes. Mr Baird's statement will be Exhibit 36.

**#EXHIBIT 36 - STATEMENT OF DAVID BAIRD DATED 18
DECEMBER 2009**

MS RONALDS: And Mr Baird's statement does have the name in it that was suppressed.

ASSISTANT COMMISSIONER: Yes. That will remain suppressed.

10

MS RONALDS: Note for the record.

ASSISTANT COMMISSIONER: And the other document will be Exhibit 37.

**#EXHIBIT 37 - EMAIL DATED 15 SEPTEMBER 2008 FROM MR
NEAL TO MR LEGGAT SC SUBJECT BURWOOD COUNCIL:
ELECTORAL FRAUD**

20

MS RONALDS: I'm taking you back to the conversation between the Mayor, Mr Romano and yourself about security of the house. Do you recall, you've give some evidence about what you recall about what was said by the Mayor. I just want to put some of Mr Romano's recollections to see if this assists you. And Commissioner, this is page 74 of the transcript at line 38. Mr Romano recalls Mr Faker saying, it's funny that you experienced this because I'm experiencing similar types of issues at my home. And he proceeded to describe events why people, whereby, sorry, people would run up to his door and bang on his door and when he'd open the door there was no one there. And that had happened in the preceding weeks prior to me meeting with on that day. I think it's known colloquially as ring and run. Do you remember - - -?---I can't remember. I know that the Mayor referred to issues that he had experienced. But I just don't remember, he may have, I don't remember.

30

And as we discussed, none of the factual bases is actually in your statement. Now, if I could just show you this document. You see this is a Maddocks bill?---Ah hmm.

40

Invoice sorry, I should say. Advice regarding electoral costs and action to be taken, \$2,422 dated 30 September, 2008, and on the back you'll see there is, as I understand your practice, to list what happened?---Ah hmm, yes.

Starting from 28 August, 2008, which suggests, does it not, that the first conversations about the matter were - - -?---Were prior to the election, yes, that's probably right, yes.

And as I now understand, well, as I think I understand it, prior to the engagement of the surveillance operatives to follow the candidates which was earlier in September but before that?---Ah hmm.

And then you see it is alleged you drafted and settled an advice on 1 September?---Ah hmm.

I'm sorry, not alleged but it's set out in the bill?---It refers to that, yes, I see that.

10

And do you have any recollection of that?---Well, I've looked for that letter and I couldn't find it in the files that were sent to us from Maddocks but - - -

Is it likely drafting and settling an advice would be an oral advice? You'd say that, wouldn't you? I mean - - -?---No, a letter, it's drafting a letter to Council.

I'm sorry?---It says drafting a letter to Council, so I, I think you read it as a letter was prepared. See number 2? Draft and - - -

20

Sorry, no, I'm further down. I'm looking at you. 1 September, drafting and settling advice regarding electoral matters?---Well, that implies a written advice.

That implies, I mean, I just didn't want to misread it in case - - -?---No, no, no, that certainly implies a written advice, yes, and I couldn't find it.

And we don't seem to have seen it anywhere. It hasn't turned up in something (not transcribable)? This is all before the election?---Yes. There were, there were, there was, there was another piece of advice that dealt with changes to the, the law on the contents of electoral material but I think this is about the same time and I, I just offer this as a potential explanation. Sometimes matters were put incorrectly onto files as a, the file number was incorrect when it was entered on the billing account. Now, I don't know whether that occurred here. I'd have to check it but unfortunately billing in law firms is a, an area where often mistakes, innocent mistakes are made. Errors, typographical errors.

30

Sorry. There's a bundle that I just need to sort out for one moment, if you just bear with me?---So I don't know.

40

Sorry, just bear with me a moment?---Do I have an alternative?

Sorry?---Do I have any other alternative?

Sorry, no you don't?---Take your time.

I give you some, a bundle of documents which are all the invoices for, from Maddocks which appear to all relate to electoral issues in relation to Burwood Council and the election that we're talking about?---Ah hmm.

And that may or may not assist you and if you need a minute we can stand you down if you want to look through them and there's another witness who'll be very short. They may just take a minute for you to look through, for you to make any sense of them. Would it be helpful if you - - -?
---Yeah, I think I need to look at them in detail.

10

Perhaps if the witness could be stood down for a moment. If I provide him with a copy of the bundle so (not transcribable) sorry, no, Neal has got a copy as well.

ASSISTANT COMMISSIONER: Yes, you may stand down?---Thank you.

THE WITNESS STOOD DOWN

[3.10pm]

20

MS RONALDS: I'll tender a bundle in a moment when the witness returns. If I could call Mr Howe.

ASSISTANT COMMISSIONER: You're Mr Howe? Yes, take a seat. Mr Howe, you're required to answer the questions asked of you at the inquiry. You may object and seek a declaration under section 38. Do you wish to do that?

30

MR HOWE: I've been advised to do so, yes.

ASSISTANT COMMISSIONER: 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 him during the course of today's hearing 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.

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 HIM DURING THE COURSE OF TODAY'S HEARING 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.

ASSISTANT COMMISSIONER: Mr Howe, you're required to take an oath on the bible or make an affirmation to tell the truth?

MR HOWE: On the bible will be fine.

ASSISTANT COMMISSIONER: Yes, could the witness be sworn, please.

ASSISTANT COMMISSIONER: Yes, Ms Ronalds.

MS RONALDS: Just give me one moment, Commissioner. Sorry, I'm just trying to organise runners.

10 Could you tell the, I'm sorry, my name is Ronalds, I'm counsel assisting and I'll just be asking you a few questions. Could you tell the Commission your first, your full name?---Probably, Robert Kenneth Howe.

And your professional address?---53A Appletree Drive, Cherrybrook.

And your occupation?---Management, management consultant.

Now you've been a management consultant for some time, without being at all - - -?---28 years, yes.

20 And part of your role as a management consultant is working with various local councils?---That's correct.

And that includes in relation to human resource, personnel issues?---And also strategic planning, yes.

All right. Well, we'll do it, just for, bear with me, one at a time?
---Whatever, yes.

30 In terms of human resource issues you were involved, were you not, with the recruitment of Mr Romano as general manager of the Burwood Council?
---Correct.

And would you tell the Commissioner what your role in that recruitment process was?---The role itself was to advertise for a new general manager for Burwood Council, to interview or to review all of the application then to interview, I interviewed somewhere in excess of 12 or 14 people. I then shortlisted them and passed them to a panel of Councillors, four Councillors, whose job it was then to decide who would then be interviewed.

40 And you attended at the culling, did they meet together to cull the - - -?
---They did, yes, and the - - -

Did you attend that process, doing the best you can?---In 2002, I think I would normally, to answer questions, yes.

Right. And then after they culled and there was a shortlist compiled?---A shortlist of four.

Right. And Mr Romano was on the list I presume?---Was one of those, yes.

And then there was an interview panel?---An interview panel where they - -
-

Were you a member of the interview panel?---No, I was an adviser.

But you were present during the interview?---Correct.

10

And the interview panel consisted only of Councillors, is that correct?
---Correct.

And the interviews were sometime before September 2002 obviously and out of the four were those all four interviewed?---No, only three, one withdrew.

Right. And there was a selection discussion assumedly?---Correct.

20

And the committee made a decision?---They, they then made a decision which then had to then be ratified by Council.

Right, that's the step I was going to go through?---Sorry.

So they formed a recommended view that Mr Romano was the preferred candidate?---Correct.

30

And then they recommended that to Council and did he have to attend before Council and meet the Councillors before they formed a view as to whether they would accept that recommendation?---I don't remember (not transcribable) would be yes because there would be people on that, that weren't on the panel and who would like to form an opinion.

Yes. So I mean I - - ?---I would believe yes.

- - - was that the normal process?---Yes.

I just wasn't sure. Now in terms of his initial contract of engagement you were involved in the preparation of that?---Correct.

40

You were in fact with the major drafter, were you not?---Correct. It was, sorry.

No, you go, your turn?---It was, it was based on other contracts that I had with other general managers. Oddly enough, one of the strongest ones was a firm by the name of Ebsworth & Ebsworth who did the final draft on another organisation and that's been the basis on which we worked.

I don't have a copy I don't think. And the salary level, was that based on your recommendation to the Council?---Based on my recommendation after I compared market figures elsewhere and they then made the decision as to what they would offer.

And was one of the factors that you took into account that it was a relatively small Council?---Correct.

10 And with a relatively small number of employees?---Correct.

And a relatively small budget compared to other councils?---Correct.

And that meant that the salary was it not, was more at the bottom range of general managers?---For metropolitan, yes.

For metropolitan. So that those in the country are on a different sort of range?---They're, they're worse off, yes.

20 Yes, right. So it was at the bottom level of the metropolitan councils?
---Correct.

Because I think it's the second smallest council in the Sydney, greater Sydney area so that would be reflected in what was your recommendation for salary level?---There are one, two, three, four, five other councils of a very similar size, yes, so it wasn't, it was easier to do it because there were other councils very similar.

30 Now, I think you've been involved in performance reviews of Mr Romano over the years. Is that correct?---Correct. When, when, I have done so, yes.

And you did, I think, a few in the first few years?---Correct.

That is, in 2003 and at least 2005?---Correct.

And on various occasions you recommended salary increases - - -?
---Correct.

40 - - - consistent with CPI or maybe a bit higher?---And consistent also with market forces, information I had on other councils plus also I had what was (not transcribable) list, now Mercer provide those sort of information across other councils.

Right. So that parity was maintained with the position at other councils of similar size?---That was the attempt yes.

Budget?---Yes.

Staff size, those sort of factors. And how did you conduct a performance review, what sort of things did you do?---Okay. There was a document produced which usually is attached to the General Manager's contract. It's a format that spells out exactly what the person was expected to perform. It comes in two parts, the jobs they were to do and the way in which they went about it. It's 50-50. What would happen is that I would provide that to the general manger, I'd provide it to the panel and I'd run a, an exercise with those panel members because they may not have been through it before because the panel members revolved and therefore you'd go through it.

10 They would then sit with me and they would fill that in. I, my, my role wasn't to actually give a score, my role was to ensure that they scored reasonably and within the bounds of what they thought was reasonable at that particular, of the General Manager's performance. The General Manager did his role, we then brought them together in a meeting. At that meeting we then came up with a consolidated view of the performance and from that we then, I wrote up a report which was then submitted to the panel and then submitted to Council to be approved.

20 And was personal expenditure, that is personal expenditure under the clause of the contract that entitles reimbursement for expenses, sorry, not personal expenditure but expenditure by Mr Romano, accrued in the course of Council business a fact of the matter that was ever reviewed?---Not in that sense. It's a, it's a clause within his contract and it requires him to actually provide substantiation for anything to make sure that it is related to, to the job at hand.

Right. But that was not a matter that was specifically reviewed?---It was not.

30 And you maintained, well, after his appointment and during the course of the following years did you maintain regular contact with Mr Romano?
---Yes, very regular.

And you kept performing work for Burwood Council?---I did.

And some of that was what you'd call the strategic arm of your consulting business, is that correct?---Correct, correct.

40 And you developed certain projects and proposals for them?---That's correct.

And you did that on demand, well, not on demand but on request - - -?---On request, yes.

- - - when Mr Romano wanted your advice?---Correct.

How would you describe your relationship with Mr Romano by October 2007?---A very good working relationship. We built up a fair degree of

trust over that time. He would pick up the phone to ask an opinion, we would often have a half hour conversation and that conversation would go over things that he thought would, he would like to do. He would ask my opinion as to whether we felt that they were appropriate or whether they would not be and in many cases we, we didn't always agree but it was, it was a good working relationship because I was able to say no. In many cases with your clients you can't, in this case you could.

10 And that was because you had an open relationship and you could have those sort of discussions?---In work terms, yes.

And were you friends?---I'd call him a friend, yes.

Right?---We didn't socialise personally, we, I've never been to his home, he's never been to mine and. but we did talk about, he's very proud of his kids, I knew a fair bit about how they were progressing, that sort of thing. That's a fairly normal working relationship where you build up a good relationship with the individual and you can call them a friend.

20 Right. Now, I understand you've only been in attendance today and you've travelled from Cairns to be with us so I thank you for that. And so you haven't heard the evidence in the last two days?---I have, I've read, I've read the whole, I've read the transcripts, yes.

Right. So you're aware of the issues that have been - - -?---I am, yes.

30 All right. Now, doing the best you can I'll just show you a document, if the witness could be shown Exhibit 8, I'm not sure whether Mr Baird the previous witness left any of the (not transcribable)?---What was said before perhaps he made sure there wasn't any.

Otherwise I was going to clean it out. Now, if I could ask you to turn to page 2 of that document, the document that you authored?---Yep. Yes.

And at the third page there's an email which seems to be the originating email from the 24 of October, 2007. You said, "Pat, please find attached my assessment, Kind regards, Bob Howe." And that's you and you've sent that?---That's correct.

40 Now, doing the best you can can you recall the conversation that you had with Mr Romano identifying or giving wise to this advice coming into existence? Do you understand?---Yes, I do. To the best of my knowledge what was discussed was that Pat had said that he had had a number of instances where he felt that his family and himself were at threat and that this possibly would extend on, could extend on to the Mayor who also had younger children and that he wanted to know whether or not I had occasion to know of circumstances where there was a need for some kind of

assistance to the General Manager or to, and/or the Mayor to protect them and to protect their families.

Now, do you recall any details he provided to you about what activities or conduct he was discussing?---(not transcribable) the, sorry, the answer's yes. He mentioned I think three things, from memory there was, it was to do with shouting, it was to do with - - -

Shouting, I'm sorry?---Shouting.

10

So that was, what, Ray's voice (not transcribable) - - -?---Ray's voice is (not transcribable) - - -

- - -or people shouting at him as he (not transcribable)?---No, no, this was not phone calls it was to do with his home and it was to do with eggs, a parcel, I must admit I didn't ask about the parcel and it was to do with shouting. I wasn't aware of the lights being turned out until later.

20

And so he said he'd received a parcel and you didn't ask to view it?---No, he, no, well, there's no reason to because his request to me was have you circumstances where Council should provide some degree of protection for their officers or for their Councillors.

And you trusted him (not transcribable)?---I had no evidence in the past to not trust him for - - -

30

But you'd not had any occasion where you had reason to doubt the voracity of anything he'd told you?---I didn't always agree with him but the point was that, when he said, I, I believe we had a very high level of trust.

And so do you now understand as I understand the evidence the parcel was something that he created himself?---Having read the transcript on Monday night following someone ringing me to say there are articles in the local paper I was shocked.

But you now understand - did Mr Romano tell you that there were, he'd received emails?---No, he did not.

40

Or letters?---No.

So you remember eggs?---I just remember that there was some attack on his property, he also mentioned the fact that there were some instances at the moment at that time (not transcribable) DAs that may actually have been relevant.

Do you remember him saying anything about being followed by people?
---No.

And you took him at his word that things have happened and so having accepted that you just turned your mind to what practical measures there should be to deal with it?---I turned my mind to say, no, actually that's not quite true, all I did was to say, If you're under threat in that fashion and if you believe, if, on one hand if you can prove it, on the other hand if you felt that you were unsure those two are matters they were costs which could be attributed to Council, if it was personal, no. But I don't believe that conversation took place in that form, he simply asked me could I verify the fact that in other instances that there were circumstances where Council would assist with protection.

If I could ask you just to look at your note because that's not entirely reflective of what the evidence you've just given?---In what form, in what way?

Well, this one doesn't - well, just have you had a moment to read it?---Mmm.

Right. So your first thing is about you make a comment about the contract and whether, his contract and whether it covers it?---In which case it doesn't, yes.

And there's two public faces?---Yep.

If there's a security risk et cetera. Then you say, "There's no clear identification of the person or persons involved nor the extent of the risk, however, it would be unwise to disregard potential risk to two families especially with children." Then you say, "I support your immediate action, costs could be seen as operational and then my understanding is that similar situations have occurred at other Councils and this has been the approach taken by other Councils." Now, based on your knowledge and understanding as reflected in that last sentence was it so that the Councils you knew and understood about there was an identified risk to the General Manager and/or the Mayor by members in the community. That is, something happened - -?---Either identifiable or potentially identifiable. I can go back to an incident that was, had occurred not long before, perhaps two years before which ICAC's aware of, there are two incidents at Shellharbour where the - can I mention the person or what do I do? I don't think it's - Arthur Webster who is the, he's the number two person at Shellharbour, he had two factors where he had been threatened, one by emails to his family and the second one face to face exercise. The lawyers at the time who are not Maddocks by the way had decided not to support him in terms of trying to do something and he had to go through the police. I felt that that was a fairly unreasonable circumstance when they weren't sure whether it was completely related to work, in one case it was very much so and in the other case it turned out to be, it was a, a website that's been set up overseas which has been used to try and undermine the Council.

Right?---And because they get their, their legal advisors hadn't supported them they were left stranded in a job that I thought was part of their - and I checked with another legal firm and their view was it was potentially something that should've been looked at first and then because the risk was high and that was about two years before this.

10 And that required did it not some nexus between the identified threat and the public officer role or I think you call it the, the public faces?---That's correct. From my point of view at the time they didn't know the answer to that and therefore I felt that if they felt at risk that needed to be looked at. After Monday I'd have to say I was horrified to find that there was no nexus and that I'd been misled. Now, from my point of view that doesn't change what I said, I'm not a, I'm not a security expert, I cannot do a security risk, I was suggesting that they get a security check and that they look at the options that are available and decide what to do. My, my exercise probably wouldn't have taken more than an hour of my time, I did check that. And all it was doing was saying I have instances in the past where situations have occurred and where Council has felt the need to do something as long as the nexus could be partially covered to the point where it was decided
20 whether or not it was work related. If it's not work related obviously no but when you're not sure and in public office situations I can't, I'm aware of instances where General Managers on a reasonably regular basis and I mean more than once a year are threatened over the phone, you know.

Occupational hazard?---It's a hazard, yes, it's a reason why I would never want to be a general manager but the principle I was getting at was fairly straight forward. If there is a threat perceived, if there is no nexus identified at that point in time but there was a feeling of threat, then something should be done, not just as had occurred at, at Shellharbour where they said - - -
30

Right, no, I understand that, yes?---?- - - they stepped away.

And that was your sole involvement in the matter, was it?---Totally.

So you weren't involved later, you didn't have any further discussions with Mr Romano about approving the proper way of authorising payments and whether he should authorise the payments himself for his own house?---No.

40 You've read the evidence, you understand now that that's what happened?
---I understand that.

Would that have ever been within your advice, if you'd been asked?---I, I would have no reason to be asked that but there was nothing asked of me in that regard.

And so after that you left it to the security specialists?---Because it's their job.

All right. I have nothing further. I'm not sure whether anyone else does.

ASSISTANT COMMISSIONER: Does anybody wish to cross-examine this witness?

MR BLAKE: I have some further questions.

MS RONALDS: Mr Romano's counsel would like to - - -?---Thank you.

10 ASSISTANT COMMISSIONER: Yes, Mr Blake.

MR BLAKE: Mr Howe, can I show you this document please. It is (not transcribable) I apologise, the print is very small. Are you able to read it without - - -?---Yes, I am.

Mr Howe, I want to ask you about the bottom half of the email. Do you recall receiving an email from Mr Romano in the terms in front of you?---I don't, I must admit I don't remember seeing this. It's not inconsistent with most of what I said but it, it has one or two extras in there.

20

Yes. Now, the discussion that you relayed to counsel assisting, would that have occurred on the same day that you sent your letter containing your advice?---It should have been. There was no reason for there to be any delay.

Yes, and your view at the time, and I'm really talking at the time, that it was appropriate that - - -?---May I ask? Could I have the, what I just, what you, the other email back again, if I may, just to make sure that the dates are correct in my head. It's the, I'm just trying to remember. It's 17

30

September, isn't it.

ASSISTANT COMMISSIONER: He wants - - -

THE WITNESS: The one at the back. I'll keep them together. That's the one, yes. 24th October.

MR BLAKE: All right, Mr Howe, I'm not sure what document you have just received back. Is that the - - -?---I'm sorry.

40 ASSISTANT COMMISSIONER: That's Exhibit 8 I think. It's the, his advice about whether the security should be installed.

MR BLAKE: Yes, okay, so you're looking at Exhibit 8. All right? ---Correct.

Is it correct to say at that time you distinguished in your mind between three situations. Firstly, and I'll just deal with them each time, each one and ask you a question. If there was a clear link between an incident of harassment

and the business of Council for either the Mayor or the General Manager, in your view that was an operational cost which should be paid for by Council - - -?---Correct.

- - - in respect of (not transcribable) security?---Correct.

10 That's the first situation. The second situation was if the source of the harassment was indeterminate, it couldn't be determined one way or the other whether it was related to Council business or not, and security measures were undertaken, is it your view that that would be an operational cost?---Up to the point where it was determined whether it was the first case or the third one that you're going to ask me about.

Yes. And the third one, if it was clearly not connected with Council business and known to those involved that was not an operational cost and would not be covered properly by Council expenditure?---That's correct, yes.

20 And it was that view that you sought to convey in your letter of 24 October, do you agree with that?---That's correct, yes.

And you had in mind in giving your advice the second situation, is that correct?---Absolutely.

30 Yes. Now, in the third paragraph of the letter, you refer to your understanding in that similar situation have occurred at other councils and this has been the approach taken by those councils. What councils did you have in mind when you wrote this letter that you had in mind?---Well, there were three but it, there were, the three that I had were Auburn Council.

Yes?---And I said to you I think before I mentioned that it was five years but it's probably more like eight years ago, Shellharbour.

Yes?---And there'd been many more instances at the two I mentioned and the third one was my best man when he was at Blue Mountains but again that's way back in '93 but, where they bombed the council. They were fairly obvious situations where there was a threat.

40 So you had in mind those instances - - -?---Correct.

- - - when you wrote the letter, yes, thank you?---I'd suggest to you that the, the circumstances of Shellharbour were the most recent and the one that had the most force on me.

ASSISTANT COMMISSIONER: I understood with Shellharbour though they didn't pay for any protection?---No, but the, the General Manager provided a great deal more assistance to the, to his, to the Director. He also brought in KPMG and a number of other organisations to check out the, the

source of the emails and that went on for some time and in the case, and the police were in the second case.

They didn't provide the sort of - - -?---I also suggest - - -

10 - - - support that is being suggested here?---No, but I didn't, I didn't say what sort of support should be provided. I was simply saying that you need to get an expert security firm would make the decision as to what level of risk there was and what they would do. See, I had no knowledge of the fact of whether or not there would be, you know, what method of security would be being provided.

All right?---Is that, is that reasonable in terms of answering the question, I mean.

20 Yes. Although I would've thought somebody reading that last paragraph of your letter would've thought you knew of other councils where similar security had been provided as an operational cost to the council and yes, so you've named Shellharbour as one of them. I would've thought it couldn't be called an example of where security had been provided as an operational expense?---I understand.

All right, Mr Howe, I'll just ask you if you'll look at the email I showed you again and just having your refreshed your memory from the nominated paragraphs 1, 2 and 3 in the letter, does that refresh your memory that those were the matters of which you were informed by Mr Romano as constituting the harassment that he had experienced?---I have to admit I don't remember number 1.

30 Yes?---I certainly remember 2 and 3 and, as I say, unfortunately I don't remember the email as such. I do remember a phone conversation. It's not unreasonable that the time, if you look at the timing there that he could have set this as a basis on which he was confirming the, the conversation and my memory is not giving me a clear answer on that.

Thank you, Mr Howe.

40 (not transcribable) Commissioner. Yes, nothing further, Commissioner. I would seek to tender that email.

ASSISTANT COMMISSIONER: Well, Mr Howe doesn't remember getting the email and it's providence is unknown to me. I think the appropriate thing would be if you want to give it to counsel assisting perhaps it can be checked out in some way. I wouldn't be willing to accept it at this stage.

MR BLAKE: As the Commissioner pleases and I'll take that email back, thanks.

ASSISTANT COMMISSIONER: Yes, thank you.

MR BLAKE: No further questions.

ASSISTANT COMMISSIONER: Thank you, Mr Blake. If nobody else wants to question this witness I think he can be excused. Yes.

10 MS RONALDS: Yes. I think he'd like to return to his northern climes.

ASSISTANT COMMISSIONER: Thank you, Mr Howe, you're now excused.

THE WITNESS EXCUSED

[3.42pm]

MS RONALDS: I recall Mr Baird.

20 MR BLAKE: Commissioner, I'm just wondering if you want this marked in some way or are we happy, so there's no question of what is shown?

ASSISTANT COMMISSIONER: Oh, look, yes, if you like I'll mark it for identification, MF1 and counsel assisting will check it out.

**#MFL1: EMAIL FROM PAT ROMANO DATED 24 OCTOBER 2007
TO BOB HOWE, SUBJECT: SECURITY FOR GM AND MAYOR**

MS RONALDS: Now, you have a folder with you, Mr Baird, what's the folder?---It has some documents in it.

Of yours?---My documents.

Can you just pop it on the side?---Sure.

10

Just before we turn to the bills, have you ever given Mr Romano private legal advice?---I don't recall. I don't think so.

Did you attend, sorry?---I don't think so.

Did you attend a meeting with Mr Romano at the St George Bank on 11 April, 2007, the St George Bank at Chifley Square, which was related to discussions about finances for Befaro Pty Limited?---I introduced Mr Romano to the St George Bank, that's correct, I referred him to that, he was - - -

20

Did you attend the meeting?---Oh jeez, I, I don't remember if I did, I was there just to introduce him I think. I don't remember.

So is it your evidence that you didn't give him any legal advice about Befaro?---Yes.

And if you were present at the meeting as recorded in other documents that was for a matter of introducing him?---Yes.

30

And you were introducing him in his personal capacity not in his capacity as general manger?---Correct.

You understood and knew, did you not, that Befaro Pty Limited was a private enterprise of his in the sense that it was not connected at all with his role as General Manager?---I don't even remember the structure or the company. I was just taking him down, he said he was, he said you don't know of any good bank managers, I said yeah, I've got one, I'll introduce you.

40

Well, did he, did he tell you why he needed a bank manager?---Yeah, he said he was considering an investment of a, he was considering an investment in a property and I said make sure it's not in Burwood, he said oh, no, it's not in Burwood, I said fine, I said if you need a reference to a good bank manager I can help you and I think I referred him to the bank. I'm pretty sure that if I went there it was only for an introductory matter. I'm sure that I didn't act in the matter and I left him to his own devices and he negotiated with the bank.

And that would've been in your role as a friend?---As a friend, yes, not as his solicitor.

Not as a legal advisor?---But it was not uncommon for me to field requests for, from senior managers, senior executives at Council, General Managers where they would often ask my view about any range of professional services including banks.

- 10 For their private - - ?---For their private business or for, if they're family related affairs but not in a, in the sense of acting for them just as a, Do you know any good bank managers, do you know a good accountant.

I'm just trying to dichotomise with you that that advice would be given as friend to friend?---That's my belief, yes.

So that you have a number of other General Managers do you who you classify as friends?---Professional friends and/or social friends, yes.

- 20 And you would provide them that sort of advice from time to time?---If they rang, yes, it's a, it's a normal part of the relationship that you develop at a senior level and I didn't think, didn't think that it in any way compromised me, I wasn't lending him the money, I was just saying, Look, these people have dealt with me very nicely go and have a talk to them.

Now, you've had occasion to look at the accounts, sorry, invoices - - -?---The bills? Yes, I have.

- 30 Sorry, bills is a bit of a (not transcribable) term. The invoices that - one of them appears at least to relate to what we were talking about earlier discussions with Mr Leggitt et cetera?---Seems that I'm no longer entrusted with any documents, they've taken them away from me again so I don't have them. One of your offsidiers came and took them from me I believe, back to - - -

They're meant to give them to you not take them from you?---I just followed orders. There's a bundle, I think he said he was going to copy them.

- 40 I'm sorry, Mr Baird, we're just, apparently they needed to be copied. You didn't write on them?---No.

Now, in relation to the matters we were discussing before and the electoral fraud, so-called, or I think it's called something more discreet in the memos. Is there any comment you can make about these - - -?---Yes, I can, I can explain that they relate to two entirely different matters.

Okay?---The election expenses for Local Government elections and it's an invoice dated the 25 November, 2008.

What's the quantum, it's easier for me to work out the quantum?---The total is 7,084.

10 Right. Yes, what's that one about?---That was relating to quite a significant piece of work which was, the Burwood Council were, as all Councils in New South Wales were being levied a fee, a cost to reimburse the cost of running the election by the Electoral Commission and I can't remember the quantum of the amount being charged back to Burwood but it was many hundreds of thousands of dollars.

Right?---And Burwood wanted to challenge the basis upon which the fee was charged whether it was, firstly, lawfully - - -

Just stopping you there. It's a separate issue - - -?---Separate matter, yes, separate matter.

20 I know it was interesting but if I could just hold you there. So the \$7,084 doesn't relate to the issue we were looking at about before about residential, non-residential electoral - - -?---None whatsoever. If you have a look - - -

So if we remove that one - - -?---Yep.

Sorry, you were about to tell me - - -?---Well, you see the entry on the 12 of the 11, '08, confirm with Pat Romano, Burwood Mayor and the President of the Local Government Shires Association.

30 Yes, I see that, yes?---Yeah. I recall that meeting and it was all about the LGSA backing Burwood to run a challenge.

Well, it seems to start on the 3 November conferring with the Electoral Commissioner, Pat Romano and reviewing (not transcribable)?---Yes, we had a meeting. Yes, we had a meeting with him as well.

40 All right. So that one we set to one side. Now, there's a loan for \$495 that is headed, "Election Expenses for the Local Government Election". Do you see that one?---Yes.

Does that fall in the same category?---It does, I believe.

It has the same file number, does that assist?---Yes.

And then there's another one for 1,120 which has the same file number ---Yes, that appears to be the same - - -

5475411?---Yes, that's the same matter.

So if you put those three, sorry, three, four, whatever it was, three into one bundle?---Ah hmm.

And then we have three left. There's the original one I handed you which is the \$2,442?---Yep.

Dated 30/9/2008. Do you have that?---Yes.

10 There's another one dated the same date with the same file number for 4,488 and this one records the presence of Mr Leggitt and you in chambers and is consistent with what was your recollection it seems?---4,488, yes.

You see there - - -?---This, could I just quickly look at that one again?

15/9 and it has you attending Mr Leggitt's chambers - - -?---Yeah, that's - - -

- - - and that seems consistent with the note on top of his?---Correct.

20

And then there's another one for \$434.50 with the same file number but called "Advice on the Mayor Election"?---What date is that one? 30th - - -

31/10?---That might, that may also have been a separate aspect. I can't recall whether, mayor election has a certain meaning in local government.

Yes, but it's got the same file number, would that - - -?---It's a general advice file so it could've mean there was a discreet question asked as to the process and procedure for the election of a mayor.

30

But clearly then, as far as I understand it, the two that we could put into the category of the advice that we were looking at earlier - - -?---Yes.

- - - is the 4488 and the 2442?---That appears to be correct.

Thank you?---Do you want them back?

If I could tender, I think at this stage it's just necessary to tender two, the 2442 and the 4481 ones.

40

ASSISTANT COMMISSIONER: Yes, those two invoices that relate to the relevant matter will be Exhibit 38.

#EXHIBIT 38 - TWO MADDOCKS INVOICES FOR BURWOOD COUNCIL (\$2,442.00 & \$4,488.00)

MS RONALDS: Yes, Mr Blake?

MR BLAKE: Could Mr Baird be shown Exhibit 16, please?

Mr Baird, you've been shown this account before and I just want to understand a couple of aspects of it. Where it's got in each of them "Our Ref: DJB10" that indicates that you were the partner in charge of this matter, is that correct, just at the top left hand corner?---The partner with the reference to the other lawyer working on it, Todd Neal, TAN and the file number.

Yes. And I think you may have clarified this just in an answer a little while ago, you had a file called General Advice Burwood Council, and there were a number of matters in that that weren't allocated a separate number, is that correct?---That's correct.

And so the number up the top, 4000564 that was the general advice file for Burwood Council, am I understanding it correctly? So DJB TAN and then 4000564, is that the file number?---I believe so, yes.

Yes. And if you go over to the reverse page, they're set out in the same way but the hours are, seem to be in units of point 10 of an hour and there's a particular amount given. Was there a time costing system based on a six minute unit of time, is that why it's recorded in that way?---I, I think so, I can't recall the exact detail but I think one unit - - -

Well, that would be right, wouldn't it, one unit?---Yes, six minutes, I think that's the way that the computer was programme.

Yes. And if you just look at the two reverse pages - - -?---Ah hmm.

- - - I can only see one telephone attendance and that's the one that counsel assisting referred you to, the one on 15 - - -?---Yes.

- - - November, 2007 between Mr Neal and Mr Cummins?---Yes.

Now you recall your evidence you had a number of conversations with Mr Romano. Does that indicate that you didn't charge for them if they're not here?---That's correct.

Right, I see. Now you also, I think, referred to a daybook that you maintained in 2007. Would it be possible for you, I think you can bring that tomorrow if necessary?---I'll make a note.

All right. I don't think you need to make a note but you recall that, do you? ---Yes.

If it's available you'll bring it?---If I can find it, yes - - -

Yes?--- - - - I'll bring it.

And where you have being giving evidence of meetings and telephone conversations in your evidence to counsel assisting I take it you were relying on your memory in giving your recollection of those events?---Yes.

Your memory wasn't assisted by refreshing your memory from a file note for example?---No.

10

Thank you. Now, I'm wondering, Commissioner, if Mr Baird can be shown MF1.

ASSISTANT COMMISSIONER: Yes.

MR BLAKE: It's quite small, Mr Baird, are you able to read it?---Yes. I've read it.

20

Well, you'll see it's in two parts?---Yes.

One and you're familiar with a string of emails, but one from Mr Romano to Mr Howe and said to be copied to yourself and Mr Faker at 11.22am and then 11.26am from Mr Romano to yourself and copied to Mr Howe and Mr Faker. Do you see that?---Yes, I can see that and I, and I, I understand it, yes.

30

Yes. Do you recall receiving those two emails?---I, I couldn't say yes or no to that, I received on average between 80 and 120 emails per day sometimes and I assume that it was sent to me because it has my name on it.

Thank you. And have, I'm just unsure from your evidence, there were a number of files that I think were provided to the Commission and maybe went to Ebsworths, do you recall inspecting the file to see the contents and whether this particular email was there or not or, or didn't you look at the contents of the files?---I only received them last Thursday I think, the bulk of them. I went through them. I, I don't recall, I think that this may have had an attachment to it which I'd have to check but there is a paragraph there which I'd, I'd, would be concerned about and that - - -

40

Which paragraph would you be concerned about?---The third paragraph it says, "In addition I consulted with Council solicitor David Baird who has advised me that I should contact the police and engage a private investigator. I was also advised by the Council solicitor that I should install at Council's expense a security system in my home. They further advised that this security system should also be installed at the home of the Mayor." I don't think that accurately records the discussion that I had with Mr Romano.

Your evidence is you can't recall receiving this one way or the other?---I can't recall receiving it, no.

I'll be half an hour.

MS RONALDS: My friend advises me he'll be half an hour or so and I regret that we'll have to return tomorrow. I'll have to be accompanied by your 2007 day book and - - -?---Could I just ask, the months that you are interested in for the day book?

10

September, October, November, December?---September through to December 2007.

And then September 2008, sorry, August, September because you started from the bills having discourse in - and we'll speak to Mr Neal when you leave the witness box to sort out any access to it before the start of tomorrow.

20 I regret the inconvenience to you but you'll have to come back tomorrow?--
-I understand.

Commissioner, is there any other matter?

ASSISTANT COMMISSIONER: No. All right. Well, we'll adjourn until 10 o'clock tomorrow morning.

THE WITNESS STOOD DOWN

[4.03pm]

30

AT 4.03 THE MATTER WAS ADJOURNED ACCORDINGLY [4.03pm]