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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

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AT 10.20AM

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ASSISTANT COMMISSIONER: Thank you. Please be seated.

MS RONALDS: Commissioner, if I could just note for the record that Mr Neal, on behalf of Mr Baird, has produced to the Commission four spiral, Spirax A4 notebooks and we'll review those return to them when Mr Baird returns next week if necessary.

ASSISTANT COMMISSIONER: Thank you.

10

<DAVID JOHN BAIRD, on former oath

[10.20am]

MS RONALDS: Now, just before Mr Blake starts, Mr Baird, if I could show you this document.

Commissioner, I'll just hand one up to you because it's not on the system.

20 Mr Baird, this is a document, obviously, it's a draft advice produced by you. Is that correct?---That is correct.

It's dated 10 July 2008 and just ignore the little B on the top of it for a moment if you would?---Yes.

And it's an advice, a draft advice from you at Maddocks in relation to the distribution of electoral material. Is that correct?---That's correct.

30 And you recall we were discussing this issue yesterday in relation to surveillance of Councillors and how that may or may not have happened, et cetera?---Yes.

And your state of knowledge and involvement in what appears to have happened?---Yes.

40 Can you recall the circumstances whereby you were asked to provide this advice or you were asked to provide an advice that turned into this advice? ---Yes. It would have been probably early July 2008. I would have received a call from Mr Romano and he would have raised the issues that are set out in the background of the advice.

And that's starting at page 2?---Yes. And I believe that there was also a Director General's bulletin, the Director General of the Department of Local Government relating to the caretaker, or what was now described as the caretaker period which comes into effect before the local government elections which were due to be conducted in September 2008.

You'll see that down on the last paragraph there it refers to a DLG circular?

---That's the one, yes, and this was a, a new development in local government where the Department were endeavouring to introduce the notion of a caretaker period for councils and effectively neutralise any major political activity or policy decisions during the immediate run up to the election. There were also some changes to the legislative provisions which I've referred to the Local Government General Amendment Elections Regulation 2008 and they were quite complex provisions which controlled or sought to control and regulate the, the material that could be referred to and the way in which you put together electoral material for distribution. So

10 ---

Right. And that was in essence the nub to - - -?---Yes, and Mr Romano sought advice on that because the impression created by, I think, the Director General's guideline and the, there may have been even some press in relation to this was that there was going to be a, a greater restriction on electoral material so he asked for some detailed guidance on this matter which we prepared and forwarded as a draft as this document indicates on or around the 10<sup>th</sup> of July.

20 And did you have a discussion with Mr Romano after you provided him the draft about the contents of the draft?---Yes, I recall it because in his somewhat colourful fashion he rang me and opened with a salvo which was quite hostile to the contents of all the conclusions.

Well, rather than just conclude if you could tell us what he said?---Well, he was, he, he was openly challenging me in relation to a number of the conclusions that are stated in the executive summary and I remember when we went through it, I think it was by telephone and it was quite a detailed and quite a robust discussion because he was quite hostile to some of the

30 conclusions and I recall him making a statement to the effect that, I think he described the conclusions at one stage as BS.

But use the full term?---Bullshit. And that the Labour Mayor sought, had got their own advice and my, my advice wasn't worth the paper it was written on. This was half joking but it was, I read, I knew him pretty well and we were able to discuss things in a fairly frank fashion but he was quite hostile to some of the conclusions which would have possibly curtailed the way in which the Mayor of the day was proposing to advertise or distribute material for his political purposes.

40 And that's why I'm confused, Mr Baird. What possible role did the General Manager of the Council have in relation to what an individual political party would put into a campaign leaflet?---Well, that's a good question, I don't know the answer to that but I'm just recounting the conversation that he put to me that I think he was putting it in term, well, if the Mayor can't say this then that sounds like bullshit. If the Mayor can't do this that sounds like bullshit. Now, what are you trying to say, why, you know, this, this is, this,

this, you know, he was pretty dismissive of the advice. So I, my response if you want, that's what he said.

And did you change the advice from the draft advice?---No.

This is the draft?---This is the draft.

10 I assume there's a final one somewhere?---I assume that to be the case too but I haven't seen a final copy. I did not change it nor would I change it and I took him through the provisions, I said, That's my interpretation, Pat, I know it's conservative but that's my interpretation and my role is to interpret the legislation and you've got to try and understand it and apply it and if you don't like it well, that's a matter for you but this is the way it is. And I struck to my guns and I think he, his, his attitude was, I remember words to the effect, Oh well, they'll go and get their own advice and the Mayor will do what he needs to do to be re-elected. That was - and it was a, it wasn't a happy conversation.

20 And, but as far as you recall you produced a final advice that was consistent with the advice included in this draft advice, set out in this draft?---That's my understanding, yes. There was no change that I'm aware of that would have watered it down in any way, changed the elements of the executive summary.

Thank you. Commissioner, if I could tender that advice.

ASSISTANT COMMISSIONER: Yes. That draft advice will be Exhibit 39.

30

**#EXHIBIT 39 - DRAFT ADVICE DATED 10/07/2008 FROM MR BAIRD TO THE GENERAL MANAGER, BURWOOD COUNCIL**

MS RONALDS: I have nothing further at this stage.

ASSISTANT COMMISSIONER: Thank you. Yes, Mr Blake.

40 MR BLAKE: Mr Baird, I just want to ask you about your practice in providing advice to various clients. I take it your practice is where you provide written advice as to fully deal with the issues the subject of the advice?---I endeavour too, yes.

Yes. And you endeavour to express clearly the conclusions that you've arrived at?---Yes.

And I take it that when - I'd just like to ask you a bit about the preparation of the draft advice, it does have the name Monica Kelly, she was a more

junior solicitor working under your supervision?---That's correct. Draft advice you're referring to the 7 November, 2007?

Yes?---Yes, okay.

In fact it might help, Commissioner, could Mr Baird be shown Exhibit 10, please. Is it correct that that draft advice was prepared under your supervision?---Yes.

10 And was sent out after you had approved it?---Yes.

Yes. And I'll just ask you to look at the very first paragraph, we refer to your email dated 24 October, 2007, so that clearly indicates that there had been an email from Mr Romano or from the Council. Do you agree with that?---Yes.

20 Could Mr Baird be shown MFI 1, please. Having had your attention drawn to just the first paragraph and the reference to the email dated 24 October, 2007, does that refresh your memory as to whether MFI 1 was in fact the email that you received?---It could've been, but it doesn't appear to be a (not transcribable) instruction. The email from Pat Romano where I'm (not transcribable) in with the Mayor appears to be sorry.

I know, perhaps you might direct your attention to the email above from Mr Romano to you directly copied to Mr Howe and Mr Faker?---The top email, yes.

Yes?---Yes.

30 You'll see, further to our discussion on this matter two weeks ago, I request formal advice in writing on this matter. I have provided details in the email for (not transcribable)?---Yes.

And please note that I seek this advice as a matter of urgency?---Yes.

40 Does that refresh your memory that that was the email that was referred to in the draft price, Exhibit 10?---The top email is, appears to be the email instructing. I can't recall, I just don't remember whether the annexed email was also part of the email.

So you would accept it was likely that the, at least the first part of the email was what you received?---Yes.

Yes. All right. I seek to tender it now, Commissioner.

ASSISTANT COMMISSIONER: Yes. That email will be Exhibit 40.

**`EXHIBIT 40 - EMAIL FROM PAT ROMANO DATED 24  
OCTOBER 2007 TO BOB HOWE, SUBJECT: SECURITY FOR GM  
AND MAYOR**

MR NEILL: Commissioner, I have not seen it, I wonder if I might just have a quick look at it for a moment.

ASSISTANT COMMISSIONER: Certainly.

10

MR NEILL: Thank you.

ASSISTANT COMMISSIONER: Ms Ronalds, have we been able to find a copy of this email in Council records or in Mr Baird's files?

MS RONALDS: We haven't because we had so many other things to do last night and this morning. I'm sorry, it was not a priority to identify it. But it wasn't readily identified. It may exist, but we haven't been able to find it.

20

ASSISTANT COMMISSIONER: No. Well, look I mean at this stage I'm happy to make it an Exhibit and - - -

MS RONALDS: We'll endeavour to do so, but as you appreciate there's a lot going on behind the scene as well as out the front so - - -

ASSISTANT COMMISSIONER: Yes. Certainly.

MR BLAKE: All right. Mr Baird, if you can look at Exhibit 10, please.  
30 The, you were asked to advise on two particular matters and they, they are referred to in the first two paragraphs. Do you agree with that?---Yes.

And there were some that you set out the background and then the law and you were of the view in paragraph 15 that the General Manager had the statutory obligation to uphold provisions of the Occupational Health & Safety Acts, so far as concerned the Council?---That part of the advice I, I recall I sought assistance from our employment expert, Mr Gardner, and his team and they had the input into that part of the advice.

40 Right, yes. You had no reason to doubt that advice from the employment team?---No, no.

And you dealt with the provision of security to the Mayor separately from the provision of security to the General Manager - - -?---Yes.

- - - and the Mayor in paragraph 16 to 20?---Yes.

And your view was that, in paragraph 20 was that Mr Romano as General Manager had authority to authorise the provision of the security system to the Mayor's house?--I, I believe, well, firstly if I could suggest with respect this was a preliminary view, not, not the final view but you - - -

I'm just saying at the time this was written - - -?---At the time it was a preliminary draft review, review - - -

10 Yes?---Preliminary advice but you've got to read paragraph 20 with paragraph 17 where I was trying to highlight that the use of Council's resources have to be ethical, effective and efficient, you must not use them for private purposes unless the use is lawfully authorised by the proper payment and proper payment is made where appropriate. So I think if you read the General Manager's powers as a general statutory mandate and discretion for the day to day operations of Council you have to then read it subject to those other qualifications that are also set out.

20 Right. Well, provided it wasn't a private matter you were satisfied that the General Manager had authority to approve the expenditure. Is that correct?  
---Generally, yes.

Well, you say generally yes, yes or - - -?---Providing the, generally providing that you, it gets back to this, this notion which isn't fully articulated in the draft advice that the idea of a private expenditure - - -

I think I put that qualification to you - - -?---Yeah.

30 - - - provided it wasn't a private expense the General Manager had authority, that was your view?---Yes. If, when, when you read paragraph 16 to 20, yes.

Yes, thank you. And so far as the advice dealing with the General Manger, that was in paragraphs 21 to 24, I think that's right, and that's dealt with as a discreet matter?---Yes.

And your view was, in paragraph 24, one, that the General Manager had authority to authorise the expenditure on a private investigator and the provision of a security system?---Yes.

40 And also he had a statutory obligation in terms of the Occupational Health and Safety Act to do that?---Yes. I would also suggest that those powers were also subject to general obligations under the code of conduct, so the same qualification.

There's no particular expression, at least within paragraphs 21 to 24, there's no reference to the code of conduct, you agree with that, don't you?---That's correct.

And, and you say in paragraph 24 your conclusion, "Because of the above the cost of the security system should be met by Council." Do you see that?  
---Yes.

You'd agree that that advice is unequivocal, wouldn't you?---In those terms.

Well, in the conclusion, paragraphs 28 to 31, in paragraph 29 you were proceeding on the basis that there was a possibility that the harassment of which you had been informed arose because of Mr Romano's position at the Council?---That's correct, that's, that's correct.

And - - -?---So that there was direct linkage between the person causing the harassment.

Well, it doesn't say that, Mr Baird, does it?---Well, I think that's the implication.

It says it is possible?---Yes, it is possible that you have suffered harassment because of the position you hold at Council.

I mean that's pretty obvious with most of these harassment matters because most harassers don't identify themselves do they?---That's, that's possible, yes.

And on the basis of a possibility, your chain of reasoning or reason for the process was that in paragraph 30 what was a reasonable reaction to the possibility of harassment. Do you agree with that?---Yes.

And your view was it was likely that the installation of security system at Mr Romano's home would likely to be considered a reasonable reaction?  
---Subject to the other provisions, yes.

And also the installation of a security system at the home of the Mayor would be likely to be a reasonable reaction?---Correct.

And paragraph 31 deals with the surveillance expenses. You agree with that?---I, when you refer to surveillance expenses - - -

Sorry, I'll withdraw that, I've misled you?---Yes.

It dealt with the engagement of a private investigator?---Correct.

Yes. And your view at that time was that it was a reasonable expense?  
---The type of expenses that I was referring to although they're not articulated in the advice were the matters that were discussed between myself and Mr Romano and I referred to those yesterday where I was indicating to him surveillance or investigation of numberplates of suspicious cars and/or investigation of phone numbers that could be identified from



harassing calls, that was the context of it. And I know that the advice doesn't say that but I just want to give you context.

I take it, Mr Baird, that you in accordance with your practice wrote advices to declare?---That's absolutely correct but at this stage on the 7 November this was considered to be a work in progress and it wasn't regarded and shouldn't be regarded as the final product.

10 I understand that. But there was, but you'd agree with me there was no suggestion in the advice in paragraph 31 that it was limited to any particular type of expenses of a private investigator?---The advice, that's correct, yes.

Yes. And I take it you were aware that the advice could go beyond Mr Romano, might go to the Council in due course? That was at least a possibility in your mind?---Yes, yes.

20 Yes. Now, were you also involved in the preparation of the advice of the 15 November, 2007 which I think is Exhibit 14?---Which is referred to as the final advice I believe.

You believe that's the final advice?---No, it was under a cover, covering email of the 29<sup>th</sup>, that's the one you're referring to?

Perhaps, can you return for the moment Exhibit 10 and Exhibit 40 and can be Mr Baird be shown Exhibit 14 please. Now, if you'd just like to refresh your memory?---Yes.

30 You had some involvement in the preparation of the final advice didn't you? ---Yes.

And while it has the name again Monica Kelly as the contact person at the top of the first page it was prepared under your supervision?---Yes.

And it was sent out with your agreement to the contents?---Yes.

Yes. And you expressed the opinions you held at the time?---Yes.

40 Prior to or in the period between the 7 November and about the 15 November you had a conversation with Mr Romano about the initial advice didn't you?---At least one maybe many.

Yes?---Mmm.

And in one of those conversations Mr Romano told you he'd received an email from Robert Cummins in relation to the legal advice you provided on the security investigation matters?---Yes. The installation of security, yes.

And the - - -?---Surveillance.

Surveillance. And you knew Robert Cummins in your dealings with the Council?---Yes.

And you knew that he had done some legal training or had a law degree?  
---That was my understanding, yes.

Yes. And Mr Romano told you that Robert Cummins considered your advice to be extremely weak. Words to that effect?---Yes.

10

And was not sufficient to protect either his or the Mayor's interest?---Can't recall the exact words but I know that he informed me that Mr Cummins was critical of the advice.

Yes?---Yes.

And did he - - -?---The preliminary advice.

Yes, I understand it was a draft advice?---Mmm.

20

Did Mr Romano inform you as to the reasons why Mr Cummins was concerned?---I can't remember the exact basis of the concerns but I, I, my recollection is that it was concerns as to - I think accountability was, was the issue.

Right?---And I shared that concern.

30

And Mr Romano asked you to have a further look at the advice in the light of those criticisms that had been made of it?---Yes. And I volunteered and he accepted my offer to speak to Mr Cummins.

And would it be fair to say that you were annoyed that Mr Cummins had criticised your advice as being extremely weak?---It would be fair to say that I was concerned that anyone would criticise an advice that had my name on it and I was very keen to find out why they had that concern and I was, I can, I had an open mind to address the concerns in a collaborative way and to understand their concerns.

40

And I suggest that you said, Who the hell does Robert Cummins think he is, having a law degree doesn't make him an expert on these sorts of issues?  
---I, I don't remember.

It's something you could've said though isn't it, Mr Baird?---There may have been some banter but it was probably more just professional pride.

Yes, I'm not critical, Mr Baird?---I don't remember.

Right. Thank you. And Mr Romano said, Don't worry about the colourful language just get on with the advice, I'm keen to have the matter finalised? ---I don't remember that.

Thank you. Now, could I just ask you to go to Exhibit 14?---Yep.

Now, there were indeed quite a few changes made to the advice weren't there?---Yes.

10 In particular quite an amount of research went into - and you'll see particularly around the position of the Mayor paragraphs 10 through to 18, you'll see at the bottom of page 5 a number of cases including authority of the High Court was referred to?---Yes, yes.

And some material was introduced into the advice that had not been there previously with respect to the model Code of Conduct in paragraph 12 and following. Do you recall that?---Yes. But I think the model Code of Conduct is referred to in the preliminary advice, I think it's the identical quote from the Code. There's certainly supplementary material, I'm not - - -

20

Yes, supplementary material. Perhaps I've misread - - -?---It's a much more comprehensive analysis.

Right. Including reference to those cases. But your conclusion regarding the Mayor was set out in paragraph 17?---Could you just hold on a second, I'm just trying to, paragraph 17?

Well 17, perhaps and 18, I was going to take you through them separately? ---I was looking at paragraph 15 I think. Paragraph 15 is an additional comment where there's emphasis on or a distinction drawn between public and private purposes.

30

Yes, yes. I, I, I accept that. But in paragraph 17 you commence with the words, considering that paragraphs above and there are four dot points? ---Yes.

And that expressed your conclusions didn't it, so far as expenses for the Mayor?---Yes.

40 And on the basis of that your view was in paragraph 18, it may be considered reasonable for the cost of the security to be met by Council? ---Subject to the other qualifications, yes.

And that qualification was in substance that it wasn't for a private purpose? ---Yes.

And you were aware right, the practice of other Councils was the same as you set out in the second sentence of paragraph 18.

ASSISTANT COMMISSIONER: It says we are instructed that the practices of other Councils are the same.

MR BLAKE: Well, I'm going to ask (not transcribable) that, Commissioner. I just want to test his awareness first?---I see the paragraph and I believe that that was from, I, I, my recollection was that Mr Romano instructed me that it was not unusual that other Council's were taking this sort of view in relation to protecting their, the senior people. And I think, I  
10 don't remember the details.

So did you have any awareness yourself from your practice in local government law that other Council's had come to a similar arrangement at this, at this time?---I had given a lot of advices over the years in relation to the installation of security and or surveillance equipment on public premises, Council Chambers and the like. I'm trying to recall whether there were any similar advices for upgrading security at private residences. I don't remember. But I do remember, I think, many, many years ago there was an instance of a threat, a threat of, a death threat to a particular Mayor  
20 and there was a suggestion that it was a, a person within the local government area who was responsible. I think the police were brought in and I think that there was an agreement to put on security, security patrols, private patrols around the Mayor's house at the time. I can't remember the exact detail, but that's probably a similar situation.

Where it says, as the Commissioner pointed out, we are instructed, this is also consistent, can you recall from whom those instructions came?---My, I don't remember. It could've been Mr Romano, it could've been Mr Cummins, I don't remember. It could've been, I don't think I was talking to  
30 this, talking about this to Mr Hullick, but I'd say probably, probably, I'm speculating, Mr Romano.

All right. Well, don't speculate?---Well, I can't tell, I just don't remember.

Thank you. And then the advice goes on to deal with the provision of security to the General Manager?---Mmm.

And your view expressed in paragraph 19 was that section 335 of the local government act gave the General Manager a broad function for day to day  
40 management?---Yes, but I would, I'm not trying to be argumentative, but I think you've got to read the whole sentence as a complete sentence and not just take me to section 335, because critically it says, in addition to the above requirements under the code of conduct which apply to yourself. And I was seeking to emphasise to the General Manager that the provisions referred to in the discussion of the code of conduct which were referred to in the provisions of security to the Mayor in paragraph 12, also applied to him and if you read paragraph 12, it sets it out in black and white, you have to use Council resources ethically, effectively, et cetera, et cetera. You can't

use them for private purposes. Now if you, if you read the advice subject to that, in other words, I'm linking the code of conduct, your general power under section 335, you've got to read the two together. So the 335 is not a blanket mandate to go and spend money on any particular purpose. You've got to go back and look at the code of conduct. You can't spend it for private purposes. That's what it's trying to say.

All right. It was your view at 15 November, 2007, was that the powers conferred upon a General Manager under section 333 - - -?---335.

10

- - - 335 of the local government act was qualified by the code of conduct but might be approved under another section of the act. Was that your view?---My view was if you read 335 on its face and then you look at any other statutory, relevance statutory provisions or any other provisions that were governed the way in you exercise the power, therefore you read the two together.

All right?---And that's the way I've applied it.

20

Yes?---335 is a very wide power, but it doesn't authorise the, the use of funds without qualification.

And in paragraph 20 you refer to the General Manager being within the provisions of the Occupational Health & Safety Act, that was a, a view that you held?---Yes.

30

And in paragraph 21, you're of the view that the General Manager had responsibility to consider the application of the provisions of the Occupational Health & Safety Act to the Council?---I was, the OH&S provisions were drafted by my colleague in the workplace services group. But I accepted the conclusions.

40

Yes. And your view was expressed in paragraph 22 that the engagement of a private investigator and the security system fell within the General Manager's responsible decision making under the broad day to day management function for Council?---Yes. But once again, reading the words of the advice, it says, considering the paragraphs above. So you have to follow it seriatim and subject to those qualifications. But generally what you say is correct.

Yes. (not transcribable) required under the Occupational Health & Safety Act?---I believe that's correct.

And in substance the qualification was that the expenditure must not be for a private purpose?---That's correct.

And - - -?---And linked, not to be for a private purpose and linked to a matter related generally or a, or (not transcribable) with a Burwood Councillor connection, that was the other point.

Well, that's not in your advice, anything about (not transcribable) is it?  
---There is a section, I can try and find it. I thought there was a reference, would you allow me to refer to my copy of the advice, because I've marked it and I can it quickly. See I - - -

10 I don't think it's really up to me to allow anything.

ASSISTANT COMMISSIONER: yes, if it will quicken the pace, I'm happy for you to do so?---Thank you. No, I'm sorry, I was looking at the wrong provision. I apologise.

MR BLAKE: I'll suggest to you, Mr Baird, that your view remained the same in the final advice. In paragraph 27 your reasoning process was that firstly that it needed, there needed to be a possibility that the harassment was connected to the positions at Council?---That's the provision I was  
20 trying to find, yes.

Yes?---It's out of order in the earlier, it's been, it's been renumbered but 27 is the, is - - -

Yes?---The position of the General Manager and the Mayor of the Council are high profile positions and it's possible that they may have suffered harassment because of their positions held at Council.

30 So the first step in your reasoning process was a possibility of harassment being connected with the Council?---Being connected with their position at Council.

Their positions at the Council?---Yes.

And secondly, in paragraph 28, it was necessary to consider what was a reasonable reaction to that possibility?---Yes.

40 And your view was, in paragraph 28, was that the installation of security systems at the home of the Mayor was a reasonable reaction to you, your work?---Yes.

And similarly the installation of a security system at the General Manager's home was a reasonable reaction?---Subject to the instructions that I believe were correct, yes.

Yes, all right, we'll come to those in a minute. Your thinking at the time, when you wrote this letter, was that the installation of a security system at the General Manager's home was a reasonable reaction?---Yes.

And similarly, the engagement of a private investigator to, and I think these are additional words, establish who had conducted the harassment and their possible motives was within the General Manager's power to control day to day management of the Council?---Yes.

And that was reinforced by the Occupational Health and Safety legislation?  
---Yes.

- 10 And was an expense that could be legitimately reimbursed from Council funds?---Yes, subject to the other qualifications, yes.

Now, Ms Ronalds asked you some questions yesterday about the background material and perhaps rather than go back to Exhibit 10 I think it's substantially the same in this document, if you had been informed in terms of paragraph 4.2 that instead of hand delivered packages an unidentified letter containing a threat had been delivered to Mr Romano would that have caused your advice to change?

- 20 ASSISTANT COMMISSIONER: Mr Blake, I'm not sure that Mr Romano specified that the letter contained a threat, did he? My recollection is he said it was an anonymous letter but the contents of it have not been specified to my knowledge.

MR BLAKE: I don't think he was asked the contents.

MS RONALDS: Yes, he said the contents, he said the contents, as I understand it, was did you have a good weekend.

- 30 ASSISTANT COMMISSIONER: Yes. I mean, I'm sorry, to me that's not a threat at all.

MS RONALDS: Unless there's some other one that (not transcribable) a threat.

ASSISTANT COMMISSIONER: It's a question. I mean, the fact is, Mr Blake, we've spent a lot of time going through this advice asking him to confirm that he formed certain views.

- 40 The real issue is, I take it you based your legal views on the facts that were provided to you - - -?---Yes.

- - - by Mr Romano and Mr Faker?---Yes.

Now, if you'd know that most of those facts were in fact false would your advice have been the same or is it not possible for you to say?---No, I, if, if the, if I knew at the time what I now know the advice would be entirely different, it would have been entirely different. I have no doubt about that.

MR BLAKE: Mr Baird, if you were informed now that there had been threats and that there was a possibility connected with Council - - -

10 ASSISTANT COMMISSIONER: Look, I'm sorry, Mr Blake but I have never heard Mr Romano say in his evidence or I haven't seen it, you can point it out to me, that there were threats. There were anonymous calls, I've heard something about breathing and perhaps an insult, that's the most detail I have been provided to date about anything to do with the calls, the emails weren't true, the packages weren't true, there was an anonymous letter that said did you have a good weekend. I'm happy for you to put to the witness what, you know, your client says was happening to him but I think it has to be put accurately.

MR BLAKE: Thank you, Commissioner.

20 MR STANTON: Commissioner, I (not transcribable) learned friend and not to do it deliberately but to just correct something at this moment so it doesn't get too far into (not transcribable) currency, Mr Faker has never been attributed as giving any instructions to Mr Baird, positively or otherwise, concerning threats to him. It was Mr Faker who was collectively brought into the concern and not otherwise in terms of instructions, if you please, Madam Commissioner, so might the record reflect that, please. He was never the author or, more importantly, the conduit to Mr Baird of any specific instruction seeking his advice.

30 ASSISTANT COMMISSIONER: No. I understand the evidence is there was a meeting where, according to Mr Romano, Mr Faker said oh, the same thing's been happening to me.

MR STANTON: That may well be, ma'am, but nothing specific and it's borne out by Mr Baird's advice in Exhibit 14 that there are no specific instructions from Mr Faker.

ASSISTANT COMMISSIONER: No, I think that's true.

MR STANTON: And I'd like the record to reflect that accordingly.

40 ASSISTANT COMMISSIONER: Yes, thank you. Yes, Mr Blake.

MS RONALDS: Could I just note that if my friend wishes to speak he needs to come to a microphone and I think given Mr Faker will be the next witness perhaps somebody who nt.

MR STANTON: I think bearing in mind my position within the ranks of the bar I'm still in the right place (not transcribable).



MS RONALDS: Well, I think there's a solicitor here who could vacate a place for you.

ASSISTANT COMMISSIONER: I think we'll have to - - -

MR STANTON: (not transcribable) my voice is projected.

MS RONALDS: No, it's not.

10 MR STANTON: Can you hear me?

MS RONALDS: No, the sound recordist is not picking it up.

MR STANTON: (not transcribable) courts I've appeared in (not transcribable).

MS RONALDS: Well, it's not about whether the Commissioner can hear it, it's not on the transcript.

20 MR STANTON: Well, I (not transcribable).

MS RONALDS: So if I could ask you to please swap.

MR STANTON: (not transcribable)

ASSISTANT COMMISSIONER: Well, I think, I think the point is if you want to make an objection you'll just have to come forward and talk into one of the microphones, thank you.

30 MR STANTON: (not transcribable).

MR BLAKE: Thank you, Commissioner.

ASSISTANT COMMISSIONER: Yes.

MR STANTON: Did you (not transcribable) something, I'm not, I mean I'm told it's not recorded, I'm not quite sure what's been at this point but - - -

40 MS RONALDS: Well, it's just that if you wish to make another objection.

MR STANTON: Well, I'm not, I mean, I think I've sufficiently recorded my objection, you're apprised of it and those who possibly heard or did not hear but in the confines - - -

ASSISTANT COMMISSIONER: Yes. You wanted to place on the record that you say there's no evidence that Mr Faker ever provided the

instructions that formed the basis of this advice. Is that what you wished to say?

MR STANTON: (not transcribable) Commissioner.

ASSISTANT COMMISSIONER: Yes, well, that's noted.

MR BLAKE: Is this a submission or an objection to a question, I'm not quite - - -

10

MR STANTON: No, it's not an objection to a question. I rose to interrupt my learned friend not to object but to just make something clear at this stage and that's why I said I'm attributing to an (not transcribable) of currency so that it doesn't get lost with the continuation of my learned friend's cross-examination but I wanted to make that point at this stage. It's not a question from him there, it was an observation from yourself, Commissioner.

ASSISTANT COMMISSIONER: Yes, all right. Well, your comment's noted and Mr Blake can continue.

20

MR STANTON: I just didn't want it to get lost in the material that's going to ensue.

MR BLAKE: Mr Baird, I suggest to you that provided there was a possibility of harassment, whatever the means, connected with the Mayor's position at Council your advice would not have changed?---Could you just, I'm not sure what you mean by that, could you just explain.

30

Well, there are many ways in which someone might be harassed, telephone, stalking, there's an enormous variety. Provided there was a possibility of harassment connected to the Mayor's position at Council I suggest your advice would not have changed?

MS RONALDS: I object to that. This is speculation that is going way beyond the realms and in my submission is not at all useful or helpful for this inquiry.

ASSISTANT COMMISSIONER: Yes, I - - -

40

MS RONALDS: I'm trying not to interrupt my friend at all but it is really asking Mr Baird to speculate about something that wasn't the position. What we have is a position where certain matters happened, payments were made, that's what this inquiry is concerned about not what Mr Baird might've thought if he was told something else some other time.

ASSISTANT COMMISSIONER: Yes, I think the trouble is, Mr Blake, I mean harassment could, somebody could've yelled out to the Mayor in the street, You're stupid or I think you're an idiot. Would that have justified the

Council paying for a, you know, a security at his home. So I mean I think it would be very difficult for Mr Baird to express a view on the basis you've just put because it's too general.

MR BLAKE: I'm sure he will be able to give an answer one way or the other.

10 ASSISTANT COMMISSIONER: Well, I don't think the question is fairly put, I don't think it's of relevance because it doesn't seem to encapsulate any of the facts as shown by the evidence.

MR BLAKE: Commissioner, it goes to the issue of the materiality of every aspect of the background material.

ASSISTANT COMMISSIONER: Well, I think unless you put it as, did he think that any harassment however light and however vaguely connected to the duties of the Mayor or the General Manager would've allowed the Council to pay for a security - - -

20 MR BLAKE: I'll withdraw the question and I'll put it another way.

ASSISTANT COMMISSIONER: Yes.

MR BLAKE: Mr Baird, if your instructions had been that Mr Romano and his wife had received harassing telephone calls and had eggs thrown at their house by an unknown person and there had been noises outside their house with flickering headlights with cars driving away suddenly and that the power - - -

30 ASSISTANT COMMISSIONER: I'm sorry, Mr Blake, look, I cannot allow a question in those forms. Again, harassing phone calls could be a salesman ringing up at night, I find them very annoying. People making noise and headlights in the street I again find that very annoying but I wouldn't expect I need a security device as a result of it. I think it's impossible to put what you want to which is a theoretical proposition and reasonably expect Mr Baird to be able to say what his legal advice would've been. He set out in some detail in this advice what were the factual issues he was addressing. I think it is impossible to expect him to give an advice about the issues you're now raising.

40

MR BLAKE: I would've thought Mr Baird would've been in a position to say that. I mean, we're speculating here, Commissioner, but perhaps I can ask another question. In paragraph 4.1 when you refer to the harassing telephone calls did you ever find out the nature of what the harassing telephone calls was for the purpose of your advice, Mr Baird?---My recollection was that Mr Romano assured me that there were a series of phone calls where people were threatening him and/or his family and there

were other disturbing phone calls where there was heavy breathing and the like.

And when was that said to you by Mr Romano? Before this advice was written?---Yes.

Well, I suggest you're mistaken about that. Would you agree with that?  
---No.

10 No. I want to take you back to - could the Exhibit be, could Mr Baird be shown Exhibit 40 please. You've got it in front of you?---Yes.

You'll see the email directly to you refers to a discussion on this matter two weeks ago?---Two weeks ago?

I'm sorry. The email to you sent at 11.26am from Mr Romano. "Further to our discussion in the matter two weeks ago."?---I see, yes, yes. Yes.

20 I suggest that in that discussion Mr Romano told you he'd been receiving harassing calls?---Most likely, yes, that could've been one of the discussions, yes.

And he told you he got a letter in the mail?---No, I don't recall that.

Don't recall that?---I don't remember.

And he told you that there had been instances at his home with someone egging his house?---I remember that.

30 Yes. And he said he had engaged Richard Mailey and had spoken to the police?---I don't recall him mentioning Mr Mailey by name. He may have, I don't remember. I told him to ring the police and see if he could get some assistance from the police.

I suggest to you that he had told you he had spoken to the police?---He may have, I don't remember.

40 Right?--He also, he may have even mentioned a stalking incident, I don't, I, I'd need to refresh my memory on that.

Well, when you say you need to refresh your memory do you need to look at a document to do that?---Yes.

What do you need to look at to refresh your memory?---My, one of the day books that I've given to Mrs Ronalds. The Spirex books.

ASSISTANT COMMISSIONER: So you think you have some sort of contemporaneous note in one of those books?---Well, there's a reference to stalking I just want to check the date.

Yes, I'm happy for you to look at it if you can find it?---Yes, there's a reference to "Pat Romano, stalked 4.00pm on the 9 of the 10, '07." I think that's the date of the file note not the actual date of the incident and it's just a note that I made that would've referred to a discussion that I'd had with Mr Romano which shows that, it, it, in my memory I would've received a phone call and a complaint by him that as part of these problems that he was experiencing one of the aspects was he felt that someone was either stalking him or his wife. That was the context and that's dated the 9 of the 10, '07 which predates the draft and predates the email.

MR BLAKE: It would accord approximately with two weeks ago referred to in the email?---But that's one specific example.

Yes?---I think there were many phone calls.

20 And did he say that the investigator said he should install a closed circuit TV at his house?---I don't remember.

And he asked you whether he was, sorry, I'll withdraw that. He asked you whether he was entitled to upgrade the security at his home didn't he? ---That, that is a likely question that he would've posed because it was part of the general discussion about how to protect him and when we first started talking about these matters you can't just give a yes or no answer - I'm not trying to waste time but these were conversations over two or three minutes of each event and we discussed what had happened and tried to analyse the appropriate response and there was a lot of information that was being passed backwards and forwards.

I think you accept it was likely that he asked that question?---Most probably.

Yes?---I don't remember but most probably.

And he asked you whether that would be considered an operational matter? ---I don't remember.

40 And he asked you whether he would need the Mayor's approval or the Council's approval?---He may have and I would have, my response I think would've been let me look at it. I used to, that was a standard response, let me look at it because he always wanted the answer quickly and I often didn't want to be making a call on a complex issue and this struck me as being reasonably complex and serious and I probably said, Look, let me get back to it, I want to have a look at it, tell me more, let me have a think about it. I used to say that all the time.

Right. Well, I suggest that you said, and I'll put three sentences together, tell me if you can't answer it as a whole. My initial thought was that it appeared to be operational. I strongly suggest you speak to the Mayor or Council for approval to proceed. I will need to consider this issue in more depth?---That's exactly, that's probably a fair recollection. That's exactly what I was suggesting a minute ago, that I used to say let me look at it in detail. But the middle sentence that you just referred to - - -

10 That, I strongly suggest you speak to the Mayor or Council for approval to proceed?---Correct. I, I agree with that because I was concerned about the issue of accountability and speaking to Council was my shorthand reference to reporting back to Council on this.

And Mr Romano, and I suggest that you just, perhaps I mislead you, that this wasn't a telephone, it was actually a meeting when this took place?  
---Well, it may have been and there were so many meetings and, and discussions over the phone. I, it may very well have been a meeting and it could've been in his office.

20

Right?---I don't recall.

But I suggest that Mr Romano then said, the Mayor is here, let's go and have a talk to him right now?---What date approximately was that, if I may ask?

Well - - -?---I don't remember.

30 - - - it was about two weeks before the email?---I don't remember. We may have had a preliminary discussion with the Mayor. I just don't remember. My, my recollection of the discussion with the Mayor was more, well, it was later then that as I've indicated in my earlier evidence.

40 But you didn't, you wouldn't disagree that there could've been a three way discussion between you, Mr Romano and the Mayor about two weeks before 24 October?---I can't say absolutely no, but I don't recall it, because I, it was my practice, if I was at Burwood Council two or three days a week at some stages, often that might mean having a cup of tea with the Mayor or saying hello to the Mayor. And as I think I've indicated, it was Mr Romano's style to often say, let's go and talk to the Mayor about this issue on a particular legal issue that was before the Council at the time. So, I can't remember, but it could have been.

All right. I suggest to you that in a three way meeting with you, Mr Romano and the Mayor, Mr Romano said he'd been having some issues with someone harassing him on the phone and at his home. He'd asked you for some advice, whether he could upgrade the security and decided (not transcribable) have a chat with the Mayor about it?---I don't remember.

And the Mayor said, this is amazing because I'm also having problems at home. I have people coming and banging on the front door and running off several times in the last few weeks. I did not (not transcribable) at first but then I thought it may be kids. But given what you've now said, they might be related. He said something like that?---To me that discussion seems to be more consistent with the second meeting that I've referred to, that I, I recall the Mayor making those comments at the second meeting that I've referred to. The same sort of comment.

10

And they could've also been said at an earlier meeting?---He could have, but I don't remember.

Yes. And Mr Romano asked you to just give your initial thoughts and I suggest that you said the following. You're entitled to secure your homes if the harassment is work related. I consider you and Pat are entitled to upgrade the security on your homes, but I'll need to check it. And I'll need to confirm through written advice in the coming days?---I don't remember, but it sounds as though, it sounds to me that that was a, more of a telephone discussion than an actually meeting, but I don't disagree with the contents, I just can't place the contents.

20

So you'd accept you said something to that affect?---Possibly, yes.

Yesterday you gave some evidence, just pardon me for a moment, that you discussed the contents of your draft advice with the General Manager and the Mayor. Do you recall that evidence?---Yes.

30

I suggest you were mistaken about that and there was no discussion face to face with Mr Romano and the Mayor about your draft advice?---No. I remember having a piece of paper in my hand when I was with them and that led me to the conclusion in trying to reconstruct these events, that I had a draft advice with me. So I, I believe that's correct.

40

And you expressed yesterday that you said orally to the General Manager and the Mayor that it would not be appropriate for the General Manager to authorise expenditure on his own house and that he should seek the authority of the Mayor in his executive capacity for this action?---I, I gave evidence, it was part of the evidence that I gave. It was part of a wrap up of the processes that I thought were appropriate. And that was part 1 and I think I indicated that I was concerned that there'd be a perception that the General Manager authorised his own expenditure. I think I indicated that I, that we were probably talking about emergency, the exercise of emergency power of the Mayor over the Christmas period, if there had to be an approval. And I think I also linked that with a further reference to the draft advice that was indicative of a requirement to report in accordance with Council's policies or to make the claim for reimbursement consistent with Council's policies on the matter. That's my recollection.

Well, I suggest to you that you never gave any such oral advice. Would you agree with that?---I don't agree.

And you would agree though that the substance of that oral advice was not recorded in either the draft or the final advice?---No, I don't agree with that. I think - - -

Well, can you - - -?----I don't agree with that at all.

10

Well can you, do you have Exhibit 10 or Exhibit 14 in front of you?  
---Exhibit 14, and I've got a copy of Exhibit 10.

Well?---My recollection was that I referred, I think it was paragraph 26 or I would have summarised and read, summarised the contents of paragraph 26. Because my recollection was that the Mayor was also (not transcribable)

20

I'm sorry, I'd just like to ask you a question, which advice are you referring to?---To 7 November, paragraph 25, 26 and 27 because I detected, my recollection is I detected in the Mayor's reaction considerable concern about the transparency of this arrangement and I think there might have been some banter about the fact that the Mayor had also recent experience with the ICAC and he was quite conservative in his views on expenditure.

You'd agree that in Exhibit 10, paragraphs 25 to 27, is headed "Reimbursement of payment of expenses in advance"?---Yes.

30

And you'd agree with me that the issue of reimbursement or payment in advance is conceptually distinct from authorisation, isn't it?---I think they're merged when you read 25, 26 and 27 and when you understand what it's trying to achieve and there was, although, although the advice is expressed in terms of the instalment of equipment had already been undertaken I think it was still confused as to whether it had or hadn't, that's my recollection, perhaps some had been, perhaps there was more to go, I don't remember but my concern was to suggest to Mr Romano to protect him that in paragraph 26 that he had to or should fall within the same regime that applied to the Mayor for reimbursement of this type of expense and I was suggesting pay for it up front and then get Council to reimburse after you make an application to Council for reimbursement in accordance with the policy and unless it was an emergency, which is what we discussed, the exercise of emergency powers under the Local Government Act.

40

Mr Baird, in your statement protected disclosure, Exhibit 36, you say on page 2 that your view expressly orally to the General Manager and the Mayor is that it would not be appropriate for the General Manager to authorise expenditure on his own house and that he should seek the authority of the Mayor in his executive capacity for this action?---Correct, executive capacity is my shorthand for the emergency power.



And you'd agree with me that a statement to that effect does not appear in either your draft advice or your final advice, does it?---No, because I'm recounting what was discussed at the meeting and then, but I go onto say I also advised the GM to record the discussions with the Mayor and I know that that was his practice sometimes to make a record and to prepare a formal record of this because I thought it was an important decision and I remember that we talked about the process going forward and I think I referred to paragraph 26 of the draft advice. That's why I, in my  
10 recollection, I had the draft advice with me or I, I had a document that resembled the draft advice. It might have been a working copy. I can't remember, another working copy.

Commissioner, I am conscious of the time, I'm happy to keep asking questions but - - -

ASSISTANT COMMISSIONER: Will you be much longer?

MR BLAKE: About 15 minutes.  
20

ASSISTANT COMMISSIONER: Sorry, you'll have to speak up, Ms Ronalds?

MS RONALDS: Perhaps we should break now otherwise (not transcribable).

ASSISTANT COMMISSIONER: All right. Look, we will have a 15 minute break but can we try to keep it closer to 20 minutes than half an hour, thank you.  
30

SHORT ADJOURNMENT [11.32am]

ASSISTANT COMMISSIONER: Ladies and gentlemen, we were forced to start a little late this morning because it was necessary to take evidence in another matter. Unless anybody has any strong objection we intend to sit until 4.30 today. Thank you.

40 MS RONALDS: And I'm hopeful, we're just checking that that's enough time and then we will of course reconvene at 5.00.

ASSISTANT COMMISSIONER: Yes. Today is the video link day.

MS RONALDS: For those who want to stay for the Irish segment, shall we call it, we need a bit of time to set up so that (not transcribable) can set up the link.

ASSISTANT COMMISSIONER: Thank you. Yes, Mr Blake.

MR BLAKE: Mr Baird, I was asking about Exhibit 14 and I think (not transcribable) that you saying that the issues of authority to authorise the expenditure and reimbursement were conceptually linked?---That's correct. Yes.

10 And you disagreed with me that the statement that it would be appropriate for the General Manager to seek the authority of the Mayor in his executive power could this action, you disagreed with me that that statement was not contained in the advice. I think that's correct wasn't it?---I think I agreed that it's not in the, that part isn't in the written advice.

Oh, okay?---Maybe I misunderstood you, I beg your pardon.

You accept that's not in the written advice?---It's not in the written advice, it was the oral advisement.

20 All right. And you asked for the General Manager to record the discussions in a diary note?---No, a note for the file.

Is that your - - -?---The Council, the Council file.

Sorry, I think I interrupted your answer?---A note for the Council file.

30 Right. Is that your normal practice to ask a client to record your advice? ---Not to record the advice, to record the steps in the process and to make sure the Council file reflected the steps that had to be undertaken. That was the suggestion.

But that - - -?---And it was, from, from my experience I think would often state to Mr Romano, you better make a file note of this or put it on file. And he said, yep, on many occasions.

But those steps and processes were in accordance with the advice you had given orally. Is that correct?---Yes.

40 And did you make a note of that oral advice that you gave?---I made a file note myself. But as I, I think I said on day 1, day 2, it didn't come over with the files that we received. And I couldn't find it, but I remember recording a proper file note, not a, not a notepad - - -

There's no action in your day book?---No, not in the day book.

Yes. You are able to remember that you did make a file note. Is that what you're saying?---I believe I did, yes.

And you can't explain its absence?---I can't.

All right. Could you be mistaken about making a file note and that's why it's not there?---I don't, not in this instance, I don't think so, because the steps were in my mind important to make sure that the General Manager and the Mayor were protected.

And Mr Baird, you've given evidence that this conversation you've been relying on your memory I take it?---Largely, yes.

10 And when you say largely, what else have you (not transcribable) refresh your memory?---Documents, documents.

The advices?---And that file note that I referred to, in the working paper (not transcribable) my day book.

20 And you claim to have, sorry, I'll withdraw that. The first occasion that you had to revisit this issue in terms of remembering what had happened was late 2009. Is that correct, when you were approached by ICAC?---I don't think I was approached. I think that they sent a section 22 notice from recollection.

It might've been a section 35 notice, that you produce some documents. Is that right?---It was 35 - - -

The documents?---The notice requiring the production of the documents was sent to me and there may have been a telephone call by one of the ICAC officers who foreshadowed that he was coming over and could I try and find the documents.

30 Yes. But between late 2007 and that time, I think late 2009, you'd agree you'd had no occasion to think about these conversations?---No, that's probably not entirely correct. I, I was aware, generally aware of the allegations that have been raised by Mr Cummins and I believe that some of the allegations that he raised did touch upon the installation of the security equipment, I think. I can't, I can't, I'd have to see his letters, but I think he raised it or I might've seen it in the context of another document. But that would've been the only occasion that I turned my mind to it, but generally what you've said is correct.

40 Yes. And you said in your statement, Exhibit 36, "I also recall advising the General Manager and the Mayor about these matters should be reported to Council in accordance with the policy referred to and the Council should be informed and should be asked to authorise and confirm the actions of the General Manager in these regards"?---Yes.

Can you, I'm just wondering could Mr Baird be shown Exhibit 10, please?  
---Yes.

Mr Baird, can you go to paragraphs 23 to 25?---Yes.

And is that, when you're talking about the Council's policy, is that the policy you had in mind referred to there?---No.

10 It's not. Well, which - - -?---Referring the policy referred to at, hold on, let me, in paragraph 11, section 252 of the Local Government Act requires Council to adopt a policy concerning the payment of expenses incurred or to be incurred by and/or the provision of facilities to the Mayor, Deputy Mayor and other Councillors in relation to discharging their civic functions and what I was trying to suggest to the General Manager and the Mayor was that from a, I've said this before but since you've asked, but from a probity perspective paragraph 26 I was suggesting it would be more, it would be more correct for the General Manager to submit to the same rigour in the policies, that's why I said we advise that in keeping with the intention of the policy you and the Mayor, even though the policy doesn't bind the General Manager, it only binds elected representatives, I wanted him to volunteer to submit to the same process of declaring and seeking reimbursement and having the Council endorse it.

20

Yes, I recall that evidence but I was asking you to identify the policy?

---Well, that's - - -

Is the policy you're referring to the one in paragraph 12?---11.

No, I'm asking is the policy that you were referring to - - -?---I beg your pardon, 12, yes.

30 It is paragraph 12?---Yes.

Now can I, you're familiar with the Council's expense and facilities policy? ---Generally familiar with it. I haven't looked at it verbatim but - - -

Can I show you a copy please, thank you. Do you, this is the Council's expenses and facilities policy and you'll see it was adopted on 27 February, 2007?---Ah hmm, yes.

40 And you'd agree with me that this was the policy in force at the time?---I, I assume that to be the case.

Yes. And for, in terms of the policy, for Council's expenses do you agree with me that it was the General Manager who was given authority to make that decision?---Could you repeat the question, I'm sorry.

Would you agree that under the policy for approval of Councillors' expenses, the General Manger had authority to give that approval or anyone to whom he had delegated his authority?---I, I don't know the answer to that, I'd have to read the - - -

Well - - -?---Can you refresh my memory as to his delegations. My assumption, which I put to both, my assumption, the assumption that, that I proceeded upon was that it was going to be a matter that should be reported to the Council as opposed to the General Manger or the exercise of a delegated function.

10 Mr Baird, you well knew, didn't you, in terms of page 5 of this policy that it was the General Manager who had authority to approve expenses of Councillors?---I don't think that's entirely correct. I think you've got to, you've got to read it, approval of expenses for Councillors will be in line with the delegation of the General Manager and/or sub-delegation. So you need to check the actual terms of the delegations. I didn't have the delegations with me at the time and I don't have them here today so I think you've got to read it as, you go back to the purpose of the policy which is black and white to ensure accountability and transparency in the reimbursement of expenses incurred or to be incurred by Councillors and the policy also ensures that the facilities provided to assist Councillors to carry out their civic duties are reasonable. Now, speaking in general terms  
20 my concern was that if we were going to have a lawful - - -

Well, Mr Baird, I'm not asking you about your concern just at the moment? ---Well, I, the answer is I, I don't think it's as, it's entirely governed by the delegations to the General Manager.

Right?---I think that there's a Council function as well.

All right. If you go on to page 6 - - -?---Yes.

30 - - - and you'll see a heading, Provisions, Payment of expenses generally and the very last - - -?---Where?

Page 6 of 27?---Yes, yes.

40 The heading Provisions and then you'll see a subheading, Payment of expenses generally and then another heading at the bottom of the page, Establishment of monetary limits and standards and immediately above that you'll see that the General Manager reserves the right to decline the reimbursement of any expenses he or she considers to be inappropriate or unreasonable?---Yes, I see that.

And you knew at the time, I suggest, that the General Manger was vested authority under this policy to determine whether Council's expenses would be reimbursed or not, didn't you?---At the time I would have had a general understanding to, in line with the proposition that you put but both the Mayor, the General Manager and myself were dealing with this matter as, as if it were an extraordinary item, not an item that would be regarded as a travel expense or a reimbursement of a café expense. That's the context.

MS RONALDS: (not transcribable) doesn't have one and - - -

MR BLAKE: Sorry, I beg your pardon, Commissioner, I'll get you another copy.

MS RONALDS: I'm a little bit confused because ours has got 26 pages and you said yours had 27 so you'd better give them that one (not transcribable).

10 MR BLAKE: I apologise, Commissioner, I didn't - - -

And if you turn over the page, Mr Baird?---Which page?

Sorry, we're on page 6, over to page 7?---Ah hmm.

You'll see table 2, expenses that will be reimbursed and there's a table and various types of expenses on the left-hand side?---Yes.

20 And an explanation on the right-hand side and going over to the end of the table you would agree with me that security would not fall within any other items before the last one, other expenses?---Other expenses, yes.

And you'll see there any other expenses deemed by the General Manager as being Council related?---Yes.

And the General Manager in respect of other expenses it was him to determine whether they were Council related and therefore to be reimbursed. You agree with that?---Yes.

30 Thank you. I tender the Council's Expenses and Facilities Policy.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 41.

**#EXHIBIT 41 - COUNCILLORS' EXPENSES AND FACILITIES  
POLICY – BURWOOD COUNCIL**

40 MR BLAKE: And, Mr Baird, do you agree that the advice that you gave that the expenses are connected with the Mayor should be reported to the Council where inconsistent with the policy?---Not at all, it's entirely consistent with the objectives of the policy for accountability and transparency because I was trying to emphasise to the Mayor and the General Manager and the Mayor appreciated the point because he raised it. Signing off to self-approve this sort of expenditure was, in his mind, the incorrect thing to do and he was most concerned and I shared that concern the issue of transparency and the issue of accountability and there was no issue in his mind for a report to go to the Council to approve the expenses.

So objectives and carriage of the policy and the purpose of the policy to mind it was entirely consistent with that aspect of the policy.

Thank you, Mr Baird.

ASSISTANT COMMISSIONER: Sorry. Mr Baird, this policy seems to have a total, a maximum of expenses that can be reimbursed of \$12,000 a year for the Mayor. Am I reading that correctly or not?---20,000, Commissioner.

10

Well, the copy I've got on page 7 says the total maximum reimbursement for a 12 month period will be \$12,000 for the Mayor?---It may be the Mayoral allowance, Commissioner, I'd need to read it carefully.

It relates to all of the expenses in table 2 which I think it's been put would include other expenses, that's the only head this could come under isn't it? ---Yes, I must say I didn't turn my mind to any monetary figure in terms of the amount at the time but we were focussing on the issue of declaring and seeking Council approval but I need to read. And I, I wasn't aware of, and I don't think the Mayor was, or the General Manager raised any monetary limit in the discussion.

20

MR BLAKE: Mr Baird, I would like to show you yesterday's transcript if I may. I'd like you to turn to page 232 please?---232. Yes.

Can you just look at the question beginning at line 7 and read down to the end of that paragraph at page, line 24?---Hold on, I haven't got it. 232.

232?---There is no line 7.

30

Sorry?---I beg your pardon. At the very top?

Sorry, you'll see the lines are numbered 10, 20, 30 et cetera. If you can find line 7 - - -?---"So that was one person."

Person, yes?---Do you want me to read the paragraph?

I want you to read the paragraph please?---Yes.

40

You agree with me that the principle of law that you've expressed in your answer is inconsistent with the advice that you gave in your draft advice and final advice?---No.

You don't?---No.

Do you have Exhibit 10 or Exhibit 14 in front of you?---10, I've got, yes, and I've got 14.

Perhaps we might just go to Exhibit 14. Could you go to paragraph 27?  
---Ah hmm.

I put this to you before that your reasoning process in 27, 28 and 29 was a possibility of harassment linked to Council then what's a reasonable reaction to the possibility and then your view was the security and the private investigators was a reasonable response. Do you recall I put that to you?---Yes.

10 There's no reference in 27 or 28 or 29 to there being any reasonable connection is there?---I disagree. Paragraph 27, "It is possible that you have suffered harassment because of the positions held at Council." That's a basis for the proposition of establishing connection between harassment and the position that you hold at Council, in other words, that it's Council related. That's the way I meant it to be understood.

20 So when you were referring to reasonable connection you were talking about a possibility that the harassment arose because of the Mayor's or the General Manager's position at Council?---And it was linked, Burwood, Burwood Council related, yes.

Well, there's no reference in paragraph 27 to it being linked, it refers to a possibility of a link?---I accept that but the words, the words, that's the intention, I don't think it's entirely inconsistent with what I said. The transcript paragraph that you referred me to is a more broad extrapolation of that principle but I think there is relevantly a link between the two.

30 Well, you disagree with what I put to you that what you said at page 232 and what you've expressed in paragraph 27 are inconsistent?---I disagree.

Yes. And at line 23 and 24 you say that, you said, "If we can establish that nexus then you get over the threshold problem." Do you agree with me that there's no reference to a threshold in paragraph 27, 28 or 29?---No, I don't agree. Paragraph 29 talks about the engagement of the PI in order to establish who had conducted the harassment and their possible motives. Possible motives is a, is relevantly the issue of connecting them with Burwood Council.

40 Well - - -?---It's an extrapolation but it's just a matter of interpretation. I think that the, the Mayor and the General Manager when we discussed the matter and the principles - - -

Mr Baird, you said that a number of times, I just want to ask you about the advice?---Well, I don't agree.

And you'd agree with me in paragraph 29 that the, your view that the engagement of a private investigator was within the scope - - -?---Of the, I beg your pardon, of the - - -



Exhibit 14?---Yes.

Your view that the engagement of the private investigator to establish who conducted the harassment and their possible motives was within the scope of the power and could be reimbursed but your view was that that was justified even though no link had yet been established?---No.

Sorry?---I don't agree.

10

You disagree with that?---I disagree with that what you - - -

You seriously disagree with that, Mr Baird?---Maybe if you repeat it again I'll try and understand what I was saying.

Yes. Let me put it to you as clearly as I can. You regarded the engagement of a private investigator as being within the scope of the General Manager's power and a matter that could be properly reimbursed so that 1, it might be established who had conducted the harassment and 2, their possible motives?---Yes, that's what paragraph 29 says.

20

Yes?---I, I understand.

And in your mind no link was required between the harassment and the Council in order for the expense to be justified. Do you agree with that? ---No, I don't.

You don't. You seriously, you say to the Commission that paragraph 29 indicates that a link was required (not transcribable) be reimbursed?---I said with the advice in context, you see that that link is discussed at paragraph 27. You read the three together, you get the entire picture.

30

Yes. And you'd agree that paragraph 27 is based on a possibility of a link not the establishment of a link?---The words say that, yes.

Yes. Thank you. I suggest to you that the words you have recorded in your answer at page 232 from line 8 through to the end of line 24 were never conveyed to Mr Romano. Do you agree with that?---No.

40

Mr Baird, I'd like to go to 2008 and ask you about the surveillance issue?---Sorry, which - - -

The surveillance issue of Councillors. You recall you were asked a number of questions - - -?---Oh, yes.

- - - about the Council election?---Yes.

I think you accept that prior to the Council election you had a conversation with Mr Romano in which he sought your advice about matters related to the election?---Was that in relation to the eligibility of a certain - - -

Well, I - - -?---Could you be more specific, please?

10 All right. I suggest to you that prior to the election Mr Romano rang you and asked you for some advice. And firstly, and I'll just read the whole, firstly, what constitutes a place of living in relation to the electoral roll and secondly, who determines electorate irregularities for residential and non-residential roles?---I recall that evidence. Yes.

Yes. And do you recall attending the Council premises on the Tuesday after the Council election or attending a meeting with regard to this issue?---Yes, I believe there was a meeting. I'm not sure of the date, but, I believe so, yes.

20 Yes. And if you go to the Exhibits, I think Exhibit 32, sorry, I've mislead you I'm afraid, Exhibit 38. If you look at the tax invoice dated 30 September, 2008, the reverse side you'll see a reference to 16 September, 2009, David Baird informing the General Manager and Mayor regarding possible electoral irregularities?---I think I've been handed the wrong advice, the wrong invoice.

I thought they were all together.

ASSISTANT COMMISSIONER: Well, can't he be shown on the screen?

30 MR BLAKE: I've got one here?---What was the date?

16 September, if you look on the reverse side?---Yeah. Inform of Gen and Mayor regarding possible electoral irregularities, yes.

Yes. Now did you check overnight in your day book to see if you had any note of this meeting?---I think I did, but one of the books was, I couldn't find one of them. There, there were some entries relating to the electoral irregularity, but I seem to recall they related to a conference with Mr Leggat. And - - -

40 I'm not referring to that, I'm referring - - -?---No, no. But I did, I have checked, I don't know whether there's a reference to this meeting.

You're not sure, is that - - -?---I need to double check, but I don't think there was.

Okay. So you're, you're in a position to double check that?---I could have a look, but I, if it's the meeting - - -

(not transcribable) that you're in a position to double check it?---Mmm.

Yes?---Yes.

Thank you. Do you recall at the meeting at the beginning there were a number of people, yourself, the Mayor, Mr Faker, Mr O'Reilly from IPP Consulting, a Mr Sam Dustiari, a Councillor, Bob Nanva and Mr Romano. Do you recall that?---I remember some of them, I don't remember all of them.

10

And do you recall that the Mayor was chairing the meeting and Mr Romano said there were two parts to the meeting. That Mr Baird was going to give some legal advice on two issues?---Yes.

One is define the place of living under the electoral act and two is in relation to the electoral roll. And the second part of the meeting will deal with any electoral irregularities in relation to Mr Sidoti and Mr Strik and other matters. Do you recall that being the purpose of the meeting, those two issues that you were going to advise about?---Generally, yes.

20

Yes. And you gave some advice at that meeting. Do you recall that?---Yes.

And you, I think repeated your instructions that you'd been told by Pat Romano that a Councillor had made allegations that Mr Sidoti was not living or using the same address as indicated on the residential or non-residential roll. Do you recall that was the general issue?---Yes.

And I suggest at that point a number, Mr Dustiari and Councillor Nanva left?---I don't remember.

30

You don't recall that?---I don't recall, it's possible, but I don't remember.

You don't remember. And I suggest that the substance of the advice that you gave was it was necessary to define the place of living in relation to the electoral roll and firstly you'd have to get a tenancy agreement, whether residential or business?---Yeah.

40

Or secondly you may need to get proof of ownership and just witnessing a person coming and going from a property is not enough to prove they were not living at the premises?---That sounds like the type of advice that would have been discussed. I can't remember the exact - - -

You can't remember but it would be consistent with the views you held at the time?---Which was to provide the principles to determine residency or the eligibility for the candidate.

Yes?---The legal requirements.

Yes. And do you remember that Mr Reilly then gave a verbal briefing of the results of the surveillance operations of the Park Road unit?---I don't remember but he may have, I don't remember.

You just don't recall that?---I don't remember.

And after that briefing I suggest you said just because two people have the same address doesn't mean they both reside at the same address?---I don't remember.

10

You don't remember that. And I suggest you said that your belief that no action was warranted in terms of electoral irregularities on the basis of what you heard?---I think that that was the conclusion that I drew from the facts as instructed, yes.

Yes. And I think there is, you said there was nothing in your daybook, did you make a file note of this meeting?---I can't recall, I don't remember.

20

You don't remember. Is this one of the files that was handed to the Commission?---Yes, yes. One of the files handed to the Commission?

Yes?---I don't know.

You don't know?---No.

But your expectation is that if a file note was made it would be found in the file?---Yes.

30

And if there was not a file note the (not transcribable) is that on this occasion you didn't make one?---Well - - -

Would you agree with that?---Yes, yes.

Thank you. Now, you gave some evidence yesterday about a conversation that you had with Mr Romano on 17 December?---Yes.

40

I may have neglected to ask for this through counsel assisting, I think I probably did, but you did mention you made a file note of the conversation? ---Yes.

Is that with you now or not?---No.

You'll be in a position to provide it to counsel assisting?---Yes.

All right. And where did the conversation take place?---On 17 December?

Yes, but where?---Where, in a meeting room on the 14<sup>th</sup> floor of Australia Square.

That was the current or the location of your office?---Correct.

Correct, right. And did Mr Romano tell you that he'd recently learnt that the ICAC were aware of surveillance work that he'd authorised when his family was being harassed a couple of years ago?---I don't remember the exact words that he used. That doesn't seem to be the, my recollection of the words. If I may be allowed just to refresh my memory for one second.

10 No, no, just, I'll ask you to do that if I want you to, Mr Baird, will you disclose - - -?---I don't remember the exact words.

You don't remember that and did he suggest to you that he wanted to let you know some information you may not be aware of?---He said that he needed to tell me something and he was very, very agitated.

Well, I'm just asking you what he said at the moment?---Yeah, I need to tell you something.

20 Yes. And did he tell you that he'd been to his lawyer earlier that day?---My recollection is he only told me that he'd been to see Mr Gorry was when, at the end of the meeting I said you'd better go and talk to Stephen about this, he said, I have already have.

Yes?---And that, I remember that because it surprised me that he would not have told me that at the beginning.

Well, I suggest to you you were mistaken in your recollection, he mentioned at the beginning he'd been to see Mr Gorry?---No, sir.

30 You disagree?---I disagree.

Yes. And I suggest that he told you that during the surveillance in 2007 he had found out that one of the people he thought had been harassing him was a colleague of his wife?---Those are his words. My recollection was in a slightly different fashion. I've recorded it in my statement and I, I need to refresh my memory as to what I believe he said because I believe my words are accurate because I wrote them down very, very quickly after they were spoken and I can't remember, unless I have a look.

40 And I suggest that Mr Romano told you he still wasn't sure but he didn't get any evidence from Mailey to prove whether the person was harassing his family from a business point of view?---No, I don't believe that was said.

And you asked him who paid for the surveillance?---I did but not, following on from your last sentence, no, it was a different discussion that led to my question who paid.

Yes. And he told you the Council?---The Council paid.

Yes. And you told him not to talk any more with you about it?---Well, I said this is very problematic or this is problematic, have you spoken to Stephen, Pat, you need to ring Stephen and talk to him. He said I already have. I said oh, I said I'll need to speak to Craig about this, I think it's best we don't talk about this at this stage any further, something like that.

10 Well, he's, he's told you he'd been to see Mr Gorry again and the conversation ended at that point more or less?---He, no, he said I've already spoken to Stephen.

Yes, and the conversation ended at that point?---Yes.

Thank you.

Yes, nothing further, Commissioner.

20 ASSISTANT COMMISSIONER: Thank you, Mr Blake. Yes. Does anybody else seek to cross-examine Mr Baird?

MR NEILL: Yes, if I may please, Commissioner.

ASSISTANT COMMISSIONER: Yes, Mr Neill.

MR NEILL: Mr Baird, you were asked some questions about your background as a lawyer in the context of a reference to you being a planning lawyer and you gave some elaboration of that. Do you recall?---Yes.

30 Now, in addition to your evidence so far is it the case that for the past 29 years you have been in continuous practice as a solicitor specialising in local government law, planning law, governance and the matters you described earlier?---Yes.

And in that period have you acted for over 30 metropolitan and country councils throughout the state of New South Wales?---Yes.

40 Have you acted for the peak body, the Local Government and Shires Association of New South Wales?---Yes.

Have you been retained from time to time by the Regional Organisation of Councils of New South Wales?---The South Sydney and I believe the Western Sydney Regional Organisation from time to time.

Have you been appointed an adjunct lecturer at the University of New South Wales teaching a course in local government law, an introduction to planning law and have you performed that function since 1996?---Yes, intermittently, not, not consecutively but over that period of time.

Have you over a period of a couple of decades or so at various times been instructed to advise and assist different Ministers for Local Government in New South Wales in working parties on various matters including the Code of Conduct and public and private partnerships related to Local Government Affairs?---Yes.

10 And have you been appointed a conduct reviewer and are you presently on the panel of over 30 Councils throughout New South Wales with respect to conduct review?---Yes.

And briefly what is conduct review?---It's an independent appointment that one would receive when a complaint is made under the Code of Conduct as to matters of concern at a Council under their Code of Conduct and that the General Manager determines that it's a matter that should be referred to an independent reviewer for an investigation and report which is a recommendation back to the Council.

20 In the context of conduct review activities have it fallen to you from time to time to either perform or advise upon any investigative role?---Yes.

Outside of that context in your practice as a solicitor in Local Government and planning affairs has it ever fallen to you to undertake any investigative role of factual matters?---Yes.

30 And in what circumstances?---Two significant matters come to mind. One was during the 1990's when the firm that I was at was instructed to independently investigate the reasons for a property collapse at Woollahra, the transactional collapse of a proposed property development at Woollahra Council which was called the Scott's Development Investigation and I participated in that and led that. Also I had a role to play, I was independently appointed to investigate some of the matters leading to the Oasis and collapse of the Oasis project at Liverpool City Council. They are two that come to mind.

40 From that experience and your general experience are you familiar with the difference between a solicitor specifically retained and instructed in an investigative role and a solicitor retained and instructed to advise a client on Local Government or planning matters?---I believe so, yes.

In this matter before this Commission in respect of all of the questions you've so far been asked but specifically in your dealings with Mr Romano and the Mayor that have been the subject of evidence was it ever your function as you understood it to undertake any investigative role of the facts that you were given as instructions?---No.

And would you have expected in the context in which the matter came to you by way of instructions to have received any instructions for you yourself to undertake any personal investigative role?---No.

You were asked about your friendship that you described having developed over a period of years with Mr Romano and you gave some evidence about that subject?---Yes.

10 In your period of nearly 30 years in practice have friendships developed between you and other senior Council personnel including General Managers?---Yes.

And have you socialised over that period from time to time with other General Managers and senior Council personnel?---Yes.

And with others such as elected officials, Councillors and/or Mayors? ---Yes.

20 And do you have a wide circle of professional colleagues and acquaintances who practice in the same general field as you?---I believe so, yes.

And to your knowledge have activities of social kinds that you have engaged in with Councillors, General Managers, senior Council people over the years in your experience has that been commonplace amongst practitioners in your field?---Yes.

30 And in your experience generally as a solicitor in the various firms you've been with as a principal over many years has there always been some degree of socialisation particularly between principals of firms and major clients? ---Yes.

Has that been regarded in this state at least in your experience as a normal part of client relations and practice development?---Yes. One qualification. In recent times it is considered a working protocol that when a client such as a Council resolves to go to tender or to readvertise for the expression of interest for the provision of legal services it's considered appropriate to suspend social activities including lunches and/or other activity until the tender has been determined.

40 All right. Given the time I might go to a few discreet matters up to 1 o'clock and then come back to perhaps a few matters after lunch of a little more substance. Just dealing with a couple of matters ad hoc a number of your firms or Maddocks invoices or tax bills to Burwood Council have been put into evidence?---Yes.

Maddocks charges including your rates of charge and those of your associates in the firm such as Mr Todd Neal and others have they been at



concessional rates compared with normal commercial rates?---They were whilst I was at the firm, yes.

Was that always the case with Burwood Council?---Whilst I was involved in not just Burwood Council, my practice was to offer a concessional billing arrangement to all Local Government clients compared to what might be considered the comparable commercial rate prevailing amongst commercial partners and the differential if you'd like me to continue - - -

10 You briefly - - -

ASSISTANT COMMISSIONER: Well, I'm sorry, I really, what is this going to?

MR NEILL: It may not be relevant. There was some question early on by my learned friend senior counsel assisting about the cost of the initial advice of November 2007 of being 2,400 for what may have been implied to be an advice with some inadequacies in it but if there's no issue about that I'll move on.

20

ASSISTANT COMMISSIONER: I don't think there's any issue in general terms about the rate of costs that were being charged by this firm.

MR NEILL: Thank you. Thank you. My learned friend says 6,000 but there's no issue about it so I'll move along. Now, do you still have a copy of Exhibit 10, the draft advice of 7 November, 2007 before you?---I'm not allowed to have Exhibit 7.

30

For good reason.

ASSISTANT COMMISSIONER: They've been removed.

MR NEILL: Could you just look at this one and please not mark it. Could I take you please to the paragraphs that set out your instructions as to the facts?---Yes.

40

And before I go to those specifically may I ask you this? In your dealings with Mr Romano prior to 17 December, 2009 did you ever have any reason from your experience of him to doubt his voracity?---No.

In the period prior to 17 December, 2009 had you been involved with Mr Romano extensively on Council matters which fall within the description of major projects?---Yes.

And had you worked closely with him on a number of major projects for a period of years?---Yes.

Had you been with him in numerous meetings with the Mayor from time to time and Councillors from time to time?---And senior executives of the, of his executive team, yes.

And commercial developers, people in industry, various professional groups?---Visitations to ministerial offices and to the LGSA, yes, to all - - -

A range of other lawyers including junior and senior counsel - - -?---Yes.

10 - - - of some eminence in this field of practice?---Yes.

In all of that period prior to the 17 December last had you ever had any reason to suspect that Mr Romano may have been engaged in any form of corrupt conduct?---None, none whatsoever.

When he gave you instructions as to the facts set out in Exhibit 10, the draft advice of 7 November, 2007?---Yes.

20 Did you have any reason to question the reliability and accuracy of those instructions?---No.

From your experience as a solicitor, do you have a view in circumstances where there is no reason to challenge a clients instructions as to whether a solicitor is bound by a clients instructions?---I think it is exactly that position.

30 And bound to act upon them?---Bound to accept them on their face as truthful and honest explanation as to what has happened and bound to act on them.

40 Might I please have for a moment and passed to the witness Exhibit 40, which was previously MFI 1. And you were shown this document a little while ago, Mr Baird and this may be the only copy in the hearing room, I just want to read out the top line dated 30 October, 2007 from Mr Romano to you. Dear David, further to our discussion on this matter two weeks ago, I request formal advice in writing on this matter. I have provided details in the email below. Please note that I seek this advice as a matter of urgency. Regards, Pat Romano. And below there's an email copy from Mr Romano to Mr Howe, 24 October, 2007. And I'd just like you to look at that bottom section of the 24 October email. Thank you very much, my learned friend, senior counsel assisting has kindly given me a copy. And I want to ask you this, in substance are the matters set out there in the numbered paragraphs and following consistent with what you have recorded in your draft advice of 7 November, 2007 as being Mr Romano's instructions as to the facts? ---The facts are consistent with what he put to me?

Yes?---Yes.

Now in your meeting with Mr Romano and the Mayor on or if it was not precisely that day at on or about 7 November, 2007 at the Burwood Council Chambers, correct me if I'm wrong, did you say earlier in your evidence that was in the Mayor's office?---It could've been in the General Manager's office or the Mayor's office. They were side by side and, and I can't recall. But before I answer that, could I just qualify paragraph, back to - - -

Exhibit 40?---Exhibit 40. Paragraph one, two, three down underneath number 3.

10

The one commencing, In addition?---Yes. I don't believe that that's an accurate recollection of my verbal, my initial verbal reaction to the matter.

That says, In addition I have consulted Council solicitors, David Baird, who advised that I should contact the police and engage a private investigator? ---That's correct.

Now it goes on in another sentence, but what is your memory of what was said, if anything between you and Mr Romano at about this time on that subject?---I don't think I advised that he should install the equipment at Council's expense or at the Mayor's expense in unqualified terms and put it (not transcribable)

20

As I recall (not transcribable) the penultimate of Exhibit 40?---Correct. Other than that it's correct.

All right. Well, I might return Exhibit 40, Commissioner?---I'm sorry to interrupt.

Not at all. In the meeting at the Council Chambers with Mr Romano and the Mayor about the draft advice of 7 November, 2007, at any time did Mr Romano say anything that was contrary to the factual instructions recounted in that draft advice?---No.

30

And at any time before or after that meeting and before or after Council received the final advice dated 15 November, 2007, did Mr Romano ever contradict, qualify or vary the instructions as to the facts set out in the draft advice and the final advice?---No.

Did you go through those draft, those instructions as to the facts with him at the meeting at the Council Chambers?---I can't remember, but in the forwarding of the advices, the draft advice there usually was an enclosed for discussion purposes, please find draft advice and or there was always, it was our practice for him to check the advice and check the facts that, I think, I think I've said that before.

40

All right. In the draft advice of 7 November and the final advice dated 15 November, 2007, in the context of the instructions leading up to those

documents were you in your mind giving the draft and the final advice on the footing that you had experience that Mr Romano as General Manager and the Mayor as the Mayor, themselves, have some independent knowledge of the Council's own policy on these matters?---On reimbursement?

Yes?---I proceeded on the basis that they were generally aware of the, the obligations for reimbursement of expenses, yes.

- 10 There was a question asked of you in chief, to the effect that particularly with your draft advice of 7 November, certain things would not have been clear if it were read by the man in the street. Was it ever intended that either advice be read by the man in the street?---No.  
Or out of context?---No.

Did you in your mind intend that it be read in the context that you were dealing with (not transcribable) probably the two most senior people in the Council?---Yes.

- 20 Both of whom had been known to you for a period of years?---Yes.

And with whom you had a current working professional relationship?---Yes.

Now, you saw, I think an email from Mr Cummins about the draft advice of 7 November referring to it in his opinion at that time as being extremely weak?---I saw that email, I can't recall whether I saw it prior to these proceedings, but I've seen the email.

- 30 Now, in the context of that being a draft advice, do you accept that as a fair description of the draft advice?---Not really, no. I thought it was a little bit harsh because the first cut, the first draft was a working draft and was open to refinement and improvement.

My learned friend, Mr Blake, put to you and you accepted that there are substantial differences between the draft advice and the final advice?---Yes, I, that's true.

- 40 Was it the final advice dated 15 November that you expected the Council to act upon?---Yes.

And there is a subsequent email from Mr Cummins dated around about 22 or 23 November - - -?---Yes.

- - - 2007 which I'm quoting in parentheses, refers to him having received robust advice from Maddocks on the particular subject matters of the draft advice. Had you seen that email before these proceedings commenced?---I don't believe I did but, I, I don't believe I did.

You have given evidence of having a discussion with Mr Cummins about the draft advice?---It was my recollection, yes.

At the end of that discussion did Mr Cummins say anything to you about his position in terms of any matters of amendment or development of the draft advice that you discussed with him?---At the conclusion of the discussion?

10 Yes?---He, he indicated to me I recall that he was now satisfied that the advice was in the, in the vernacular up to speed or, you know, he was happy with it because we had discussed the issues of concern. I think the discussion was about 20 or so minutes and we, I had satisfied him that with the amendments that we were going to undertake that the advice was, in his view, satisfactory and he was happy.

The draft advice of 7 November and the final advice dated 15 November, in terms of Maddocks and your role, I think you've made it clear it was not a sole effort on your part?---No.

20 There were other experts within the firm dealing with particular parts?  
---Yes.

Especially the employment lawyer expert?---Yes.

What was Mr Todd Neal's speciality?---He, he was a junior solicitor who worked in the, in my group, the governance group and he was involved in drafting and research.

30 And, but you, as I understand it, accept personal professional responsibility for the content of both documents?---I do.

And what was the role of, forgive me for one moment?---Miss Kelly?

Miss Monica Kelly?---She was also a junior lawyer in the governance group.

And can you just remind us of the name of the employment partner?---Mr Darren Gardner.

40 And so did the whole four of you contribute to the content of both documents?---I believe so, yes, not, not four at the one time - - -

Yes?--- - - - but divided into components.

And you indicated that the draft advice of 7 November was prepared as a matter of urgency - - -?---Yes.

- - - and indeed Exhibit 40 calls upon you to do that?---Yes.

But between then and the ultimate submission to Council on about 22 November, 2007 of the final advice bearing the dated 15 November - - -? ---Yes.

- - - was there still a continuing state, so far as you were concerned, about, of urgency about the amendment and completion and redrafting and issuing of the final advice?---Yes.

10 Now, if I could just ask one final question before the break, so far as the final advice dated 15 November is concerned, in your professional opinion is the legal content of it correct in law?---The principles are correct, yes.

Would that be a convenient time, Commissioner?

ASSISTANT COMMISSIONER: Yes. We'll adjourn at this time till 2 o'clock.

MR NEILL: I won't be very much longer after the break I don't think.

20 ASSISTANT COMMISSIONER: Will anyone else be applying to question this witness?

MR STANTON: May it please you, Commissioner, I have one issue with what Mr Neill's raised concerning Mr Faker that I'd ask to be allowed to explore.

ASSISTANT COMMISSIONER: All right.

30 MR STANTON: It's just one brief - - -

ASSISTANT COMMISSIONER: So you'll be short.

MR STANTON: I will be, yes.

ASSISTANT COMMISSIONER: Good, all right. Thank you.

LUNCH ADJOURNMENT

[1.03pm]