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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

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AT SYDNEY

ON THURSDAY 25 MARCH, 2010

AT 2.05PM

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ASSISTANT COMMISSIONER: Yes.

<DAVID JOHN BAIRD, on former oath

[2.05pm]

MR NEILL: Thank you, Commissioner. Mr Baird, just for purposes of accuracy are you able to confirm that the matters of fact constituting your instructions as to the facts in the draft advice of the 7 November, 2007 are
10 contained in paragraphs 8 to 12?---That's my recollection. Do you want me to see the document just to - - -

If you need to, there may be no real issue about it?---That's my understanding, yes.

And are the matters of fact being your instructions as to the facts in the final advice of the 15 November, 2007 contained in paragraph 4, 4.1, 4.2 et cetera?---That's correct.

20 You were asked about a file note in respect of the meeting at the Council on 7 November, 2007. You said you couldn't find a file note. Were you indicating you have looked in the Maddocks files to which you were recently given access?---Yes.

And in those files you could not find the file note?---That's correct.

Did you observe in those files, firstly, may I ask were they files coded or identified as files relating to Burwood Council?---Yes.

30 And when you went through those files did you find in them material relating to other Councils?---Yes.

And have you had access to the whole of the Maddocks records relating to Burwood Council for the relevant period?---I don't believe we've had access to the whole of the records as I recall.

And is it possible that the file note's been misfiled?---It's a possibility, yes.

40 Could I take you please to the final advice of the 15 November, 2007, Exhibit 14. I wonder if the witness might be shown that?---I have a copy.

ASSISTANT COMMISSIONER: He has a copy. It might be quicker just to use that.

MR NEILL: You were asked a number of questions but a number of questions and answers took you to the latter part of the advice particularly pages 6 and, 6 and 8 but paragraphs 23 through 29. I just want to ask a general question and I preface it this way. You were also asked some

questions about the latter part of your draft advice of the 7 November. Do you recall that?---Yes.

Was it your expectation that the recipients of the draft and the final advice would read those documents in the context of the whole of the document?
---Each separately, yes.

10 Yes. And was it your intention that, for instance if we take 15 November, paragraphs 23, 24, 25, that they be read in the context of what went before and what came after?---Yes.

If I invite your attention briefly to paragraph 11 of the 15 November advice, I don't want to go through it all, it's in writing but what you say in that paragraph concludes with a final sentence about your view as to the installation of the security system being a reasonable Council expense to assist the Mayor, et cetera?---Yes.

20 And then if we go over the page you then set out a reference in paragraph 12 to the model code of conduct and we go to paragraph 13 and it's to the model code, you say this has two elements which applies equally to yourself as General Manager as well as the mayor and you go on to give an explanation of that matter?---Correct.

Were you expect material such as that to be taken into account when the reader arrived at paragraphs such as 23, 4 and 5?---You read them all together in - - -

30 And paragraphs 27, 8 and 9?---Yes, cumulatively, I guess, is the best way to put it.

Did you have any expectation that the reader would mentally segment these various paragraphs and parse and analyse the words in them and treat them in isolation?---Not at all, no.

And would you have expected people such as the Mayor and Mr Romano in your experience of them to have done that or to have read them as a whole and taken them into account in the whole of their context?---That's, that's been my experience.

40 These men were not amateurs in their roles in your experience?---Not at all.

Now, you were asked this morning about a particular matter regarding an advice as to some electoral considerations. Do you recall that?---Yes.

I'm not going back to it, I want to ask you this: apart from that matter, over the years when you received instructions from Mr Romano to give advice to Burwood Council on various matters, were there other occasions when you gave advice and it was made known to you by him that it was not the advice

he wanted?---There were other occasions where we had a, a disagreement and sometimes a serious disagreement.

And can you recall any, I don't want everything but are there any examples that come to mind at the moment?---Yeah, two specific examples.

Mr Romano or, he wrote to us after a number of telephone discussions relating to the appointment of Maddocks and myself to the position to be appointed as conduct reviewers under the Burwood code of conduct and he was insistent upon the appointment which on the face of it is very flattering because it's, it's a very important and serious role but the code of conduct specifically precludes panel solicitors from accepting the role as a conduct reviewer because there's a special definition as to independent adviser and it excludes a person who is already retained by the Council under a contract and I tried to explain to him that we were effectively disqualified being panel lawyers. And it struck me as, he was being particularly stubborn in his insistence that we accept the appointment.

What was the outcome?---Ultimately a forwarding of a short advice stating that we could not accept the appointment despite the, it, it was nice to be invited but we couldn't because there were legal obstacles.

Was that an advice of Maddocks through you to Burwood Council through Mr Romano?---Yes.

Is there another example that comes to mind?---Yes, most recently, and this was a strange one, the Council had gone to an expression of interest to sell a number of its properties at, near Conder Street and known as the civic precinct and these were car parks that were going to be redeveloped for various commercial purposes. And the Council is in negotiations, this is a public tender, a public expression of interest and the Council is in negotiations with interested parties. Towards the end of last year and at the very, very beginning of this year and whilst I was on leave Mr Romano came up with an idea, as I understand it was his idea, where he instructed his engineers and/or architects to develop a tunnel scheme for Conder Street and this would be engineered at significant cost, millions of dollars of cost, to go under part of Conder Street as a link, link road. I frankly couldn't understand the engineering design but I, I was more concerned with the impact of that type of serious departure from the existing plan which, which was the plan and prefacing the expressions of interest that had gone out to the public for the sales of these properties.

What was the substance of your advice?---Don't do it.

And what was Mr Romano's reaction to that?---Hostile, argumentative and it took me hours and hours, well, not hours and hours, but it took me a huge amount of effort to persuade him that there were, there were extreme legal risks associated with the variation of the scheme which could affect the

properties, the subject of this expression of interest. I'm just giving you a summary of the concern, Commissioner.

What was the outcome?---Well, ultimately he relented. But it, it took a huge amount of effort. And I don't want to sound, put this too highly, but often as I said before, the senior staff would ask me to ring him to talk to him about a particular issue to persuade him to change his mind. This was one of those instances. But it was over the Christmas, New Year break and we were able to get him to, a short advice was sent out under Peter
10 Barakate's name with my input into it, because I was on leave.

And who's Peter Barakate?---He, he assists, he's a special counsel at HWL in the Local Government Property Group. He was working with me on the special project matters for the sale of the lands and the, the advice is pretty robust in the sense that it sets out the risks and recommends strongly against proceeding on that basis.

All right. Now did you ever give to Burwood Council through Mr Romano or anyone else a legal advice you did not believe in to meet what you
20 thought they wanted?---Never.

Did Mr Romano ever influence you to give to him or the Burwood Council a legal advice that you did not believe in as a matter of convenience for them?---I think you're asking me did I ever succumb to his influence to provide a opinion of convenience?

Yes?---Never.

All right. I have nothing further. Thank you, Commissioner.
30

MR STANTON: Assistant Commissioner, may I please (not transcribable)

ASSISTANT COMMISSIONER: Yes, Mr Stanton

MR STANTON: Mr Baird, you indicated that Councillor Faker was adamant if not to the point of being very testing in an attempt to make sure that this security installation would be in, I think the vernacular, kosher. Was that the, was that the concept as you understood it?---Yes.

40 And whilst he did say you were equally concerned to make sure that his concerns were correlated in your advice were you not, ultimately?---Yes.

And any constraints, concerning budget reimbursement from the Council's expenses, whilst they may have been a contemplation that you had that he understood, are you following me so far?---I think so.

That nevertheless didn't appear expressly in your advice when you wrote it on 15 November?---That's correct. Not expressly.

Okay. Just finally if I may please, sir, should you have been minded to ensure that Councillor Faker's concerns were fully and adequately accommodated, it would've been equally open to you to put in your advice that there was no reimbursement as you saw it available other than with Council approval, that is Council as assembled for approval?---Yes. Yes. That was the intention.

10 But whilst that may have been the intention, it didn't appear in your advice, in terms of the inability of Councillor Faker to, without Council approval get access to the security equipment and to have it paid for without resorting to his Council reimbursement expenses?---Well, that was generically called the policy.

I appreciate that, sir, but - - -?---I'm not following your question.

20 Right. You were referred this morning to a document which was the reimbursement of Council expenses on a Mayoralty allowance I think of about \$12,000 and it was never within your mind that Councillor Faker expressed to you could he have access to that to pay for this security system was it?---No, it wasn't.

And nor was it, sir, something that you thought to take you specifically to orally or in writing to assuage any misconception you might have that he couldn't have access to that reimbursement policy as provided for in the Council document?---I think I understand the question and I think the answer is I didn't take him to that.

30 That's what I'm interested in. And in a context of where he was as you say extremely conscious of both a prior familiarity with ICAC and to ensure that this was done according to what were the proper protocols (not transcribable)?---Correct, which is picked up in 23 to 25 of the final advice but not expressed as in the detail that you're expressing.

As Mr Neill has quite rightly put to you you wrote the advice bearing in mind the context in which it was done prior to it being written and following on from the draft advice that you'd seen Councillor Faker and Mr Romano and you recall Councillor Faker vividly indicated to you it had to be to his satisfaction to meet their concerns - - -?---By the book.

40 Thank you.

ASSISTANT COMMISSIONER: Yes. Thank you.

MR EKSTEIN: Commissioner, I'm here for Mr Cummins, I seek leave to ask this witness a few questions.

ASSISTANT COMMISSIONER: Yes, certainly. Yes, Mr Ekstein.

MR EKSTEIN: Mr Baird, yesterday you were asked a number of questions about objections from within the executive staff at Burwood to the proposal to install the security systems and one of the executive was Mr Cummins. And in an itemised bill relating to this issue one of your employed solicitors or associates of Mr Todd - - -?---Neal, Mr Neal, Todd Neal.

10 Todd Neal indicated that he'd spoken to Mr Cummins about this issue for about 20 minutes. Do you, I suggest to you that apart from exchanging pleasantries you never had a substantive chat with Mr Cummins about that security system, it was, all the information was given to Todd Neal?---My recollection was that Mr Neal may have had a preliminary discussion with Mr Cummins and he and I discussed the concerns that Mr Cummins had raised and then I called Mr Cummins back and went through those matters and resolved them fairly readily. But what you're suggesting is that you may not, Mr Cummins wasn't privy to the dynamic at my end which was to consider the discussion that Mr Neal had had with Mr Cummins. In other words myself and Mr Neal considering those matters and then my, my call in returning Mr Cummins' call to go through those matters and deal with them. That was my recollection.

20

Was that second conversation or the first between you and Mr Cummins billed in that same bill?---I don't recall that it was, I have to see the bill but my recollection was that there was no entry that I made when I spoke to Mr Cummins because quite frankly I didn't think it was fair to be billing that conversation.

30 And did you refresh your memory about that conversation from any file note or matters on your file?---I couldn't find, I couldn't find a particular file note, I can't remember whether I saw something from Mr Neal but I, I recall the sequence of events in my own mind and that's what I've stated.

They're my questions.

ASSISTANT COMMISSIONER: Thank you, Mr Ekstein.

MR BLAKE: Commissioner, I forgot to ask Mr Baird about one document. Just three or four questions.

40 ASSISTANT COMMISSIONER: Yes.

MR BLAKE: Could Mr Baird be shown Exhibit 8 please. Mr Baird, you see Exhibit 8?---Yes.

It's an email from Mr Romano to Mr Faker and copied to Mr Howe and yourself?---Yes.

Do you recall receiving the email and in particular reading the letter of Strategic Consultant Solutions attached to the email?---At the time or now, do I recall now?

Do you recall now receiving it at the time?---That's what I thought you meant. Vaguely.

Vaguely?---Yeah.

10 And I asked you some questions about one part of Exhibit 14 and I'm just wondering if that be handed to Mr Baird.

ASSISTANT COMMISSIONER: I think he has a copy of his final advice there if that's what you're talking about.

MR BLAKE: I am talking about that.

ASSISTANT COMMISSIONER: It would save time by letting him use that.

20

MR BLAKE: Yes, happy to do that, thank you. Can you look at paragraph 18 please?---18.

I asked you about the second sentence, you recall those questions?---"We're instructed that this is also consistent with" - - -

30 Yes?---Yes, I see. If you're suggesting that there's a linkage between the advice from Mr Howe in that sentence that's probably the case, that's where I probably may have seen it. I think I answered to you before I couldn't recall what Mr Romano had told me. I think that was my answer but that may very well be the document that - - -

Well, to the best of your recollection that would be the genesis of the instructions?---Could very well have, well, it certainly is, it's consistent with that and there's nothing in my recollection to say that that wasn't the case.

Thank you. There's nothing further, Commissioner.

40 ASSISTANT COMMISSIONER: Thank you, Mr Blake.

MR BLAKE: If those Exhibits can be returned.

MS RONALDS: I'll only be another hour or two. I can show you this document. You referred earlier to a note in your notebook. Do you recall that?---Yes.

I thought you said seven but it's a four isn't it, "Pat Romano stalked 4.00pm."?---4.00pm.

Sorry, I thought you said 7.00am this morning. That's the note to which you were referring?---Yes, it is.

And the 9/10/07 is the day you would've written the note?---Yes.

That is, the day he would've telephoned you?---That's correct.

10 Is that correct? So the 4.00pm 9/10 is the day he telephoned you rather than the day, time or date he said he was being stalked?---I think it's 4.00pm I had a telephone call from Mr Romano indicating that he'd been stalked.

And the rest of it doesn't relate to that, - - -?---The rest of it - - -

- - -that relates to other matters?---Unrelated, yes.

And we've blanked out the top of the page just so you understand, Commissioner, when you see the Exhibit because they were matters unconnected with Burwood Council?---Correct.

20 If I could tender that page.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 42.

#EXHIBIT 42 - COPY OF MR BAIRD'S HANDWRITTEN NOTE 9-10-07

30 MS RONALDS: I'm sure Mr Baird's terribly disappointed but I have no further questions.

ASSISTANT COMMISSIONER: Yes. Now, Mr Baird is being stood down at this stage is he?

MS RONALDS: Yes, he's being stood down, yes.

40 ASSISTANT COMMISSIONER: Yes, Mr Baird, you're stood down but unfortunately will have to come back at some stage. Thank you? Thank you, Commissioner.

THE WITNESS STOOD DOWN

[2.29pm]

MR NEILL: Commissioner, might I indicate just as a matter of courtesy to you and the Commission that I'm proposing to now withdraw and come back when necessary. I came into this matter very late, my learned floor

leader Mr Robert Ellicott QC was briefed and due to circumstances I came into it late last week and it may be, I have to liaise with my very learned friend senior counsel assisting, I have got a couple of appellate and part heard commitments that we'll have to work around and I have a personal medical matter on Monday but I'm sure we can do our best to work around that. If worse comes to worse it may be that someone will have to step in in my place.

10 ASSISTANT COMMISSIONER: Thank you. Yes, Mr Neill.

MR NEILL: Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you, Mr Baird.

MS RONALDS: Mr Baird I think understands he doesn't need to stay, he's only stood down and we will notify him when he needs to return?---Thank you.

20 MS RONALDS: Through Mr Neill?---I appreciate that.

I call Mr Faker.

MR STANTON: I appear for him, Commissioner.

ASSISTANT COMMISSIONER: Yes, Mr Faker, excuse me. Now, you've been called here to give evidence. You are required to answer the questions asked of you however you can object to answering and receive a direction under section 38 of the Act. Mr Stanton?

30 MR STANTON: Yes, Madam Commissioner, might he be administered section 38.

ASSISTANT COMMISSIONER: Yes, thank you.

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

**PURSUANT TO SECTION 38 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT I DECLARE THAT
ALL ANSWERS GIVEN BY THIS WITNESS AND ALL
DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE
COURSE OF THIS HEARING ARE TO BE REGARDED AS
HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND**

**THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION
IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR
DOCUMENT OR THING PRODUCED.**

ASSISTANT COMMISSIONER: Mr Faker, you're required to take an oath on the bible or make an affirmation.

MR FAKER: The bible, thanks, Commissioner.

10 ASSISTANT COMMISSIONER: Thank you.

ASSISTANT COMMISSIONER: Yes, Ms Ronalds.

MS RONALDS: You don't need to worry about it?---Sorry.

It's just a recording mike?---Yeah, I just wasn't sure if it was on or not.

10 Well, that's not your job, that's okay. We've got people who look after those things?---Sorry, senior counsel.

And if you try not to hit it otherwise you send the poor sound recordist deaf? ---I apologise, senior counsel.

Can you tell the Commission your full name?---John Faker, F-A-K-E-R.

And your business address?---10 Irrara Street, Croydon.

20 And your occupation?---I'm a public relations consultant.

And you, you are a Councillor on the Burwood Council?---That's right, senior counsel.

And you have been since 2000?---I believe so, senior counsel.

And if I just give you some years that we'll just run through, I mean, from September on as I understand it, you were elected in September 2000 or was it September 1999?---I think it was, no, I think it was July or March 2000
30 because there was some, some issue with the dates of the elections.

Right. You were Mayor in 2001?---Possibly, I thought it was 2002 but it could have been 2001.

And then again in 2002 so I think it was late 2001 running over to 2002? ---Well, that's right, senior counsel.

For a 12-month period, is that right?---That's right.

40 Is it correct you were then the youngest mayor in New South Wales?---I'm not sure.

And you then reverted after 12 months, I don't mean it in a derogative sense but you were no longer Mayor after 12 months and became a Councillor again?---That's right.

And then you were a Mayor for three years from 2006?---That's right.

And during the period we've been, you've been sitting in, in the hearings for the last few days I think or not always but some part of - - -?---In and out, yes.

And so some of the times we're looking at, 2007 and 2008 you were Mayor?---That's right.

You ceased to be Mayor at the, after the 13 September, 2008 election?
---That's right.

10

But you remained a Councillor?---That's right.

And as I understand it you're a member of the Australian Labor Party?
---That's right.

And when you were Mayor the ALP had a majority on the Council?---I don't think we had a majority, there was some independents.

20

Right?---There was a unity, there was Burwood Community Voice and I think there was three Labor so out of the seven - - -

You were elected as the Labor mayor in essence?---Well, out of the seven Councillors there was three Labor so it wasn't a majority, no.

No. And is it correct or do I misunderstand this, that now there's a year rotation system in place?---There's an, I think there's an agreement, yeah, where there's a year rotational between the major parties and the Greens and the Independents.

30

And your turn is coming up in September this year, is that right?---I would hope so but I don't think so.

Right, okay?---I'm not sure.

Right. But you anticipate being the Mayor again the future?---Yes.

And is that the only public office you hold?---As an elected official?

As, yes?---Yes.

40

As an elected official, yes. And so you've had 10 years' experience at Burwood Council?---Yes.

And so you're familiar with its policies?---Most of it.

And the practices?---Most of it.

So during the course of 2000, when you were Mayor from 2006 to 2008, during those, that three-year period, if I could ask you to turn your mind to that, are you able to explain to the Commissioner what you understood the distinction to be between the sorts of decisions Council made and the sorts of decisions the General Manager made?---Senior counsel that was primarily with regards to operations and in that instance all of the Councillors would take the advice or rely on the advice of the staff as in the General Manager and the executive to tell us what is operational and what is Council involvement.

10

And are there a broad range of factors that are laid out anywhere that make that - - -?---I'm not sure.

- - - distinction clear?---I'm not sure.

So there's no policy that you've seen that says decisions over \$1 million have to go to Council or something like that?---No, I think with regards to policy it's more so with Council but to the day to day operations and, you know, the hiring of staff and expenditure and authorisations and that is the role of the executive.

20

Right. And would I be correct to think that in some sense it's the General Manager and the executive staff who control the decisions made by Council, that is, they're, they're the primary determinants of what goes to Council and what doesn't?---Exactly.

And that unless Council or individual Councillors find out about an issue from outside that base then you may be unaware of decisions being made about particular issues within the executive team of the Council?---I'm sure there's many decisions I wasn't aware of, senior counsel so - - -

30

And that's because of the way the information flows?---Well, there's not really that type of information. Like, I don't see any, like in my role as Mayor I never saw any executive decisions that were made, I didn't see that.

Right. So you weren't privy to minutes of the executive when they met? ---Not at all, not at all.

They're not put on the Internet or intranet?---I don't have access, I never had access to the intranet.

40

To the, to the Council intranet you don't have access to that?---No, I, I couldn't access any Council files other than what was, for example, the Council meetings that I attended as in formal Council meetings.

And you didn't, as Mayor, attend executive meetings?---Never.

And how often, and I mean it's probably hard to say, but on a, were, were you in attendance physically regularly?---At Council?

Yes, on the Council premises?---Very much so.

You were only paid a modest stipend during your period as Mayor of about \$12,000?---I don't think that's correct.

10 Right?---I think there was \$12,000 is the Councillors' allowance - - -

That's the allowance?--- - - - and I think the Mayor then gets an added \$20,000 I think it is or thereabouts.

But it's not enough for a full-time wage?---Well, people can argue that but - - -

20 Yes, well, when you were Mayor did you devote, what percentage of your time would you have devoted to your duties as Mayor?---I, I can't give you a percentage, counsel, but it was, it was a lot of time. I wanted to do the, my focus was more on the issues with regards to going out and doorknocking and speaking to residents and doing street meetings and those issues so - - -

I mean, you've been described as a very active Mayor, would, would that accord with your hope at least?---Well, well, I've, I've heard that and I would like to believe that, yes.

30 And that you went out and had meetings with lots of people and would come back with lists of requests, requirements that you wanted attended to? ---Well, they were issues that were raised by residents when I would doorknock and I would then take that to the Council and formally put it on as an action request as every other Councillor would.

And you were a frequent correspondent with, sorry, do you call them constituents, residents, what's your preferred term?---Constituents.

Right. And you were a frequent correspondent?---Yes.

Again, I'm not being derogative?---Yeah.

40 I'm saying that you had, you maintained a profile by writing to people who you'd spoken to - - -?---Yes.

- - - and recording what you'd done after you'd reviewed their requirements - - -?---Yes.

- - - or their requests, sorry, it was an odd word. And that would be in your role as Mayor?---Yes.

And in terms of support you had a personal assistant or a secretary?
---Personal assistant.

And was that person a full-time employee?---Yes, of - - -

And they were a Council employee?---Yes.

And there's a physical office for the Mayor?---Yes.

10 And that was next-door or near to the General Manager's office?---Near, there was a foyer area in between.

And then I assume there's a Council room or something, a bigger area for Council to meet?---Yes.

And there are some, it's a modest sized Council as I understand it?---Yes. I think the budget was about \$35 million.

20 And there's only seven Councillors is there on the panel?---That's right.

So are there many sub-committees or is it so small that it constitutes itself as a sub-committee?---No. There are a number of sub-committees.

And as Mayor you sat on some of those?---Yes.

Were you on the finance committee?---No.

30 And what role if any does the Council take in budget review?---The only role we had with budget review is reports that would be put to Council, they were pretty generic numbers, so they didn't have line items. And they would be audited and the Council would then see the audited financial reports.

So you wouldn't see for example that what was a monthly report on legal expenditures or anything like that?---Never. Absolutely never.

And so you've heard some sums being discussed about monies paid for various things - - -?---Yes.

40 - - - during the course of the last few days. That's not information as Mayor you would've ever been privy to. Is that correct?---That's right, senior counsel.

And so you might've learnt more about the budget in the last few days than previously?---Probably more than I learnt in ten years.

And is it correct that the, that the Council itself doesn't sit down with the budget and say what we want to do is increase the focus on, and I'm just

using this as an example, but just, you know, we want to put more into trees and less into roads or more into the library and less into parks or, and you know, we want to increase park spending by five per cent and decrease the library by ten per cent or something?---No.

10 Those sort of, debate those sort of things by percentage allocations of budgets?---No. We had a workshop once a year which I think we were required to do under the legislation that sometimes we would be offsite, sometimes we'd be at Council. And I think it ran over a weekend, where Councillors were given questionnaires, like sort of lists and, and we would rate certain projects and where we wanted to put sort of money, whether it be footpaths, security, increasing security in our town centre, a new library, those type, so we'd, we'd rate that and then they'd be taken away and dealt with by the executive.

Right. And so things like the library precinct or the civic precinct, those sort of very large projects, would they come to Council as a, as an in principal project for agreement?---Exactly.

20 So that, and would they be sometimes generated from the Councillors? Do you know what I mean? Did, did Council itself come up with an idea - - -? ---Well - - -

- - - along those, for those big substantial projects or were they staff generated and Council approved?---It could happen via a Council resolution.

30 Right. But is it necessary if there's going to be a really substantial project for it to come to Council for approval before it kicks off?---For a, if you're using the library project as an example, yes, it would.

Yes. Right?---For example planning and land sales.

And what is it about that project that would require Council? Is it because it was a certain value or certain activities had to occur?---Senior Counsel, that's probably the largest project in the history of Burwood since its existence.

40 Right. Ah hmm?---It is an \$18 million project. And it will provide what, what I believe and hope will be a state of the art facility for my community.

Right. But I'm just trying to see where the lines fall about decision making and just so you understand that, that the, what I'm trying to work out is how is it possible for example, for the General Manager to make some decisions and Council not be involved? I'm just trying to explore with you the threshold of where it, where the cross-over is. And it appears at the moment that it's at the behest of the General Manager rather than at the behest of

Council that that is determined. Would that be correct?---I would, I would agree with that.

But in relation to the library project, Council's played some role in determining the scope and nature of the project?---Yes. Yes.

10 And in terms of when a policy is delivered, sorry, developed like the Councillor's expenses and facilities policy, and I think you've been here this morning and you're aware that that's been a subject of discussion?---Ah
hmm.

And I'll take you to it in more detail in a moment. But something like that policy which affects Councillors, what involvement would Council have had in the development of that policy?---Probably none.

So it would be developed by staff and then presented as this is what you are now bound by or would you have to vote on it to accept it?---We would have to vote on the policy.

20 To accept it. But basically the work is done not through a Council committee or anything but by the staff?---That's right.

Now, self evidently you know Pat Romano?---Yes.

How long have you known Mr Romano?---Since he became General Manager at the Council.

30 Were you a member of the selection panel?---I think I may have been. I believe I probably was.

Right. And how would, during the course of 2007 and 2008, going back to then, how would you describe your relationship with him?---He was a work colleague and friend, a work friend.

Right. Did you socialise with him out of work hours much?---Never. I still don't even know where he lives.

40 Oh, thank goodness?---Well, well if you're asking me have I ever been to his home or has he ever come to my family functions like the christening of my children or have I been to his family functions, no, never.

Right?---I've never, I've never been to his home or even driven past it, I think.

Right. And if people generally perceived you as close friends, that would be wrong?---I wouldn't say it was close friends. I believe there was a relationship that was close in a working relationship that any other General Manager or Mayor would have that's running a Council.

Right?---Or trying to do the best for the Council.

And during the period that you were Mayor, you would talk to him on a daily basis?---I'm not sure if it was daily, because I was pretty occupied with doing my own thing with regards to going out and doorknocking and, and so forth.

10 But on a regular basis?---I would say so, yeah, if I saw him in the office.

Yes. And you were regularly in the office?---Well, I wouldn't say I was regularly in the office, yes, senior counsel, but part of my role, role as a Mayor was, and an active Mayor was to get out and actually doorknock and do my street meetings, which meant I spent a lot of time out of the office doing that as well.

20 Right. Sorry, just excuse me, I've just got to grab something. And in terms of the other senior staff, the executive, Mr Hullick and that level, would you have independent access to them or would you have to request from the General Manager if you wanted to talk to one of them?---Usually I would request from the General Manager, but there was, usually it'd be a request from the General Manager.

Right?---Or the General Manager would direct me to contact, for example, Mr Hullick or Mr Denker.

30 And someone, somewhere, I don't again want to be (not transcribable) about this, but somebody further down the hierarchy, say the man who, who runs the depot, then was Graham Macpherson, if you wanted to know something that was happening at the depot, would you just turn up at the depot to chat to the (not transcribable) or - - -?---No.

You didn't have that sort of access to staff?---No. I don't even recall Graham, so I wouldn't know who he was.

But if you wanted to, if you saw them working out in the streets, you might say hello to them?---Yes.

40 Because they've got a distinctive uniform on?---Yes. And, and, yes, I would, yeah.

But other than that you wouldn't have for example, independent access to talk to anyone from say the depot?---No.

Now, you understood as in your role as Mayor, that you were one person to whom persons could come if they had a grievance against the General Manager or another Councillor?---I believe, I believe so, yes.

And did, were you ever approached by any members of staff with a complaint about Mr Romano?---Never, senior counsel.

And so there was never anything brought to your attention about, for example, his conduct towards other staff?---Never.

And you, did you, were you ever with Mr Romano in the workplace where you observed him to behave in a manner you considered inappropriate?
---Sorry, just on the previous question, senior counsel, because obviously
10 it's some time, I'm confident it was never, but I can't recall, that's because I can't recall any situation.

All right. If you wake up at 3 o'clock in the morning and suddenly have a flash let us know. But certainly you weren't subject to a trail of complainants of staff who wanted to complain about the manner in which Mr Romano conducted himself in the workplace?---No. Not in my term as Mayor, no.

Not in your term as Mayor. Or since?---Yes.
20

So you say that you have been contacted by some people while you were a Councillor?---Oh, no, just general discussions in the Council where people have, you know complained or I've seen some of the boys here and I said, well, look, just take your allegations to the ICAC.

Right. But that was before this week?---No, during the week, I mean.

Oh, I see. Okay. Sorry, I just wanted to make sure. And you recall there were certain allegations published in the Sydney Morning Herald on 4
30 April, last year?---Yes.

And you were no longer Mayor at that stage?---That's right.

What role, if any, did you have in terms of the Council's response to those allegations?---I can't remember what response the Council took. I remember there was a meeting that was called by the Mayor at the time where I think Mr Baird might've been present as the legal representative and I think Mr Romano made a statement and then I think, then I think there was an argument where they, we were supposed to vote on something of an
40 investigation or something like that, I can't remember exactly, I can't remember what the resolution was.

And would you discuss those allegations with Mr Romano?---Yes.

And what was his response to you?---He told me that they were untrue.

And what, and you accepted his - - -?---Well, I had no reason to believe he was telling me the truth, he seemed very angry about them and he told me

that they were untrue and that, so forth so I just said, I don't really want to be involved.

And during your time as Mayor had you ever had occasion to doubt the voracity of anything he said to you?---Not at all.

So you trusted what he said to you?---Well, I relied on his advice, Senior Counsel, that was his job.

10 Yes. And you never had any reason to doubt that advice?---Not that I can recall.

Now, you're aware that one of the issues that has been discussed indeed in the last 24 hours at some length is about the payment of the security allowance for your house?---Yes.

Now, I just want to take you to that issue, there are other issues we'll go to but we'll start with the most popular one. Now, you agree that Council paid over \$20,000 for the installation of security alarms for your house?---
20 Counsel, I, yes.

And we'll get to the repayment, you've repaid some amounts of that?---Yes.

Right. And what was your understanding at the time that was the basis for that payment?---Sorry, the basis of the Council payment?

Yes. What was your understanding of the position you were in such that Council could pay for those alarms at the time they were installed?---Well, I
30 was advised it was operational and that the Council was doing a security audit, there was some certain circumstances that I was led to believe in that were arranged by Mr Romano about security threats and that it could escalate and that he advised me that it was operational, he had a duty under the Occupational Health and Safety Act to protect the Mayor and I was advised that it was signed off by the executive, that Mr Howe advised it was operational. And then I sought, because I asked for legal advice and then that's what led to that meeting with Mr Baird.

All right. Well. let's go through it bit by bit shall we? First of all when you say you were advised that it was operational that was by Mr Romano?
40 ---That's right.

And these discussions went on over a period of a few weeks. Is that correct?---I, I, from memory probably, probably they did, I wouldn't say a few weeks, I was pretty much initially told that that's what's happening and that he will arrange for a security advisor to come and it went on from there.

So is it your evidence that it was Mr Romano who first raised with you that you should have some security alarms installed in your house?---Hundred per cent.

So it wasn't ever that you asked for security alarms to be installed in your house?---Never, absolutely never, Commissioner. Sorry, Senior Counsel. Sorry, Assistant Commissioner.

ASSISTANT COMMISSIONER: That's all right.

10

MS RONALDS: And you're quite vehement about it if I may say in your evidence. Did you ever report to Mr Romano that you'd been subjected to any harassment?---No, not at, not prior to that, no.

20

And were you by say 1 October, 2007 had you been subjected to any harassment at your home?---Yes, I had certain type of harassment which is people picking up the phone and answering and there'd be no answer so it will just, you know, make noise, yeah, and, and very early on (not transcribable) like 1.00am, 2.00am doorknocks where I would open the door and my wife would open the door and there'd be, there'd be no one there. And we've got, I had three children under five so they were terrified.

And how often did that happen the ring and run, the knock on the door and no one there?---I can't answer that, Senior Counsel, it happened at odd times.

30

Do you remember when it happened, that is, the period in which it happened?---No, it happened in my, over my course when I was Mayor so I just thought it was probably, like sometimes you might have someone disgruntled and they'd go knock on the door and - - -

And was it something that occasioned you concern about the safety of your family?---I was always concerned about the safety of my family, Senior Counsel, considering I had a higher profile but did it raise the level of concern with regards to advising Mr Romano prior to him speaking to me, no.

40

And was, do you recall when the first conversation you had with Mr Romano about this matter, the alarms, was that just you and he or was it a three party conversation?---No, the first conversation I recall with Mr Romano was prior to Mr Mailey coming to my home.

Right?---And the conversation was as I mentioned to you, it was along the lines of the Council is doing a security audit, that he wanted to arrange for Mr Mailey to attend my home and I advised at the time that, the early advice (not transcribable) the Council's, because it was operational, the executive was fine with it, the legal advice he had received was fine and the, he had

spoken to Mr Howe and he told me that it was operational, come under his auspices I guess.

Right. Now, as I understand it Mr Mailey came to your house on 26 October, 2007?---I can't recall the exact date but I remember he came over, yes.

And you were building a new home. Is that right?---No, I was renovating an existing home.

10

Is that a home in Croydon or have I got the wrong address?---No, Croydon.

Is that in the Burwood - - -?---Yes.

Right. Local Government area?---Born and bred, Senior Counsel, born and bred in Croydon so was my wife and we're raising our family there. It's a beautiful area.

20

So, but the house that was at 10, and I've forgotten the name of the street? ---10 Irrara, 10 Irrara Street, Croydon.

So that was being renovated. So it wasn't a new house being built from scratch?---No.

Right. And do you recall that Mr Mailey came around one morning?---Yes.

Had you met Mr Mailey before then?---Yes.

30

And what were the circumstances in which you'd previously met him?--- Where, I was told like I'd be contacted by Council so he can, because, because I had a home office that he had to come and do, I don't know what he does, like a sweep or something so I'd just leave him in there and, and sit out the back.

40

Okay. So that was when he swept your house to see whether it had any bugs in it?---Well, I don't know what he did, I was told because of Council's, sensitive information regarding Council and, and commercially sensitive information I was told that, you know, like he had to go to the Council Chambers and, and he had to go to the house of the Mayor and the General Manager.

And who told you that?---(not transcribable) I think it would've been the General Manager.

Right. And do you recall how often your house was swept?---I think in my time maybe twice in my whole time.

So that by 26 October, 2007 you'd met him on one occasion or more than one occasion?---I would say at least on one occasion. I probably had seen him in the foyer at Council waiting to see Mr Romano but there was no - - -

But otherwise you'd met him once when he came and did a sweep at your house?---I can't recall exactly, I mean, I was meeting people everyday so I can't recall exactly but I had at least met him once, yes. I would, that's the best of my recollection.

10 Just do the best you can, I know it's a few years ago and I'm sure a lot's happened since then. Do you recall that your electrician was present when Mr Romano - - -?---Yes.

Sorry, when Mr Mailey was there?---Yes.

And that's a Marcelle and please forgive my pronunciation, Moad?---Moad.

20 Moad. Okay. And he was there working on the house and putting in some wiring et cetera in relation to the renovations?---Not, not on that day, I think he came down, I can't remember exactly but he was there.

And did you tell Mr Mailey that you wanted cameras to go with the alarm system?---No.

So whose idea were cameras?---The cameras had already been suggested to me prior to Mr Mailey even coming.

30 Right?---And then Mr Mailey came and he was the one that suggested cameras.

Right. And was there some discussion about using an IP or a C-Bus system?---With all due respect, senior counsel, I wouldn't know the difference between either, so when I heard Mr Mailey's evidence that I requested a certain system, I totally don't agree with that, because I wouldn't know the difference between either system. That was something he was discussing with Mr John Tannous from JT Alarms.

40 Right. So you weren't involved in that discussion?---No, I was standing there as an observer, but they were talking so - - -

They were talking some foreign language as far as you could work out. SO you don't what a C-Bus is?---No.

Well, as I understand it, it's a micro processor based control and management system. And, and it controls everything. It controls lights, audio visual devices, motors, et cetera. And so that it's a much broader system of electricity provision then just a security system?---Well, the

system that I've got installed, yeah, I wouldn't know, but the system I've got installed only controls the cameras, so - - -

Right. So it's only on, right. And, and Mr Tannous, Mr John Tannous - - - ?---Yes.

- - - now he's someone you've known for some time?---Yes.

10 You went to school together?---We went to the same school. We did not go to school together.

Right. And he runs JT Alarms?---Yes.

And you had a social, and I'm not being critical, but you had a social relationship with him?---No.

Do you attend the same church?---No. I have attended his church, which is St Joseph's at Croydon.

20 Is that the Maronite Church at Croydon?---Yeah. That's, that's, even though I'm a Maronite Catholic, I actually attend Holy (not transcribable) which is just on the top of my street, which is our local Catholic church.

Right. But would it be correct that you, you met him one day at the, at the other church, his church and had a discussion with him about your renovations?---No. I don't recall running into him. I may have, from my memory, I rang him when I was contacted by Mr Romano and Mr Mailey.

30 Okay. And you asked him to do a quote on the work that was to be done? ---No.

Right. So who did that?---Mr Mailey.

Who organised for Mr Tannous to be at your house at the same time as Mr Mailey?---I did.

Right. So Mr Tannous was there on the 26th as well?---I believe so. I don't know the exact date, but I remember he was at the meeting.

40 From other records, it seems it was 26 October. So you would accept that - - -?---Yes.

Right. And so out of that discussion Mr Tannous then went off and provided you with a specifications and quote?---No.

So he didn't give it to you?---No.

Did you ever see one?---Not that I recall. I never saw a quote.

Did you ever know the cost that was involved?---No.

Did that concern you that you didn't know how much money was being spent?---There's one thing that, only one matter that was discussed about cost when Mr Mailey came and was talking to Mr Tannous about it being, you know this like super tech type system. And I said, no, my only request is that it be a basic system.

- 10 Ah hmm. A basic, so you didn't want all the bells and whistles?---No. Well, I was told that Council was providing a security system for the Mayor. I did not want that to be extravagant. And when Mr Mailey came and had all these beautiful ideas and wonderful ideas and he's (not transcribable) about his super-duper system, I said, well, no, hang on there, if I'm going to have a system in my home it would have to be a basic system.

Right. So that was your only request?---That was, that was my understanding.

- 20 Right. Now, you've been here when there's been some lengthy discussion about a draft legal advice prepared by Mr Baird. Could the witness be shown Exhibit 10?---Yes, I'm aware of that, senior counsel.

Now, you see it's dated 7 November, 2007?---Yes.

Have you ever seen the document you've just been handed before these proceedings commenced earlier in the week?---Counsel, I remember seeing a document at the meeting. I don't know whether it was the draft or the final.

- 30 Right. Did you read it do you recall?---I went, Mr Baird went through it with me.

Right. And you and he discussed it?---He, I had some concerns which I think Mr Baird had - - -

Don't worry about his evidence, you just concentrate on yours?---Yes, we discussed it.

- 40 Right. And if he recalled that was with the draft prior to the final would you be, does that accord - - -?---I, I hand on heart said it was the final but if it was the draft I can't answer.

But at some stage you had a meeting and that was three of you, Mr Baird, Mr Romano and yourself?---It was, I was interrupted in my office.

Right. So it wasn't a scheduled meeting?---No.

And then what happened?---Well, I had a knock at the door, Mr Romano, 'cause previously I had been asking where's the legal advice, I mean, I don't want to proceed with any system until I'm comfortable that it's the right thing, I mean, I had concerns. And then I had a knock at the door one day which must've been that day and Mr Romano came in and he said to me, Mr Baird, he's here, have you got five minutes to talk to him, he's got the legal advice that I wanted to show you regarding the security system.

10 Right. And do you remember what you, Mr Baird and Mr Romano discussed at that meeting?---Yes.

And what was that?---It was specifically about me listening to Mr Baird at the time because I trusted his advice as our legal representative regarding the role of the General Manager and the Council to provide home security for the office of the Mayor and that the Council had a responsibility to do that. There was a bit of talk before that about Mr Romano rehashing the harassment issues he had and I made the comment, Well, that's funny, who was accepting that? And he told that it could be escalating and, and, and I believed it was in (not transcribable) likelihood it was related to Council.
20 You know, I made the comment that well, gee, that's funny because in the past I've had those doorknocks late at night. And I think I relayed my concern that, because I was officiating at a lot of functions of an evening and my wife and three young children were at home by themselves.

And so you raised that at the meeting?---I, I remember a discussion, a general discussion about that but it was primarily regarding the advice that I was receiving from Mr Baird regarding that it was, as Mr Baird put it, kosher from a Council perspective.

30 And you had some concerns about the payment?---I had concerns about the installation from Council for a security system - - -

Sorry, go on. And you raised those concerns?---Yes.

And what did you say, do you recall?---I can't, well, I remember mentioning to Mr Baird that if I was to proceed in, in, in accepting the system to go in that it be, that I don't want to have any issues that if it wasn't the right thing I don't have any issues, I, I, I made specific mention that I had been interviewed by ICAC regarding an allegation many years ago and I would
40 not like to put myself in that position again. I was very conscious of that.

And at the end of that discussion what did you understand was to be the process for the payment of your security alarm?---My understanding was that it was always operational, there was, it was never to my recollection regarding the matter going before Council, that was never arranged with me and that the matter, because it was operational could be approved by the General Manager with the executive approval because it was his duty under the Occupational Health and Safety Act. I was specifically being spoken to

about and that's what I recall, the duty of the General Manager and the Council under the Occupational Health and Duty Act. Safety Act.

And if I could, if I could show you the final of the legal advice, it's Exhibit 14, please. Now, this is the final of the advice. Do you ever recall receiving and reading this?---My understanding is, I honestly thought I was looking at the final.

Right?---That's what I thought it was.

10

But whether it was the final or the draft, if I could take you to paragraph 23 of the final - - -?---Yes.

- - - and there's, it's, it's a mirror image of the other ones, it talks about reimbursement for payment in advance?---Yes.

Now, was it your understanding that you were required to pay for the alarm yourself and then be reimbursed?---Never.

20

Well, you see that's clearly set out there and - - -?---Yes.

- - - in the draft so whichever one you read, that's about it, it's clearly traversed, isn't it?---Yes.

Did Mr Romano ever say to you put it on your credit card and we'll pay for it later or words to that effect?---Never, never. I never got involved in the invoicing process. I was told that that's not your role, the invoicing went through Mr Mailey and went straight to the Council.

30

Right. And until this week have you ever seen the invoice?---No.

And Mr Mailey says he came around to your house after it was installed and checked that everything was okay?---That's not correct.

So he didn't do that?---Not from what I can recall. I, I remember that I think I spoke to Mr Romano with regards to he told me to organise the security person and, and a electrician but I, I don't recall that there was any system in my home.

40

So if they could be taken back and the witness could be shown Exhibit 19.

Now, this is an invoice from JT Alarms - - -?---Yes.

- - - for the sum of \$20,422 and you'll see that it has your address on it?
---Sorry, that's SNP.

19, oh, no, sorry, you have to turn a few pages over, I'm sorry?---I'm sorry.

If you want to hand it to me I'll, I'll open it at the right place?---Yes.

Do you have it, sorry. You'll see that, you wouldn't doubt that this is the invoice for your house, would you, it's got your address on it?---Yes.

And do you say that until this week you've not seen this advice, sorry, this invoice?---Not that I recall, no, I don't believe I have.

10 And were you ever, did you ever discuss the total amount with Mr Romano?
---No.

He didn't ever ask you about it?---No.

You didn't ever ask him about it?---Not that I recall, specifically I recall it'd be a basic system.

20 Right. And if you then turn a few more pages over there's a, there's a handwritten one with a little light globe on it that looks like this. Do you see that one?---Yes.

And that's from your electrician?---Yes, who, who had, yes.

Have you seen that one before?---Not until this week.

I mean, sorry, prior to this week?---No.

30 But if your electrician said it was for the work done at your house then you, you'd accept that?---Well, I would accept it based on the fact that Mr Mailey came back and did a final inspection.

But if your electrician said this was for the work done on your house you'd accept your electrician was correct?---No, because my understanding is that, oh, sorry, yes, with regards to it being the work on my house - - -

Yes?---Yes.

For the, for the security system?---No, that was for the lighting, security lighting.

40 But that's part, sorry, the - - -?---Yes.

I'm sorry, just excuse me one minute. But it's for the, the lights were part of the security system, weren't they?---Yes.

I'm sorry, take a moment to read it, I don't want to rush you?---Yes, it's for part of the security system.

Yeah. And this was also paid as well as the other bill, is that your understanding?---(NO AUDIBLE REPLY)

You didn't pay this?---No.

And you didn't pay the JT Alarm amount?---No.

So at no stage did you pay it and get reimbursed?---No.

10 But you knew that was the policy of Council, didn't you, that Councillors had to pay and then be reimbursed for expenses?---Not with regards to the security system, no.

And why did you think it was outside that policy?---Because I was advised by the General Manager that it was operational. I was then shown a letter by Mr Howe that suggested it was operational. I remember I think I had a, I even called Mr Hullick and I think I may have sought some advice there, I can't recall but I remember it was about and seemed to be comfortable and then I got the legal advice.

20

Just on, I'm sorry, just so I understand, when you say operational, what did you think that meant?---That it feel in with the duties of the General Manager and the executive.

Right. And therefore it was something that you didn't need to trouble Council with?---No, it was the, I was told it was the responsibility of the General Manager and the executive.

30 Now, you're aware of the purchasing and tender procedure that applies at Council?---No.

All right. I'll just show you this document. Now, you recall earlier I asked you about whether you were familiar with the policies and you said you thought so?---Well, those that related to the Council elected body but I believe this is for the executive because we don't get involved in purchasing and tenders.

All right. Well, just turn to page 3?---Yes.

40 I'm sorry, you have to read it at the start of the bottom of page 2 to make sense of it. You see, what I'd suggest to you is that it covers and includes, you see, check, staff and Councillor reimbursements, do you see that at the top?---Okay, I see it now.

And it has requirements for purchases from \$10,000 to \$50,000. Do you see that at page, the top of page 4?---Yes.

Were you aware that there was a requirement depending on the size of the amount to be spent, that there'd be three tenders for a job?---I was told, sorry, with regards to this or - - -

No, just generally, in terms of what you were aware of - - -?---No.

- - - in 2007, were you aware that there was a policy that required Council money between 10 and \$50,000 to have a minimum of three written quotes? ---No.

10

And do you recall having any discussion with Mr Romano about the alarm system and the requirement to get different quotes?---No. I, I remember Mr Mailey said he was going to obtain quotes because it had to fall into line but I don't, I'm not sure, Mr Romano may have mentioned it.

But you didn't, you didn't do anything about getting, I'm not being critical but you didn't do that?---No.

20

And no one said to you you had to do that?---No. Senior counsel, I think I've got to correct something. When, when I spoke to Mr Tannous and (not transcribable) was there it was not on the basis that they do the work, it was on the basis that they could provide, go through with Mr Mailey, they would look at the system and he would give them, and then they would have to put pricing in.

30

Right. So you didn't say to anyone, I want my blokes to do it or - - -?---No, no, not at all. I, I, they were two local business people that live locally, live within the Burwood local government area that had been, from what I understood, had a high reputation in their field.

And you try and keep the work within the local area?---I believe - - -

To assist local business?---I believe Council endorsed our Council as in the electing body endorsed the policy that we'd use if, if competitive, they would use the local business community.

40

So as far as you were concerned you were being consistent with that approach and you were creating an opportunity but you saw it as no more than that. That is, they had the opportunity to put in a quote and - do you say it was up to Mr Mailey to choose which quote was- - -?---I remember a certain, while I remember he was talking about that he had to get pricing to make sure it was competitive.

Right.---I didn't know any more than that or I didn't see anything that was left for him to do, I went on to do what I wanted to do with regards to door knockings, street meetings and all the other issues.

Right. And meanwhile the arrangements were made and I assume that Mr (not transcribable) at some stage rang you up and said, we need to make access arrangements, et cetera.----Yes.

Right. If I could tender that policy.

ASSISTANT COMMISSIONER: Yes, that will be Exhibit 43.

10 MS RONALDS: I'm sorry I'll withdraw, I'll withdraw the tender, it wasn't in force at the time. We will tend to that.

ASSISTANT COMMISSIONER: Yes, all right.

MR BLAKE: (not transcribable) is that right Mr (not transcribable) 12 August.

MS RONALDS: It's the wrong version, the slaves will be whipped later. Now, you had occasion to repay some money in relation to that amount- - ?---Yes, to Council.

20 - - -total \$22,000 odd thousand. Do you recall what occasioned you to start that process?---I, from the initial advice I received when they were putting in, when they decided, when I was told that the Council was going to decide to put in a security system. I was always advised that the system would, does not belong to me that it's the property of the Council. When I finished my term as Mayor, I remember having one, at least one, more than likely two discussions in early 2009 with Mr Romano and requested – I haven't heard anything regarding the security cameras, is Council going to remove them or can I purchase them from the Council.

30 And you ensured at some stage – is this correct – that they went on the asset register, did you have anything to do with that?---No.

No, okay. But nothing happened about that?---I then had another baby, senior counsel.

40 Congratulations.---Thank you. And then I had, I started a new job and then I remember, I think speaking to Mr Romano again, who I know, I guess was always pre-occupied to me, seemed busy and I recall there was a discussion that he would speak to Mathew Walker about providing me with an invoice or in get in contact with me or something like that.

You see- - -?---But prior to that, sorry, I must correct senior counsel, prior to that I was told that there will be more than likely going to be re-elected Mayor again, why do you want to remove the cameras or purchase them? And I said - - -

Who told you that?---Um, I had that from, that advice both from Mr Romano and I think Mr Hullick.

Mr Hullick. And, you see, I'd suggest to you what happened was that you were advised that this Commission was looking at this issue late 2009 or early 2010 and that was when you organised for a repayment process to start. Would you agree?---No, senior counsel, I made those inquiries prior to that.

10 Well, you're saying you made the inquiries in early 2009 but nothing happened, you didn't make any repayments, did you?---No, in October I sent an email to Mr Hullick with regards to getting my expenses in my time as Mayor and all my general Mayoral expenses in my role, it was a detailed email at the time.

All right. Well, I'll show you this email. And then, you know what emails are like, start down the bottom. So if you start down the bottom you'll see that there's an email address to John- -?---Yes.

20 - - -but it's to you.---Yes.

And it's from Mr Hullick.---Yes.

And it's the 25th of January at 5.21pm. Do you see that?---Yes.

And it says, John, just following up on our discussion and the letter received today regarding materials supplied to the ICAC in relation to yourself.---Yes.

30 Yes. So does that help you recall that you must have had a discussion with Mr Hullick about this Commission and what was being requested and the documents et cetera in January, 2010?---No documents, absolutely no documents were discussed Senior Counsel, but I was aware that there was a Commission investigation, yes.

He says then, with regard to the security system installed at your premises when you were Mayor, the cost has been capitalised and then he sets it out.--Yes.

40 And then, you come back and tell him you think he's done it wrong and that he's been, it was more in- -?---The Council's favour.

Yes. You have been pay more.---Pay more.

Then an invoice was raised, and I'll show you. Just bear with me a moment, the paper was lost.---That's okay Senior Counsel.

I'm sorry, I'll just have to, I'll give you a somewhat ratty collection of documents. You'll see there's one, I've given you a bundle of four pages. If I could take you to the first one. You'll see that's an amount for \$12,988.59.---That's right.

And that's dated 27 January, 2010.---That's right.

And that's an amount you repaid promptly upon receipt of this invoice.---That's right.

10

And that was, you understood, you were repaying some costs of the alarm system.---That was the figure I was provided at the time which was based on the December, 09 figure.

And then there was the second one, if I could ask you to look at the second one.---Yes.

There was a figure of \$3,713.18. Do you see that?---Yes.

20 Dated 23 February 2010.---Yes.

And again, once you, and that's the second instalment in relation to the security alarm system.---Yes, Counsel that's right.

That's right isn't it. And you promptly repaid that one.---Yes, that was only provided by my requested.

And you resorted the money, you reconfigured the money I understand it.---That's right.

30

You told the Council officers they'd got it right.---That's right.

And been too generous too you in effect.---Well, um, I don't know that wasn't my job. Just to correct an issue Senior Counsel. When I sent the email to Mr Hullick regard my list, my list of my expenses. I then, I remember I then saw him at I think the September, oh sorry, November and December meeting where they had Mr Hullick and Mathew Walker where they were standing before they were walking into the Council meeting. I had a both times advised that I had yet to receive a response to my request regarding the email.

40

So that's an email you say you sent in October.---That's right.

And do you have a copy of that email?---My senior counsel does.

MR STANTON: Yes, if you could excuse me Senior Counsel. Produced please Commissioner.

ASSISTANT COMMISSIONER: Thank you.

MS RONALDS: And I'll show you this document?---I think that's the wrong document, that's the letter.

I think that's the wrong document as well?---It's an email.

MR STANTON: Well, could the witness be shown these documents then and get from them, what he says is collectively a bundle of documents.

10

MS RONALDS: I don't want to see them.

THE WITNESS: It's not you alone, Senior Counsel.

MS RONALDS: I'm arranging mine to be flogged later, yours can join if you like?---I wouldn't mind doing some flogging of my mine. I don't think it's in this lot, Senior Counsel.

20

Well, perhaps, we understand that you identified email in October and perhaps when you leave the witness box you can locate it and - - -?---Yes. No, it's there I saw it this morning.

We'll just move on rather than waste time on it, - - -?---Okay.

- - -Mr Faker, if we may and then - - -?---Sorry, here it is. Sorry, Mr Stanton. Sorry, can I just give that back to my counsel, thanks.

30

All right. Well, I'll show you this document. Is this the email that you identified dated 22 October, 2009?---Yes.

And what occasioned you to send that email?---It was after discussions I had with Mr Romano regarding wanting to repay the system. I was then sent an email from Mr Hullick requesting my diary and so it, I told them I didn't have my diary, it was with the Council and then I wrote an email regarding that I wanted, that I wanted to look at my expenses and to do a self-audit.

40

Right. And do you say that that had nothing to do with questions being asked about, from this Commission?---No. (not transcribable) to want to self-assure myself with regards to my expenses and to do an audit.

Just bear with me one sec?---That's okay, Senior Counsel.

I want to turn to the issue of childcare expenses?---Yes, Senior Counsel.

I'll show you this folder and we'll just take back from you whatever you've got. Sorry, if I could tender that email it would probably be easier?---Okay.

ASSISTANT COMMISSIONER: Yes. That email will be Exhibit 43.

**#EXHIBIT 43 - EMAIL FROM LES HULLICK TO JOHN FAKER
DATED 25 JANUARY 2010 AND REPLY FROM MR FAKER TO
MR HULLICK**

10 MS RONALDS: Sorry. And if I could - we're just seeking out the proper
copies of the two repayment invoices.

ASSISTANT COMMISSIONER: Yes.

MS RONALDS: If I could tender this bundle which are the two invoices
and attached to it are the Council's internal documents to show that you
repaid it so if I could tender that bundle.

ASSISTANT COMMISSIONER: That will be Exhibit 44.

20

**#EXHIBIT 44 - TWO INVOICES FOR COUNCILLOR JOHN
FAKER DATED 27/1/2010 AND 23/2/2010**

MS RONALDS: Now, you have - there's a schedule on the top of the
folder that you have?---Yes.

I'm sorry, you've still got some loose documents, we'll remove those so that
they don't - - -?---I was just given them.

30

We've had that one. And then if you look behind that there's a copy of the
reimbursement policy that we were just looking at earlier?---Yes.

And if I could ask you to turn to, see it says page 7, to page 7 of 26. Do you
see that?---Yes.

And you'll see there it has childcare expenses?---Yes.

40 Reimbursement be made for expenses incurred due to the need to attend
commitments at Council meetings, committee meetings or other official
Council business?---That's right.

Now, prior to today you'd seen that policy before hadn't you?---Yes.

And you made claims for childcare costs?---Yes.

And you made claims for Thursday and Friday of every week over a period?
---Yes.

And what did you understand was the basis on which you could properly claim that Thursday and Friday on a weekly basis?---Senior Counsel, when you put your child into childcare you have to secure a spot so you have to secure those days. My understanding was it was, I was allowed, based on the advice I received at the time from - because I checked it before I put it in from, I think it was Pina Viney the Corporate Governance Officer.

Sorry, who?---Pina Viney.

10

Right?---That it was claimable if I was doing Council related work.

And did anyone ever discuss with you that just working at home on the day may not meet the requirement?---No, but, no.

And did you understand that - look just up the page a bit and you'll see there's a maximum (not transcribable) there \$12,000?---Yes.

20 Did you understand that when you claimed childcare expenses that that was part, that came out in effect of your \$12,000 expenses that you could claim?
---That's right.

And you put in a series of claims for childcare?---Yes.

And if I could ask you to go to the front of the folder?---Yes.

You'll see there there's a schedule?---Yes.

30 And this is a document compiled in the Commission by the Commission staff just so you understand it, it's not a Council document?---Yes, Senior Counsel.

And it adds up the dates that you claimed which were 115 in total?---Yes.

There's 109 days and six days when in fact your child didn't actually attend childcare but you made a claim for the cost of the childcare anyway?---
That's right.

40 Right. And what's in the folder, and I don't want to waste time going through it but what I'd invite you to do later is to just, we put all the expense material together and to save time since we're - all the childcare expenses and phone expenses et cetera and if you would like to take at your leisure to look through those rather than me take them one by one?---Yes, I understand.

And if there's any issue with any of them if you can get your counsel to contact us and we'll sort it out?---Okay, Senior Counsel.

We've endeavoured to put it altogether as much as we can. So that there was a total paid of \$6,057.84, right?---Yes.

And that was paid from, during the course of 2007 and 2008?---I'm not sure but I take your advice for that.

Well, you look on the dates there. It starts on the 20/10 - - -?---Yes, yes.

- - - down to 2/1?---Yes.

10

And it was in September that you ceased to be Mayor. Is that correct? ---That's right.

Now, you've had occasion recently to repay a certain amount, that's the 12 March, 2010. Do you remember that?---Yes.

And you've repaid an amount of \$1,529.15 for childcare costs?---That's correct.

20

Now, what is it that occasioned you to do that?---My self-audit, senior counsel. What I did, I went through and audited my expenses because during my time as Mayor, as I'm sure you'd appreciate, I was busy doing the things that I was focussing on with regards to my Mayoral duties, I did that on the advice of my, even though I believed that I was entitled to that expense and still believe that I am, because I would still go into Council, the Councillors' room on those days, I sought advice from my legal counsel who told me that considering that the October, December period was outside your term as Mayor that it's probably best to, you know, for the sake of that money to pay it back which I, which I accepted his advice.

30

And you did that, did you not, because you knew this inquiry was about to start?---I had no idea of when the inquiry was going to start other than to produce, sorry, could I just go back, senior counsel, when, when I sent that email in October regarding my expenses and wanting to do a self-audit and then the follow-up requests from Mr Hullick and Mr Walker and even Mr Romano where in December I, I actually complained that I hadn't received that information, I only received my expenses in total I think in early February.

40

Right?---And it was only after I bumped into Mr Dencker and Mr Hullick and I again raised my frustration that I still had not been provided with this that I was then provided the information.

Now, some of these claims relate to a childcare centre called the Woodstock Childcare Centre?---Yes.

Do you have an interest in that centre?---Not at all.

A beneficial interest?---Not at all.

A beneficial interest in any of the unit-holder, as a unit-holder of a trust in relation to that childcare centre?---Not at all, not at all.

So on 12 March, 2010 you repaid the \$15,029 that I've referred to?---1,500.

Sorry, 1,500?---Yes.

- 10 My numeracy fades as the day goes on. And you, and you've given the circumstances, you also repaid a \$200 amount in relation to an event that was on 1 December, 2006?---That's right.

Now, why was it that on 12 March, 2010 you are repaying \$200 for an event that was in December 2006?---Well, senior counsel, as I mentioned in my previous answer, I wanted to do a self-audit. When I was provided, when I was finally provided with the expense folders I then did an audit during my time as Mayor. I then noticed that there was a, an event that I attended to which I had been invited to at the time as Mayor which was to have
20 Professor Ed Blakely provide a speech and a talk on planning matters in New South Wales. I had been enrolled in a workshop, a three-day workshop previously at the Sydney University where Professor Ed Blakely presented to us as well as former prime ministers like Prime Minister Keating and so forth on planning issues and Sydney planning matters. I was then invited by the then mayor, I think of Parramatta, David Borger to attend that event. Having upon reviewing and doing my audit I noticed that it was then a fundraiser and thought that that was not appropriate to be a, a claim so I reimbursed it.

- 30 All right. I'll show you this bundle of documents where there's a note and I assume, and I'll ask you to look at it, the first couple of documents are the, I'm sure you've got them. I don't know where the rest of the bundle's gone so you'll have to share for the minute. So on the third, sorry, the fourth page of the bundle, you see that?---Yes.

Where (not transcribable) fundraiser to help elect David Borger?---That's right.

- 40 From the members of the Granville ALP Electoral Council?---That's right.

Right. And down the bottom it's got a little handwritten note, was that from your Mayoral assistant?---I would assume so, yes.

The Mayor would like payment for this fundraiser for Mayor of Parramatta to come from his civic functions allowance?---Yes.

So would it be correct that in December 2006 you thought it was an acceptable claim but by March 2010 you'd changed your view?---No, senior

counsel, I relied on the advice because when I'd put claims in, as I had done in the past, if it wasn't in line with the guidelines it would be sent back and, and I was told it's not approved and I'd cop that on the chin.

Fair enough?---With regards to this particular one there was a covering letter that was, I presume, sent to all of those that attended those workshops so all the different mayors and that letter presented differently to this but it, the only explanation I can give you it was probably an oversight - - -

10 Right?--- - - - at the time.

But that's the total of this \$1,729 is the \$200 for that and the \$1,500-odd for childcare?---I believe so.

As in this, in this reimbursement - - -?---I believe so.

- - - as I understand it. If I could tender that bundle.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 45.

20

#EXHIBIT 45 - BUNDLE OF CLAIMS OF MR FAKER TOGETHER WITH RECEIPT FOR \$1,729.15

MS RONALDS: If I can show you this bundle. Now, you repaid an amount on 5/3/2007 of \$944?---Yes. Senior counsel, do I still need that or give it back, the child - - -

30 Hang on to that for the moment?---Okay, yes.

Now this is a bundle of documents that relate to another set, another bundle of repayments if I could call them that?---That's right.

And you'll see one is for \$405.90 to Floral Culture?---Yes.

And there's various wreaths et cetera to be delivered?---Yes.

40 And that's a claim you made at the time and then on review, do these, sorry, just go back a step, do these repayments fall into the same process that you've explained?---No. No, these, these claims did not come from my expenses allowance.

Right?---My PA had, for example, if there was a death or a, you know, 100th birthday or, you know, whatever she would arrange flowers to go and she also had my credit card so she would either use the credit card or, depending on that, this.

And - - -?---Which is, I don't know what account it came from because I, I assume there was a general account in the office which was used for things like this, like the running of the office.

But why are you repaying this amount?---Because - - -

This is a florist bill that goes back to '08, August '08 for \$405 when you paid it on 5 March, 2010?---No, sorry, senior counsel, I think that's not right.

10

That's not right?---No, because I only repaid the amount which is the top one, which is \$94.

Right. Okay. And why did you do that?---Because at the time, as I mentioned, my PA would have my credit card, my personal credit card.

Right?---So I would ring her and tell her could you arrange some flowers for these people, now even though I believed in my role as Mayor I was able to do that, when I went back and did my self-audit in February after I was given those documents finally - - -

20

Ah hmm?--- - - - I then noticed that these, some of these floral arrangements which, as she had done in the past that came from my personal credit card, actually were charged here and it's the first I saw that so I highlighted those that I thought were not appropriate in the sense of that I was not aware that she had had charged them on her account or whatever account they use and not my card so I repaid it. I wanted to do the right thing and repay that.

30

All right. So the \$944.83, you see you get that off the front, that's with GST, well, \$858.94 without the GST, are you able to say what that comprises of from this bundle or do you have a schedule somewhere else that would assist?---I think my senior counsel might have but I, I can, I know it's the first one on that page which is \$94.

Right?---There was a mix up with, because I've got two mobile numbers that run the same, that I, that I used in my time as Mayor and they have the same phone number bar one digit so instead of 0-4-1-3-6-4-3-3-3 it's 0-4-1-9-6-4-3-3-3-3 and what meant is as in the past where Pina Viney the Governance officer had sent it back and said to me, oh, the Mayor has requested to take those off, and I had done so in the past, prior to- - -

40

But (not transcribable) has requested.---Well, I had because, I would put my expenses together and on most occasions I would give it to my PA so she would fill it out or I would fill it out. She'd give it, they would check it with the governance people. At times they would make amendments to that and changes, they would then send it back to me and say, that's what you're getting reimbursed and I would be given a slip with that that had approval from Pina Viney and Mr Cummins at the time.

Right.---So, when I did those self audits I looked at there were some mistakes there um, and um, even though, as I explained with regards to my, the error that occurred from my PA, I decided to pay those backs.

And do you say, and I suggest to you, you did that because you knew this inquiry was about to start.---No, Senior Counsel, as I mentioned previously, I sent the email in October requesting my expenses specifically.

10 But you knew in October, didn't you, there was an investigation at this Commission?---I would agree that it prompted me to want to resolve the matter more quickly, yes, I won't deny that but I, I wanted to ensure that I was doing the right thing.

Right. We won't tender those for a minute then. If you could just put the folder aside and that document and when the associate.---I'm running out of room Senior Counsel.

20 Well, try the floor. I just want to turn to another issue. Just to show multi-skilling occurred (not transcribable) I'll hand you this document. Now this was an advice given by Mr Baird in relation to advice, in relation to the distribution of electoral material. Do you see that?---Yes.

And that was a matter you were concerned about, wasn't it?---No. Oh sorry, distribution of election material?

Just let me finish the question before you answer it if you don't mind. Just prior to the September, 2008 election.---Yes.

30 That was a matter that was concerning you as an ALP member?---It concerned, I don't understand what do you mean that it was concerning me?

Well, it was a matter, the content of your opponent's election material was a matter that was occasioning you concern wasn't it?---No, this, from what I understand.

40 No, don't worry about the advice, I'm just asking you a general question. Prior to the September, 2008 election you were concerned, were you not, about the content of some of the leaflets being distributed by your opponents, other candidates in the election?---I don't recall that being any different, no.

Well, I'd suggest to you that it was an issue you were concerned about and were discussing with others. Would you agree?---I can't recall.

You asked, did you not, you asked the general manager to get some legal advice about the content of leaflets and what could properly be included in leaflets?---No, that's not right.

So, have a look at this advice.---Yes.

You say, do you, that this was not being requested on your behalf?---No. The only part that was request Senior Counsel is the issue with regards to the caretaker, period.

10 Yes.---Which was with regards to providing the Mayoral column to continue in the local paper, as in advertising, Council funded advertising. All pamphlets that the Council put out which were the Mayoral pamphlets. It bears not to, I don't have any idea about the other stuff about printed material.

And wasn't there an issue about your use of letterhead?---Um, using the Council letterhead?

20 Yes, using the Council letterhead which said Mayor, after there was, after the caretaker period was declared?---I remember there was a discussion with regards to the, about the letterhead but I couldn't use, I can't remember honestly.

And wasn't there an issue about the fact that you had created a letterhead for your private use which was very close to the letterhead that was the official Burwood Mayoral Council letterhead?---There was an issue raised with that from memory, yes.

30 And it was said to you, was it not, by those in the Council, that the one that you had had, the art work you'd had done and the one you created was too close to the official Burwood Council one?---Um, I don't recall it put to me that way, no.

But that was an issue wasn't it?---Well, it wasn't an issue where it was raised that you couldn't do it, no.

So no one told you that?---Not that I recall.

40 Are you sure about that?---I remember there was, there was a discussion with regards to the letterhead, exactly with regards to that discussion but it was a comment that it looked, it had the same colours I think was the issue.

And the same lay out didn't it?---I don't know it was designed by a design expert so – it was designed by my campaign team so I never designed it it was - - -

So you're saying that you never set about trying to reproduce your official Mayoral letterhead from the private one you were using for the election?--- Counsel, I at the time, it was my campaign staff that organised, organised

those issues, my campaign volunteers. They designed it, I didn't think it was an issue.

And the advice that you've got in front of you from Mr Baird which is a draft advice.---Yes.

Do you recall ever seeing this advice?---Um, I don't believe so, I may have, I can't remember.

10 And on 4 September, 2008, I suggest to you that you met with Mr Mailey and Mr Romano. Do you recall that?---Not that at all.

And you discussed the surveillance of candidates by Mr Mailey and his staff. Do you recall that?---Not, not at all.

And you were present when Mr Romano gave instructions to Mr Mailey to conduct surveillance of Councillors Weiley, Mr Balzola and Mr Alvaro?
---Absolutely not.

20 So you say you weren't there or you don't remember?---I was not there.

Are you sure about that?---Yes.

Were you ever told by Mr Romano that he had organised surveillance of certain candidates running in September, 2008 election?---I was told that there was an electoral fraud, possibly an electoral fraud issue, I was told about that, yes.

30 And who did that involve as far as you're aware?---Mr Sidoti.

And Councillor Weiley lives within the area, doesn't he, the Burwood area?---Yes.

So there wouldn't be any issue about where he lived?---No.

And Balzola, he's a resident or was in the September 2008?---I believe so.

And Mr Alvaro?---I believe so.

40 And so there wouldn't be any issues about where the three of them lived would there?---Um, I don't, that's right.

But there was an issue, was there not, in relation to those three and the leaflets that they were distributing or may have been distributed. Do you recall that?---Not that I, not that I was aware of, no.

And do you recall that that was a concern of yours?---I may have made a passing comments with regards to the election, but at the time I was doing a lot of door knocking, so.

So, in relation to dispensing leaflet drops with hate mail, was that an issue you ever discussed with Mr Romano in September, 2008?---I can't recall that.

10 So it's likely you might have?---It may have been a general discussion but I can't recall that at all.

I mean if there were hate brochures being distributed as Mayor you would be concerned about that?---Um, yes.

You'd be concerned that somebody might be fostering descent in your community?---Yes.

Based on possible false allegations of say a certain religious group?---Yes.

20 That would concern you wouldn't it?---Yes.

And that would concern you as a senior community representative?---Yes.

And that would be the sort of issue that you would discuss with the General Manager?---Yes, but it depends if it falls in line with the issues of the General Manager.

30 And do you recall having any discussions with Mr Romano in September 2008 about those sorts of issues, hate leaflets?---No, I don't recall that.

Do you recall it being, hate leaflets being an issue in the 2008 election? ---Right at the end of the election, yes.

40 And what do you recall?---I recall that I was at Councillor Furneaux-Cook's home or candidate at the time. We were standing at the front and she advised me that there was, she just saw somebody put in, which is the only one that I ever saw which I think was the day before the election advised that someone was putting in possibly defamatory material that was unauthorised. I then contacted the police and the police came down and took the lady away.

Took the person who was (not transcribable)?---Or the person, yeah. No, no, no, well, the lady. And John Murphy I remember was driving past, the Federal Member, and he stopped and said, What's happening? And I advised him.

And do you recall making a complaint yourself to the returning officer about a leaflet?---About that leaflet, yes.

That's the leaflet that you made a written complaint about?---I believe so, it was my campaign handled those matters so - - -

I'll show you this letter. Now, the photocopy is a bit funny so we can't see your face on it but I assume that on the left-hand side is a copy of, is you isn't it?---That's the one, it's, it's the one.

10 And this is a complaint made to the Electoral Commission in effect to the returning officer for Burwood?---That's right.

And you set out, you attach a copy of an old Sydney Morning Herald article and you attach a brochure - - -?---Yes.

- - - which says things about Labour, over development et cetera. The Mayor's expense under Council waste, a Labour controlled Council (not transcribable) Mayor's expense budget has doubled from 25 to \$25,000? ---Yes.

20 And then a picture on page 5 (not transcribable) is that a photo of you, it's a bit - - -?---Yes.

It could be anyone. And then a thing about, "And a vote for Labour is a vote for more of the same."?---Yes.

And then "John Faker always voted with Frank Sartor."?---That's right.

30 And this was the leaflet that caused you concern?---Well, as I mentioned, Senior Counsel, that's the leaflet that around that time that the lady, that was the only time it was going out, that's when she got caught when I called the police and I put the complaint - - -

And then you made a complaint about a leaflet?---Well, my office, yes, well, the campaign office, sorry, the volunteer, I presume Mr Nanva would've drafted a letter and signed it.

You signed it?---Yes.

40 And then that was on the 11th so that's the Thursday before the election. And then on the Friday you received a reply, the next day you received a reply from the Electoral Commission. Do you remember that?---I don't recall that but I'll have a look.

Do you remember reading that letter or receiving that letter?---I can't recall but - - -

If you look on the third page you'll see it was emailed to your personal email address - - -?---Yes.

- - - on the 12th so that's the day before the election?---That's right.

And so it's likely you received it?---Well, my, there was two accounts that were set-up, that, that is, was the campaign account so my personal one is jfaker@optusnet, that's j.faker.

Right. So, but you don't doubt that you received it?---Well, no, the campaign would've received it, yes.

10

And it set-out certain material about brochures, about leaflets, certain advice to you about leaflets?---I assume so.

If I could tender those two documents as a bundle.

ASSISTANT COMMISSIONER: Yes. They will be Exhibit 46.

20 **#EXHIBIT 46 - A LETTER FROM MR FAKER TO RETURNING OFFICER (BURWOOD) DATED 11 SEPTEMBER 2008; A LETTER FROM THE ELECTORAL COMMISSION NSW TO MR FAKER DATED 12 SEPTEMBER 2008**

MS RONALDS: Did the General Manager ever discuss with you the surveillance of candidates after the election?---Yes.

30 And when did he do that?---There was a meeting on, straight after the election, I think on the 16th or around that time, I think Mr Baird or someone alluded to it today.

16 September?---I think it was. And I, I was requested to attend the meeting. I remember it was in the General Manager's office.

And was that prior to the election of the new Mayor, so it was prior to, because it was the Monday after I think wasn't it or a couple of days after? ---No, I think the Mayoral elections were way after that.

40 That's what I mean, just before - - -?---Yes.

So the September election had been held but the Mayoral election hadn't been?---That's right.

Sorry, continue?---And so I was requested to be at that meeting, I recall there was myself, Mr Romano, Mr Baird and Councillor Nanva, I took the fellow Councillor along with me and, do you want me to go through the meeting? And it was, Mr Romano started by saying that he had received a complaint regarding electoral fraud and I can't remember if at that time he

disclosed it was Councillor Christo-George or not that made the complaint. And then Mr Baird, so Mr Romano was asking what do I do like as in where does it go to from here. I don't, and then I recall Mr Baird started going through the legal issues and I actually quite candidly remember saying to Mr Baird, Look, David, stop with the legal jargon, talk to me in plain English, do I as a Mayor have a responsibility as an elected official to either make a complaint or take this matter to a certain authority as my role in the capacity as Mayor. He said to me words to the effect that no, at which time I then said, Well, thank you very much, it's not my issue, I got up and left with Mr Nanva.

And I originally asked you whether Mr Romano ever discussed surveillance with you. Before you left the meeting was there some discussion that Mr Sidoti had been subjected to some form of surveillance?---Not, not that I recall, no.

And was there some discussion about other candidates being subjected - - - ?---Absolutely not.

20 And had your consent as Mayor been sought to put candidates under surveillance what would your response have been?---Absolutely not, Counsel. Senior Counsel, sorry.

That's all right. And when do you say you learned that candidates were put under surveillance and paid for by Burwood Council?---Candidates as in Mr Sidoti or all the candidates?

30 And the other three?---The other three only learnt about it during this week in the Commission.

Right. And Mr Sidoti when did you learn there'd been some surveillance of him?---When I was requested to attend the meeting about electoral fraud, that's why I took Councillor Bob Nanva with me.

I'm sorry, I just thought I asked you whether at that meeting Mr Romano said that he'd had private investigators or something like that following Mr Sidoti?---I, I don't recall that at all about an investigator, no.

40 So how did, what do you say was said that was about surveillance then? ---No, I said that there was a complaint.

Yes?---And that Mr Romano then going on about what his role was with regards to what he, if he had to do anything, I think he was seeking advice from Mr Baird. Mr Baird then, 'cause I had, I wanted to leave so I, I asked Mr Baird, he started going through the legal jargon of responsibilities and everything and I said, I remember candidly and I said to Mr Baird, David, do I have a responsibility as an elected official or as a Mayor to take any action to any authority or to any body as an elected official? He then

satisfied me that I didn't. And I said, Well, thank you very much, and left with Mr Nanva.

Right. So in terms of surveillance being someone sitting outside Mr Sidoti's house and photographing the cars there that you now understand occurred do you say you didn't know anything about that in September or October 2007?---I can't recall if Mr Romano - - -

10 MR STANTON: Well, I object to the question led. Senior counsel is entitled to ask if it's September 2007 is not the appropriate year - - -

MS RONALDS: Oh, sorry.

MR STANTON: - - - and the witness inadvertently - - -

MS RONALDS: Well, there's a simple way to correct it (not transcribable).

MR STANTON: Well, there may well have been there, I'm just trying to assist, I'm not trying to flag it.

20

MS RONALDS: I obviously meant September 2008, it doesn't need a - - -? ---Not, not that I recall, senior counsel.

And so were you ever aware of any discussion about costs being paid by the Council for surveillance of the sort I've just raised, someone sitting outside and photographing Mr Sidoti's house at 6 o'clock in the morning to see the cars that were there?---No, not that I recall from my memory, no.

30 And when do you say you became aware of that issue?---What issue is that?

ASSISTANT COMMISSIONER: In respect of Mr Sidoti, when did you find out he'd been surveilled?---I don't believe I found out at the time, I can't recall if Mr Romano raised it in a meeting where David Baird was.

The question is, Mr Faker, when did you find out, I presume you know now?---I know now, that's why it's confused me.

40 Well, when did you find out that Mr Sidoti had been followed by a private investigator?---I really, I can't recall. I don't think I did know.

MS RONALDS: Well, is it, would you agree it was a peculiar activity for a council to undertake?---That wasn't my role, that was - - - -

No, I'm just asking you, would you agree it's a peculiar activity for a council to undertake?---I would say so, yes.

And so if it was discussed in front of you is it likely to be the sort of thing you might remember?---Possibly, yes.

But you say you don't specifically recall any discussion about concerns or methods used to ascertain whether Mr Sidoti lived in a particular place or didn't live in a particular place?---Not that I recall, no. I, I know there was a discussion with regards to that issue from a question but not that I recall, no.

Just bear with me a moment. Sorry, there's two documents if I could tender those, if you could retrieve them now from the floor. If I could tender the folder of childcare related expenses with the table on the front.

10

ASSISTANT COMMISSIONER: Yes.

MS RONALDS: And tender the other bundle of receipts.

ASSISTANT COMMISSIONER: Yes, Floral Culture and other receipts still need to be appended so that will be Exhibit 47.

20 **#EXHIBIT 47 - BUNDLE OF CLAIMS OF MR FAKER TOGETHER WITH RECEIPT FOR \$944.83**

ASSISTANT COMMISSIONER: And the folder of childcare material will be Exhibit 48.

#EXHIBIT 48 - FOLDER OF DOCUMENTS – CHILD CARE CLAIMS BY COUNCILLOR FAKER

30

WITNESS: Senior counsel, I'd probably like to correct that I'm not, I don't totally remember but Mr Romano may have advised at that meeting there was surveillance or investigation, I can't recall exactly.

MS RONALDS: Sorry, he may have told you there was surveillance of Mr Sidoti?---To correct the record he, he may have, I can't recall because I remember I got up and left when I was advised that I didn't have a responsibility.

40 But you don't recall do you any discussion or do you recall any discussion about Mr Weiley and investigation?---No.

And the other two that I've been through?---Yes.

Did you ever see a report produced by a company called IPP into the investigation of Mr Sidoti?---I never saw a report, never.

And did you ever see a second report in, in relation to the other three?---No, I never saw a report.

Right. And do you know a person called Steve Child?---Yes.

And how do you know him?---Through Council.

Right. And on the eve of the election, that is on the eve of, or the late afternoon or early evening of 12 September, 2008 did you telephone
10 Mr Romano and tell him you needed some extra workers at a particular venue to hand out how to votes?---No, that's not what I recall.

ASSISTANT COMMISSIONER: Excuse me, I'm sorry, Mr Faker. The transcribers have asked whether you could sit back from the microphone?
---Sorry.

Evidently it's interfering with something?---Sorry.

MS RONALDS: If it's giving feedback you'll (not transcribable)?---Sorry,
20 no, no, that's not what I recall.

What do you recall?---I remember Wayne Moody from the United Services Union who is the state organiser had expressed support that they wanted to support the campaign by providing some volunteers or delegates. I then remember having an interrupted knock on my door in my office, Mr Romano attended. Mr Romano advised me that he had become aware of the union wanting to organise delegates or union members to volunteer on the day as volunteers. I then said well, what's the issue with that, the union has a history of providing members to volunteer not only for the Labor Party
30 but for the Greens and more recently there was in Tasmania for John Howard with the CFMEU. So he said to me, no, well, he was going to get legal advice. I remember saying to him well, Pat, I mean, you know, that's for you to decide but as far as I'm aware if people want to volunteer their own time they're entitled to as private citizens. He said, no, I'm going to get some advice. I then, as he was walking out advised him well, if the advice that you get is okayed do you mind giving me the names of those volunteers that you aware of that wanted to volunteer.

Right. And then what happened?---And then I remember having a list from
40 Mr Wayne Moody, who's the union delegate, which I passed on to my campaign team and I remember having a post-it note on my Mayoral desk which volunteers and I think it had two names.

And do you recall the names?---I recall, having gone back over it now, I recall, I think the union ones were Mark Avery or Averell and I think - - -

Sorry, we didn't quite get it, Mark?---I can't pronounce the surname, it was a gentleman by the name of Mark and I think - - -

His surname was Alvaro or something?---No, no - - -

ASSISTANT COMMISSIONER: (not transcribable) into the microphone?
---Sorry, Avoy, Avoy, I think it is and I think there was a name of Joe Saad
and then on the post-it note it had a name of Ammar and I think Joe Saad
again so there was sort of a cross, from, from, the best of my recollection.

10 MS RONALDS: And did you then set in train a process to contact any of
those people?---No, I never contacted them, senior counsel, they were
passed on to my campaign volunteers that arranged the booths and the
volunteers that were working on the day.

And do you, did Mr Romano ever come back and report to you any legal
advice he'd received on the issue?---No.

20 And did you ever ask Mr Romano to call any members of staff to assist in
handing out how to votes?---No, only what I mentioned that I said if you, if
it is okayed, if you're aware of those volunteers could you give me the
names.

Right. And are you aware of whether any staff in their own time gave out
how to votes for the ALP on the election day?---I checked with my
campaign team who advised me that yes, there was three that handed out I
believe.

And you didn't know them?---Like, as in a personal, no.

30 And you didn't have any direct involvement in sending them to a particular
polling booth?---Not at all.

40 Just excuse me one moment. So who would have sent individuals to a
particular polling booth?---When you get a list I believe to the best of my
knowledge, when I gave it to the campaign team I think the, the young lady
that was organising the booths would have contacted those staff members
and said or any volunteer and said are you willing to volunteer, obviously if
they said yes then she would ask, ask them what hours or how many hours
could you do. I think from checking I think they did two or three hours
each, I'm not sure and then they would be rostered on a particular booth that
day they might want to be on.

And so when you say from checking, when did you check?---This week.

So after you heard some of the evidence this week - - -?---Yes.

- - - you were able to go back and check the old rosters, were you?---Well, I
rang one of my campaign volunteers that was active in doing all that at the
time and that's the advice I got.

Did you have sufficient volunteers to hand out how to votes say the day before the election?--I, I couldn't answer that because that wasn't handled by me.

So you don't recall whether you were short of people and needed more hands to the wheel?--Um, no, what happens is and I have many residents when I was walking out, like when I'd walk and door knock or whatever that would say to me, look, I want to volunteer and they'd give me their name. So I'd just give it on to the campaign staff and they would organise it.

So you didn't do any of that?--No.

Just excuse me for a moment Mr Faker. I'm sorry, just bear with me I'm just trying to find a document. Mr Faker, I show you a document, I showed you one similar earlier than, someone much more perceptive than I which isn't hard, pointed out that I had the wrong date. This is a purchasing manual and I've opened up at page 12. And you see down the bottom it's got purchasing categories, purchase of 10 to 49,999. See write down to the bottom of page 12.---Yes.

Minimum of 3 et cetera and then over the page to the rest of the requirements, going back to the purchase of the alarm. Did anyone at any stage discuss with you the requirements, did the alarm meet these criteria if it was to be paid for by Burwood Council?--No.

If I could tender that document.

30 ASSISTANT COMMISSIONER: Yes, that will be Exhibit 49.

#EXHIBIT 49 - BURWOOD COUNCIL PURCHASING MANUAL

MS RONALDS: I'll show you this document which is one, the cover has been produced by those who assist me and the second page is, it's a Council document I think. And in relation to the expenses they run, they run on a October, September, October year and if you look on the second page you'll see that that's your electoral expenses. Do you see that?--Yes.

And then on the sheet on the front it sets out what your expenditure was so there was the \$12,000 – that was fully expended as I understand it. There's an extra \$3,500 for phones – do you recall that's an extra expense that you paid?--Yes.

And that's a Mayoral expense isn't it?--Yes.

And then there's the two amounts that we looked at earlier so that the total ran for that twelve month period is the figure that I have there. Do you see that?---Yes.

And I suggest to you that that was the total expenditure when one puts the other two amounts it. Would you agree?---I would take your word for it.

Well, it's there on, we can go back through it if you like.---Well, I'm not going to sit here and count it but I'll take it as.

10

Well, you can have a look at it later if you want to. If I could tender that document.

ASSISTANT COMMISSIONER: Yes, that will be Exhibit 50.

**#EXHIBIT 50 – 2 PAGE DOCUMENT TITLED: FAKER EXPENSES
OCT 2007-OCT 2008 (MAYOR PERIOD)**

20

MS RONALDS: That's something from Council's - - -

MR STANTON: Commissioner, might it be tendered subject to the witness as he's indicated didn't have the opportunity to review that document.

ASSISTANT COMMISSIONER: Yes, I'm sure the witness will be free to raise any queries he has.

MR STANTON: It's not a conditional tender it's just that - - -

30

MS RONALDS: If I could just note for the record before everyone asks it, the numbers in circle on page 2 are from the document as produced by Council and they're claim numbers, I think, that Mr Faker put it. But the second document, the second page is a Council document it's not one that's been constructed here. The first page we've done. The main pages. Commissioner, I note the time and I'm told by Mr Casserly that he needs a bit of time to set up.

ASSISTANT COMMISSIONER: Yes, yes. Irish witness.

40

MS RONALDS: Or we won't have the Irish witness with us.

ASSISTANT COMMISSIONER: All right. I think we've gone as far as we can today. We will resume at 5.00pm for those who are interested in the evidence of Mr O'Brien otherwise we will resume at 10 o'clock tomorrow morning.

MR STANTON: Commissioner, will Mr Faker be resumed tomorrow morning?

MS RONALDS: Yes.

MR STANTON: It's rather difficult, I can't get here until 11.00, I've got a sensitive matter and I've got to be at the District Court, at the Downing Centre.

10 ASSISTANT COMMISSIONER: Yes.

MR STANTON: It is a very difficult matter mam, there may well be a custodial sentence imposed and it's a matter for some concern. So I would like to be with the accused. The matters been ongoing for some time now.

ASSISTANT COMMISSIONER: So you're saying - - -

MS RONALDS: I'm sure we can call the next witness.

20 MR STANTON: Do you mind Miss Charles, if that could accommodate me to 11.00/11.30 at the latest (not transcribable)

ASSISTANT COMMISSIONER: Yes, we can interpose another witness, can we not.

MS RONALDS: Yes, the next witness to be called is Mr Hullick. I'm sure he's happy let Mr Faker be interposed (not transcribable)

30 MR STANTON: Very kind, thank you. Thank you Commissioner.

ASSISTANT COMMISSIONER: Thank you. Well, you're stood down Mr Faker but you'll have to come back tomorrow and we'll adjourn until 5.00pm.

AT 4.26PM THE MATTER TO ADJOURNED ACCORDINGLY

[4.26PM]