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31/05/2010

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PUBLIC
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

PUBLIC HEARING

OPERATION AVOCA

Reference: Operation E09/1825

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 31 MAY 2010

AT 2.05PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Yes.

MS DAVENPORT: Commissioner, before we continue, could I, as part of the last exhibit which was Exhibit 12, tender a copy of a surveillance device warrant issued by Her Honour, Justice McCallum together with a recording of the parts of the telephone conversation that were played in the Commission. If they could perhaps all be made part of that same - - -

10 THE COMMISSIONER: Well, I'll make a copy of the surveillance device warrant Exhibit 13 and what's the other?

#EXHIBIT 13 - : SURVEILLANCE DEVICE WARRANT

MS DAVENPORT: The other is an actual disc of the recorded telephone conversation so perhaps that should be part of the transcript. It's the - - -

20 THE COMMISSIONER: We'll make that Exhibit 14. That's the disc comprising the recording of the telephone call which is, the transcript of which is Exhibit 12.

MS DAVENPORT: Yes, Commissioner.

#EXHIBIT 14 - DISC COMPRISING AUDIO OF LISTENING DEVICE WARRANT WHICH IS EXHIBIT 12

30 MS DAVENPORT: Commissioner, just in relation to Exhibit 6 which was the documentation from the FRUP, the Fiji - - -

THE COMMISSIONER: Road.

MS DAVENPORT: - - - Road Upgrading Project. There is a covering letter that should form part of that exhibit, Commissioner. It is a letter dated 2 February, 2010 addressed in fact to you as Commissioner of the ICAC and signed under the hand of Sirevvi Vananalargi.

40 THE COMMISSIONER: Well, that letter will simply form part of Exhibit 6.

#ADDITION TO EXHIBIT 6 - LETTER DATED 2 FEBRUARY, 2010 ADDRESSED TO THE COMMISSIONER OF THE ICAC AND SIGNED UNDER THE HAND OF SIREVVI VANANALARGI

MS DAVENPORT: Thank you, Commissioner. Commissioner, before I continue with Mr Gamage, I'd just like to briefly put Mr Blackadder back into the box, given that he is still here.

THE COMMISSIONER: Once you've finished Mr Gamage you can - - -

MS DAVENPORT: Well, it's just that Mr Blackadder has been excused and he is about, there is a conference on in Sydney that he would like to attend.

10

THE COMMISSIONER: All right. Mr Gamage, would you mind just, this won't take long. If you just return to your seat in the hearing room and Mr Blackadder can be called.

THE COMMISSIONER: Yes, Mr Blackadder. You're still under your former oath then, Mr Blackadder?---Thank you, Commissioner.

And the order that was made under Section 38 continues to apply?---Thank you.

10 MS DAVENPORT: Thank you, Commissioner.

Mr Blackadder, you were in the Commission hearing room when that tape was played or that CD was played?---I was.

And you saw the transcript on a monitor?---Yes, I did.

Does that accord with your recollection of the conversation you had?---Yes, that's the precise recollection.

20 And that conversation took place in your office, is that correct?---In, in my office at Concord, in my Blackadder Associates' office at Concord.

And it was using your mobile phone?---Yes, it was.

And it was made to Mr Gamage's mobile phone?---Yes, it was.

And was investigator Riashi present when that conversation took place? ---Yes, and another member of, of the ICAC office.

30 Mr Grainger?---That, I think that's his - - -

Is it?---No, no.

Casserly?---Casserly I think it was, yes.

So they were both - - -?---So two officers of ICAC were present during the recording of that conversation.

Yes, thank you.

40

THE COMMISSIONER: Yes, Ms David, do you wish to ask any questions?

MS DAVID: No, your Honour, no, Commissioner.

THE COMMISSIONER: Yes, you may be excused now, Mr Blackadder.

<WITNESS EXCUSED

[2.09pm]

THE COMMISSIONER: Mr Gamage, would you mind returning to the witness box.

THE COMMISSIONER: Yes, you still under your oath, and Section 38 order continues to apply?---Yes, Commissioner.

MS DAVENPORT: Mr Gamage, you've had an opportunity during the luncheon adjournment to read a transcript of that telephone conversation? ---Yes, I did.

10

Do you still maintain that that is not a proper recording of the conversation you had?---Yes, I do maintain that.

Yes. We'll move on. Now if I could take you please to some of the other areas that, where you've been employed. At the time that you were applying for the job at Cobar, sorry, at Woollahra, you were working in fact at Coonamble. Is that correct?---Yes.

20

And before that you had worked at Cobar Shire Council?---Yes.

And in terms of council's, the other council you had worked for when you first came to Australia was Brewarrina. Is that right?---Yes.

And they're the, they're the three council's that you had been employed in in New South Wales?---Yes.

You've been employed in a number of, or at least one other council in Queensland. Is that correct?---Yes.

30

The Torres - - ?---The Torres Shire Council, yeah.

And if I could take you then please to the Cobar Shire Council. You were employed by the Cobar Shire Council between 2 January, 2007 and 25 May, 2007. Is that right? For four months?---Maybe, yes.

A short time?---Yeah.

40

And in relation to your application to that Council - - ?---For which Council?

Cobar. You submitted an application. Is that correct?---Yeah.

With your resume attached?---Yeah, it should be.

And could I ask you please to have a look at this document dated, dated as received on 4 December, 2006 by Cobar Shire Council. Is that the resume that you submitted to Cobar Shire Council when you applied for the position of Director of Engineering Services?--- Yes, it could be.

I'm sorry?---Yes, it could be. Yes.

And in the accompanying letter which is the second page, you claimed that on the top of the second page, that is page 3 of the documentation, at present I am the Chief Engineer with Global Management and Engineering Solutions in Sydney. That was incorrect wasn't it?---Yes, it is incorrect. Yeah.

10 And you went on to claim that the company under your leadership had improved its annual profit in civil engineering from \$4 M in 1996 to \$22 M in 2005?---Yes.

That was a lie?---Everything is, I already admitted these things.

Yes?---You're going on and on and on, so - - -

And then in two paragraphs down again you claimed that you were a senior engineer with Yass Shire Council. That was a lie?

20

THE COMMISSIONER: Well, I'm inclined to think that all these things, that all these matters have been established Ms Davenport. He says he'd didn't work for Yass Shire. So it's all been proved.

MS DAVENPORT: And in relation to Cook Shire Council, you claimed that you were Shire Engineer. That was also a lie wasn't it?---Yes.

30 And in fact you went on for about a page and a half elaborating on the work that you did in Cook Shire and how it had given you experience with an Aboriginal community. Is that correct? With Aboriginal communities?
---Yes.

And all of that was a lie wasn't it?---If I was not there in Cook Shire Council, you know it's all - - -

40 And was that another thing that you made up because you thought it would improve the chances of you getting a job?---Obviously yes. That whole, whole purpose of gathering the experience, they seek for me to get the job and for me to serve the community, serve for the community.

Well, it was mainly so that you could get a job and get a salary, wasn't it?
---There's two parts of it I - - -

THE COMMISSIONER: I really think that these matters are, we have dealt with them and these are matters in which submissions can be made but it's pointless asking Mr Gamage about them.

MS DAVENPORT: Did you specifically target rural councils in your job seeking because you thought that you were more likely to get away with your false applications?---I, I specifically targeted rural councils because there is no competition at all. With, with Cobar there was no other applicants. I, I never beat any applicant in any council, Brewarrina, Cobar, Coonamble, I never beat another person so - - -

10 Because nobody else applied?---No, nobody else applied, right, so therefore my, so it is, I have a bit of relief in my heart that I did not beat a suitable candidate, another suitable candidate, that is why - - -

THE COMMISSIONER: I think we must just move on.

MS DAVENPORT: Commissioner, I tender that resume and covering letter.

20 THE COMMISSIONER: The application for, Mr Gamage's application for the position of Director of Engineering Services at Cobar Shire Council and the covering letter is Exhibit 15.

#EXHIBIT 15 - APPLICATION SUBMITTED BY MR GAMAGE FOR POSITION OF DIRECTOR ENGINEERING SERVICES AT COBAR SHIRE COUNCIL

30 MS DAVENPORT: And if perhaps they could be returned to Mr Gamage I want to take him to the last pages. Mr Gamage, could you turn please to the page that is number 11 of 13, it's the third last page in that document?
---Yes.

And you have listed there two referees, Dr Don Perera, Chief Executive Engineer, Global Management and Engineering Solutions, Liverpool, New South Wales?---Yes.

And a Mr Asella Manon, Asset Management Engineer, Sydney City Council, Sydney?---Yes.

40 Now, firstly Mr Don Perera never worked for Global Management and Engineering Solutions, did he?---No, he didn't.

And Mr Asella Manon, who was he?---He is, he was a friend of mine so he passed away so - - -

But he never worked as an asset management engineer for the Sydney City Council, did he?---No, he didn't.

And the next two pages are, purport to be references, one from Mr Manon and one from Mr Perera, is that right?---Yes.

And you just made those up, did you?---Yes, I did.

These were not references that were ever provided by Mr Manon - - -?---No.

- - - or by Mr Perera?---No.

10 And in relation to Mr Perera, you were very generous with him, you gave him a doctorate, didn't you, that he doesn't have?---Ah - - -

Have a look at the, have a look at the reference. It's got PhD (UOL) MSc in Chemical Engineering, BSc London. He hasn't got a PhD and he doesn't have a BSc from London University, does he?---Which page are you talking about?

I'm talking about the reproduction reference that you annexed?---Yeah, that's right.

20

He doesn't have a PhD?---No.

And he doesn't have a BSc from London?---No.

And he didn't supply, ever supply that reference - - -?---No, he didn't.

- - - in those terms?---No, he did not.

So you just made that up?---Yes, I made, I, I did.

30

And what was the purpose in doing that?---To impress the employer.

Or was it because you couldn't get a reference from anyone you had actually worked for?---You can put it that way too but my tailoring of applications or anything like this was to impress the employer, saying that this man he is coming with a great deal of experience and, and this man is the right person for us.

40 But you see you never gave as referees any of the places you had worked for, did you?---I didn't give, I didn't give anything, referees or, you know, experience or, or reference or anything so I, I presented myself as a, as a good, good candidate with, with improper information.

Well I - - -?---By that, the purpose was, was I did with good, you know, good intention, good intention.

The reason you never put forward as a referee anyone with whom you'd worked was because you knew they wouldn't give you a good reference

wasn't it?---No. That is, that is wrong. That is wrong. When I applied for, for a couple, Harden Shire Council, I put General Manager, John Griffiths, was my, my then General Manager as my referee, so - - -

Was that when you were at Coonamble?---Yes.

Before you were sacked?---Before I was sacked.

10 Yes. But of course after you've left a particular a job you can't, you haven't been able have you to use any of the persons with whom you'd worked as referees because you have not parted on agreeable terms?---That's true. Yes.

And that's also the reason is that not why, instead of actually listing the places you've worked for, you made up other places, because you didn't want the real places you'd worked for to be contacted?---That's true.

20 And in fact you were terminated, your employment was terminated at Cobar as a result of I think two issues. One was a breach of the code of ethics. Is that right?---That was the reason given in the letter, yes. But in my honest belief, that that is not the real, real reason.

And eventually you were sacked over concern, over the concerns of your employment application. Is that right?---That was one of the, the other reason was given in the application.

30 Well in fact that was correct wasn't it? You had lied in your employment application?---That is, you know, that is correct. But that was not the reason, the correct reason for the termination of contract, of employment contract.

It had nothing to do with your performance as an engineer?---No.

Nothing?---No. That is because I started unfolding corruption what was, what, what is, what was happening within the Council. That, that - - -

Did you report that to the ICAC, the corruption that you found in Cobar Council?---No.

40 Why not?---Because if I did that I, so my employment application would have been more damaging. So as soon as I leave it, the Council with bad terms, what they do, they, they put you know, something bad about me on Google search or something like that. And what happen in Coonamble, Coonamble has done the same thing to me. You know, they have deliberately put something in Google search, you know, so I (not transcribable) those things. I had to protect myself first.

Well you - - -?---For, for that reason I did not, I did not report to ICAC. In fact I report with the Mayor.

If I could show you please a series of letters, one dated 13 March, 2007 under the hand of Wally Black, Acting General Manager of Cobar Shire Council directed to you. The second is a, an email

THE COMMISSIONER: What are these directed to Ms Davenport?

10 MS DAVENPORT: I'm sorry?

THE COMMISSIONER: What are these matters directed to?

MS DAVENPORT: This is the background to the sacking at Cobar Council, Commissioner.

THE COMMISSIONER: I really don't think that's relevant.

20 MS DAVENPORT: It goes to Mr Kumaragamage's credit, with great respect, Commissioner.

THE COMMISSIONER: I'm telling you that I don't think it's relevant.

MS DAVENPORT: Well, Commissioner, perhaps I could just tender one document in relation to the termination?

30 THE COMMISSIONER: You've led evidence as to the reasons why the Council terminated his employment. And this is not, this is not the Industrial Commission. I'm not going to go into what the true reasons were for his termination of his employment. That's not one of the issues before this Commission.

MS DAVENPORT: In terms of your employment at Coonamble Council, that was also terminated in April this year. Is that correct?---Yes.

40 And that was terminated again as a result of the Council making some inquiries into your references that you had tendered?---Then again, I don't believe that that was the true reason. The true reason for, for termination this time was the pressure applied by ICAC on the General Manager. That is my, my true belief for the genuine reason.

But again you had supplied a resume which like all the others contained lies?---That is true. Yes.

Yes. And so you don't think that that's a reason for sacking you?---That is not the, that was not the trigger for, for termination. But that is, that is something mentioned in the letter of termination, yes.

Firstly could you have a please at this. Is this a copy of the resume that you sent to Coonamble Council when you applied for the job? Is that the resume that you sent to Coonamble Council when you applied for the job?
---Yes.

Yes, I tender that, Commissioner.

10 THE COMMISSIONER: Yes. Exhibit 16 is the resume Mr Gamage submitted to Coonamble Council when he applied for a position there.

**#EXHIBIT 16 - RESUME MR GAMAGE SUBMITTED TO
COONAMBLE COUNCIL WHEN APPLYING FOR A POSITION**

THE COMMISSIONER: And are you tendering the letter which terminates his employment?

20 MS DAVENPORT: Commissioner, I'm not sure that we have - - -

THE COMMISSIONER: Oh, you don't have that. All right. But Mr Gamage has testified that, that the reason given by the Council or one of the reasons given by the Council for the termination of his employment was the false resume?

30 MS DAVENPORT: Yes, Commissioner. Perhaps I could do it this way, Commissioner. You in fact had a, before you were, your employment was terminated, you had an interview did you not with Mr Griffiths, the General Manager?---Before I was terminated?

Yes?---Interview when?

With Mr Griffiths about your resume, the resume that you had sent to the Council at the time that you made the application for the job?---No. So I, the only interview was on 9, 9 April. So, at that, at that interview, so he mentioned to me that, so you are terminated, so - - -

40 Well, he went through your qualifications, your, your application with you and you admitted to him that in fact all of the, all of the work experience that you claimed, with the exception of the Roads and Traffic Authority matter, were in fact false?---Yes. I was, I was honest with him because I was on the job that time, so I had to, so one, one requirement in the job, sorry, employment contract was that I had to be honest. So I maintained my honesty after I joined the Council. So therefore I did not have authority to lie, so I did not lie. So, I was fair and honest with him and for being fair and honest was, was the sack.

Well why weren't you fair and honest when you made the application for the job?---If I was fair and honest I wouldn't have got that job and I wouldn't have chance to (not transcribable) and Coonamble people wouldn't have had the chance to, chance to receive my leadership and the service I referred to them.

There was a flood in Coonamble in, at Christmas time over 2009/2010 wasn't there?---Yes.

10 Where were you?---During the flood?

Yes?---The flood started 28 December which is the Christmas break and as soon as I was, I came to know about the flood, at that time I was enjoying my Christmas break with my family at, at a holiday resort in Hunter Valley. As soon as I came to know about the, the flood, the next minute I did I terminated all my holiday stuff and I returned to Coonamble with my family and I dealt with the flood till about 6 January and I spent few nights, you know, a number of nights sleepless and I dealt with the flood. So I should be (not transcribable) for that - - -

20

One of the performance issues was your unsatisfactory dealing with the flood, was it not?---That was a false claim, very false claim.

Another false claim, Mr Gamage, is that correct?---(NO AUDIBLE REPLY)

Commissioner, we do have a copy of the letter of termination which is just being photocopied and I'll tender that.

30 THE WITNESS: That is in fact one of my sacrifices I made and I did not even claim, you know, any overtime pay or leave in lieu or any reward for that service and I sacrificed my holiday and I did work with the other peoples. I was the (not transcribable) local (not transcribable) officer. I took my responsibility. I led, led the team and, and I did work hard and I, I, I, I contributed my, my expertise, knowledge of the dam and I, I inspected the dam frequently. And I contributed professionally and that was, that should be really regarded positively.

40 MS DAVENPORT: I'm sorry?

THE COMMISSIONER: Are you tendering the - - -

MS DAVENPORT: I'm tendering, perhaps Mr Gamage could be shown it?---So until the date of termination that, the performance was really, it was regarded by the General Manager but on the 9th he change his mind.

That was your letter of termination, is that correct?---Until, yes, until 9 February, sorry, until 9 February I was a very good boy so on the 9th after,

after application of pressure by the, by the ICAC officers I became a very bad boy.

Yes, I tender that, Commissioner.

THE COMMISSIONER: Yes, the letter terminating Mr Gamage's employment with Coonamble Council is Exhibit 17.

10 **#EXHIBIT 17 - LETTER TERMINATING MR GAMAGE'S EMPLOYMENT WITH COONAMBLE COUNCIL**

MS DAVENPORT: Now, when you first arrived in Australia you made an application to become a member of the Institute of Engineers, is that correct?---Yes.

And in terms of your application for membership, you provided references, is that correct?---I don't know, I can't remember.

20

You can't remember?---No.

Why did you, first of all, why did you join the Institute of Engineers? What was your purpose in joining the Institute of Engineers?---Because I'm an engineer.

I'm sorry?---Because I, I am an engineer. I was an engineer when I was joined.

30 Did you think it might help you in getting a job?---Yes.

And in terms of your application to the Institute of Engineers, were you honest in your application?---I can't remember.

Can't remember? All right. Could I show you please these documents. Is that the application you made to the Institute of Engineers, your first application?---Yeah.

40 And - - ?---That should be so, looks like it, yes.

You at that stage had a job in Brewarrina, is that correct?---So what was the date of it?

You said, "Present position 1 Church Street, Brewarrina". See that on the front page?

THE COMMISSIONER: May I see it on the screen, please?

THE WITNESS: It was (not transcribable) position (not transcribable) yes, yes.

MS DAVENPORT: And if you go to part 2 where you say, you set out your previous history of employment, '83 to '86 engineer, Bill Gilbert Engineers, Colombo?---So which - - -

You go - - -?---Which (not transcribable).

10 They're not numbered unfortunately. The ninth page?---Yes.

That sets out your work history before you arrived in Australia, is that right?---Yes.

Now, in terms of references, you provided a number of references to enable you to get membership, is that correct?---Which page?

20 Well, if you go another one, two, five pages along you'll see the Institute of Engineers Confidential Report by Proposers of Applicant for Corporate Management, Corporate Membership, I'm sorry?---Ah hmm.

And the first one appears to be from a Mr Quasam who was an engineer of the RTA New South Wales?---Ah hmm.

Is he, is that a genuine reference?---Yes.

The second one, Smuttu Sivarasa, is that right?---Yes.

30 That's not a genuine reference is it?---No it is.

THE COMMISSIONER: You say it is?---It is, it is a genuine reference.

MS DAVENPORT: It is a genuine reference?---Yes.

Mr Sivarasa says that, "I first came to know Don in Sri Lanka when he was supervising Bill Gilbert Construction then as a council engineer." Is that right?---Yes, this is Mr Sivarasa's writing.

40 Yes, but is it true what is in it?---Did he know me while I was in Sri Lanka, I can't remember.

THE COMMISSIONER: He says he was supervising Bill Gilbert Construction.

MS DAVENPORT: I think he meant Mr, Mr Gamage was supervising, I first came to know Don when I was supervising, oh. You, Mr Sivarasa never worked for Bil Gilbert Construction, did he?---No, no.

And he didn't, he never worked with you at the RTA, did he?---He did.

Sorry?---He did but I, at RTA we worked together.

Mr Sivarasa, did you ask him to make that, did you tell him what to put into that?---I can't remember, this is 1990 so I'm, in all honesty I have to admit that I must have, I'm under oath but I can't, I can't lie under oath but I think I must have, yes.

10 THE COMMISSIONER: You must have what?---I must have asked him to put what is here.

And, and is that true or not true, what he's put?---The Bil Gilbert Engineers part so - - -

Did he - - -?---He, he did not work for Bil Gilbert.

MS DAVENPORT: But he did work with you at the RTA?---Yes.

20 Is that correct?---Yes, he did.

So part of it's true and part of it's not?---Yes.

So you must have asked him to put in the fact that he knew in Sri Lanka working for Bill Gilbert?---I must have, yes.

Yes. And that was something that you thought would assist you in getting a registration with the Institute of Engineers?---Yes.

30 Is that correct?---Yes.

Okay. I tender those documents, Commissioner.

THE COMMISSIONER: That is Mr Gamage's application to the Institute of Engineers?

MS DAVENPORT: Yes, Commissioner, and the associated documents.

40 THE COMMISSIONER: And the associated documents are Exhibit 18.

#EXHIBIT 18 - MR GAMAGE'S APPLICATION TO ENGINEERS AUSTRALIA AND ASSOCIATED DOCUMENTS

MS DAVENPORT: Commissioner, in the light of Mr Gamage's concessions I tender a statement of Smuttu Sivarasa dated 19 March, 2010

in relation to that reference that was provided to Mr Gamage in relation to the Institute of Engineers.

THE COMMISSIONER: What is the date of the statement?

MS DAVENPORT: It is 19 March, 2010?---Do I have the right to see that?

10 THE COMMISSIONER: Yes. And Ms David's been given a copy? May I have a copy? In any event, Exhibit 19 is the statement of 19 March, 2010 by Smuttu Sivarasa.

#EXHIBIT 19 - STATEMENT OF SMUTTU SIVARASA DATED 19/03/2010

MS DAVENPORT: Thank you, Commissioner.

THE COMMISSIONER: Yes.

20 MS DAVENPORT: In addition to the, Commissioner, perhaps I could also tender a copy of the transcript of the evidence given by Mr Gamage at the compulsory examination on Friday, 28 May.

THE COMMISSIONER: Yes. So that, you're tendering the whole transcript?

MS DAVENPORT: Yes, Commissioner.

30 THE COMMISSIONER: Yes, all right. The transcript of Mr Gamage's evidence at the compulsory examination on 28 May, 2010 is Exhibit 20.

#EXHIBIT 20 - TRANSCRIPT OF MR GAMAGE'S EVIDENCE AT COMPULSORY EXAMINATION ON 28/05/2010

THE COMMISSIONER: Yes.

40 MS DAVENPORT: In addition to the councils that you actually obtained jobs with you made numerous applications to other New South Wales shire councils, didn't you?---Yes.

And they were unsuccessful, is that correct?---Yes.

For example, you applied to the Lachlan Shire Council?---Yes.

And again submitted a resume that was largely well, was almost entirely false. Is that correct?---Yes.

Yes, Commissioner, I tender a statement of Lachlan, of George Cowan, the General Manager of Lachlan Shire Council, together with the resume and package relating to the application for that job?---Can I have a look at it?

THE COMMISSIONER: Yes.

MS DAVENPORT: You also made an application - - -

10 THE COMMISSIONER: Sorry, just a moment. Exhibit 21 is a statement by George Cowan together with a resume and accompanying package relating to an application by Mr Gamage to the Lachlan Shire Council for some position.

MS DAVENPORT: Director, Technical Services.

THE COMMISSIONER: For the position of Director, Technical Services. Yes, thank you.

20

**#EXHIBIT 21 - STATEMENT BY GEORGE COWAN DATED
14/04/2010 WITH ATTACHED APPLICATION OF MR GAMAGE
AT LACHLAN SHIRE COUNCIL AND ACCOMPANYING
DOCUMENTS**

MS DAVENPORT: And in addition you made an application to Lithgow Shire Council. Is that correct?---Yes.

30 And that was for the position of Group Manager, Operations?---Yes.

And again you submitted a resume that was substantially false?---Yes.

And again you were unsuccessful in your application, is that correct?---Yes.

40 Yes, I tender a statement of Gary Withyman, W-I-T-H-Y-M-A-N, Senior Consultant, Local Government dated 25 February, 2010 together with the accompanying documents, being Mr Gamage's resume and his application, sorry, covering letter and a statement of Roger Bailey, General Manager of Lithgow City Council in relation to the interviewing of Mr Gamage for that position.

THE COMMISSIONER: Exhibit 22 comprises the statements by Gary Withyman and Roger Bailey together with an application for a job by Mr Gamage and accompanying documents.

#EXHIBIT 22 - STATEMENT OF ROGER BAILEY AND GARY WITHYMAN DATED 25/02/2010 TOGETHER WITH ACCOMPANYING DOCUMENTS BEING MR GAMAGE'S RESUME AND ACCOMPANY LETTER

THE COMMISSIONER: You also applied for a job as Director of Engineering Services with Harden Shire Council?---Yes.

10 And again you submitted a resume that was substantially false?---Yes.

MS DAVENPORT: And you were unsuccessful in your application to that council?---I was not, I was not even given a chance for interview.

Yes, I tender a statement of Maxwell John Kershaw, General Manager of Harden Shire Council dated 19 February, 2010 with an attachment of Mr Gamage's covering letter and resume directed to that Council.

20 THE COMMISSIONER: Yes, Exhibit 23 comprises statement by Mr Maxwell John Kershaw and an application and accompanying documents made by Mr Gamage to Harden Shire Council for a position there.

#EXHIBIT 23 - STATEMENT OF MAXWELL KERSHAW DATED 19/02/2010 WITH ATTACHED APPLICATION FOR MR GAMAGE AT HARDEN SHIRE COUNCIL AND ACCOMPANYING DOCUMENTS

30 MS DAVENPORT: You also applied for a position of Director, Engineering Services with the Goulburn Mulwaree Council?---Yes, I could have, yeah.

And again you submitted a resume that was substantially false?---Yeah, could be, yeah.

Well, do you want to have a look at it?---I'll see if I have applied so there's no, no truth in it, yes.

40 Yes. And again you were unsuccessful in that application?--- Yes.

Yes, I tender a statement of William Singleton, the Human Resources Manager of the Goulburn Mulwaree Council.

THE COMMISSIONER: Yes, Exhibit 24 comprises a statement by William Singleton and an application and accompanying documents by

Mr Gamage in connection with an application by him for a position with Goulburn Mulwaree Council.

#EXHIBIT 24 - STATEMENT OF WILLIAM SINGLETON DATED 15/04/2010 WITH ATTACHED APPLICATION FOR MR GAMAGE AT GOULBURN MULWAREE COUNCIL AND ACCOMPANYING DOCUMENTS

10

MS DAVENPORT: You also applied for the position of Director, Engineering Services at the Bland Shire Council?---Yes.

And again you submitted a resume that was substantially false?---Yes.

And again you were unsuccessful?---I was not given the chance for interview either, no, that is true.

20 Yes, I tender, Commissioner, a statement of Kathleen Peta P-E-T-A Robertson, the Acting General Manager, Bland Shire Council dated 1 March, 2010.

THE COMMISSIONER: Did you say Robinson?

MS DAVENPORT: Robertson.

30 THE COMMISSIONER: Robertson. Exhibit 25 comprises a statement by Kathleen Peta Robertson and an application by Mr Gamage for a position at that, with the Bland Shire Council and accompanying documents.

#EXHIBIT 25 - STATEMENT OF KATHLEEN ROBERTSON DATED 1/03/2010 WITH ATTACHED APPLICATION OF MR GAMAGE AT BLAND SHIRE COUNCIL AND ACCOMPANYING DOCUMENTS

40 MS DAVENPORT: You also applied for a position with the Upper Lachlan Shire Council, is that correct?---(NO AUDIBLE REPLY)

THE COMMISSIONER: Is that different from the - - -

MS DAVENPORT: Yes, it's different to the Lachlan Shire, Commissioner, yes. We're having some difficulty. Well, Commissioner, perhaps I could delay that while we find it.

Mr Gamage, in terms of your dealings with the Commissioner, Commission, I'm sorry, there was Commission officers attended Coonamble and served a

number of notices on you, is that correct? One was a notice to attend this hearing?---Yes.

And they first attended on 8 April this year?---Which - - -

8 April this year?---Yes.

And you were handed a copy of a notice under Section 22 of the Independent Commission Against Corruption Act, is that correct?---Yes.

10

And that document set out a number of items that you were required to produce to the Commission, is that correct?---Yes.

And they included a copy, the originals, I'm sorry, of your academic qualifications?---Yes.

Your Sri Lankan passport at the time of your arrival in Australia in 1988? ---Yes, that's right.

20 And also computers - - -?---Yes.

- - - that were used by you?---Yes.

THE COMMISSIONER: Do we have a copy of the document?

MS DAVENPORT: We'll get one, Commissioner.

Now, investigator Riashi and investigator Granger attended your house, is that correct?---Yes.

30

In the, at about 8.00am on 8 April?---Yes.

And they explained to you what the notices were about?---Yes.

And requested, Mr Riashi requested you to produce the things that were referred to in the notice, didn't he?---Yes.

He requested you to produce them immediately?---Yes.

40 And you refused?---Yes.

You refused to give the Commission officers your computer, didn't you? ---No, that is, that is unfair interpretation but I said I will bring to the ICAC office on a later date. We will make some arrangement.

Mr Riashi made it clear to you that he wanted them produced immediately, didn't he?---Yes he did, yeah.

He told you that he wanted them produced then and there?---Mmm.

And in fact you refused to produce them?---No.

You lied to him, didn't you, about where they were?---I, I, I don't know whether, no, I didn't, I did not lie but I, I told him I will not give you on the spot because the notice served me gave me the right to bring the items listed on that notice on a later date so I - - -

10 But he told you that he was requiring them to be produced then and there, didn't he?---Yes, he said.

Yes?---Yes, he said but in my reading of the notice was that he had obligation to talk to me and make other arrangement for me to bring the items another day.

You lied to him and told him that the computers that you used were all in Sydney, didn't you?---I must have, I don't know.

20 But that was a lie, wasn't it?---Yes.

They weren't in Sydney?---They were not in Sydney.

And in fact what you did with the computers was give them to a man who you supervised - - -?---Yes.

- - - at the Coonamble Council?---Yes.

30 And asked him to put them in the boot of his car?---Yes, that's - - -

To conceal them from the investigators?---Not, not conceal them from because I had, I had heard what, what council, sorry, ICAC officers normally do so when, when they serve an orders when, then they go into your house while you are not there and they, they collect them so I don't want that to happen and - - -

Well, that wasn't what was happening, was it?---It was, it did happen.

40 Investigator Riashi was there saying here I am, give me your computers? ---Yes.

He wasn't coming into your house while you weren't there. You were there?---No, no, no. After that, after - - -

No, I am asking you about when he came - - - -?---Yes.

- - - and gave you the notice, you were at your house?---Yes.

He was at your house?---Yes.

He was asking you to produce the computers?---Yes.

And you refused?---I refused with my right to refuse.

10 You refused on, on a number of bases, didn't you?---Yes, but the, the main basis was my right to refuse to do, the computers on the spot because the, the notice which was issued by the Commissioner clearly gave me right to hole the computers in my hand and bring another day.

If that was suitable to the Commission and Mr Riashi told you it was not suitable to him, didn't he? He said, I want them now?---No, there was no if.

Mr Gamage - - -?---There was no - - -

- - - you knew that you had to produce those computers on the spot - - -?
---No.

20 - - - didn't you?---No, that is, that is unfair. That is, that is very wrong. I, and I gave him in writing that what, what he, his demand was wrong.

So you lied to him about where the computers were?---For good reason to prevent him coming into my house.

You challenged the authenticity of the Section 22 notice?---Yes.

30 You claimed that you knew Commission Ipp and that you knew it wasn't his signature?---No, I did not say that. I did not, I knew Commissioner Ipp but I knew, I said that I knew Commissioner's signature.

Where had you seen the signature?---On, on the internet in various documents.

You said you knew Commissioner Ipp didn't you? And you knew that that wasn't his signature?---I must have said, yes.

40 Yes. Well perhaps we could play it?---Yes, I must have said it. Yes.

AUDIO RECORDING PLAYED [3.00pm]

MS DAVENPORT: Well that was a lie wasn't it?---That was a lie given with good intention of preventing them coming into my house. In fact they came later while I was not there to take the computer.

So that was a lie about the computer's being in Sydney?---Yes. But that was again given with a good intention of preventing them coming into my house and later, and they came later and - - -

And it was a lie - - -?---Sorry?

It was a lie when you denied that you had taken them to someone else in Coonamble wasn't it?---Yes.

10 Because you'd given them to one of your workmates?---Yes. But I did that for a good reason, to prevent them coming into my house while I wasn't there.

But you were there. Why couldn't, why wouldn't you, you were at your house, they were at your house?---Yes.

Why couldn't you just hand over the computers?---Because I, the notice gave me the right to give them, give the computers another day.

20 This is a, could you have a look at this document, please. That's the, a copy of the notice that was served upon you - - -?---Yes.

- - - by Mr Riashi - - -?---Yes.

- - - at your home on 8 April?---Yes.

And the schedule contains three things?---Yes.

30 Your original academic qualifications, your Sri Lankan passports during the period '77 to '89 and your compute laptop, desktop, laptop, flash drive, media used by you to create and or email resumes?---Yep.

They were the three items that they were seeking to get from you. Is that right?---Yes.

Nothing else?---No.

40 And you failed to comply in relation to any of them didn't you?---Oh, that is, that is unfair to say, I complied. I failed to comply.

You didn't give them to them did you?--- I did not give them, I did not give them on the spot, but I wanted to give them by arrangement with my cooperation and instigate another day.

What did you want to do, remove things from your computers?---That is hypothetical. That is hypothetical question.

Why didn't you want to produce them on that day?---Because the notice gave me the right to do it another day.

But even if the notice had given you the right, why would you not give them to the investigators on that day? What was your reason for not giving them on that day?---For me to use the computers.

10 For what?---For two days. For, for, for anything, you know, for people, why people, why do people use computers. So for emailing and for, for anything else. So the notice gave me the right to do another day, I wanted to exercise my right.

And one of the reasons that you gave for not producing the computers on that day or indeed the other items was that you challenged Commissioner Ipp's signature?---I had doubts about the Commissioner's signature, yes. But - - -

20 Why would you have doubts about the Commissioner's signature?
---Because I wanted to check the signature.

Against what?---Against the Commissioner's signature on, you know, you can find Commissioner's signature on the internet.

You claimed that you knew the Commissioner?---I knew the Commissioner, yes.

How do you know the Commissioner?---I recall the whole of New South Wales knows, everybody knows Commissioner, Commissioner Ipp.

30 THE COMMISSIONER: That's very flattering, but I have to say that I have never seen you in my life before this case?---It doesn't mean that Commissioner, Commissioner knows me. But I know Commissioner. You know, I know Kevin Rudd, it doesn't mean that Kevin Rudd knows me. I knew Commissioner, of course.

You said, this is at page 18 of the recorded conversation between Mr Gamage and Investigator Riashi, I have a problem with the authenticity of this notice?---Yes.

40 That was just an excuse wasn't it?---Sorry?

That was just an excuse to prevent or to try to prevent the officers from enforcing the notice wasn't it?---Yes, because in my understanding the Commissioner's were abusing, abusing the powers of the notice because in my understanding they're obliged to talk to me and make arrangement for me to bring the computers to their office. But they did not do that way. They were, in my understanding, so with respect to the, with respect to the

officers, but in my understanding they were abusing the notice. But for, for me to get out of that abuse, was to - - -

To lie?--- do anything, so anything, anything suitable at that time.

So if, if you get caught in a situation that you don't like you just make up lies. Is that right?---No, that is, that is (not transcribable) But I don't - - -

10 But that's what you're doing here today isn't it, telling lies?---No, that is not true.

You see - - -?---That is not true.

You said when you were, Investigator Riashi said, what is the problem that you have with the authenticity of the notice? And you said, the signature. And he said, yes. You said, the signature is - - - What about the signature? I doubt that it is a, it is the Commissioner's signature. Mr Riashi said, do you know that Commissioner? Do you know a person by the name of Honourable David Ipp? Yes, yeah, you said. Do you know that person?
20 Yes. You do know him? Yeah, yeah, I know him. And you know that's not his signature? Yep. How do you know him? I know his signature. I've seen it before, you say?---There's nothing wrong in that.

And then you say, I know, I know the Commissioner, but he may, he doesn't know me?---That is exactly right.

So you were lying about challenging, about saying that you knew the Commissioner?---I knew Commissioner for, you know, long time.

30 A long time?---Yes.

This Commissioner, how long do you think this Commissioner has been this Commissioner?---Oh, that I don't know, but - - -

No, do you?---I knew Commissioner, Commissioner David Ipp off, you know, as, as the head of the department, head of this organisation.

For how long?---That I don't know. But I knew that at that time - - -

40 No, for how long? You say you've known him for a long time, how long did you, have you known him to be the head of the ICAC?---That I can't remember. That, that question I can't, I can't answer, but at that time I knew that David Ipp was the Commissioner of ICAC.

That doesn't mean you know him does it? You might know the name and you might know the position he holds, but you don't know the person do you?---That is, that implication was (not transcribable) you know, what you meant by, by knowing.

Well, what you were trying to say - - -?---I can, I can say that I knew John Howard, I can say that I know - - -

But that would be a lie wouldn't it?---I know Barack Obama. (not transcribable)

But that would be a lie wouldn't it? You don't know them? You know of them and you know the position they hold, but you don't know them?
10 ---That is how you interpret it in the period but I can say that honestly I know Barack Obama.

But you can say anything?---It doesn't mean, it doesn't mean that he knows me.

But you can say anything because you're a liar, aren't you, Mr Gamage?
---That, I, I take offence of that.

Well, you've already admitted in this Commission - - -?---I want you to
20 withdraw that. I want - - -

You've already admitted in this Commission that you have lied constantly in documentation that you have provided in order to obtain jobs?---That I admitted.

Yes, and that makes you a liar, doesn't it?---That is not a, that is not a, no, that is not a lie but - - -

It's not a lie?---That is, that tailoring of, of, of job application was done with
30 a good intention - - -

It's a lie, isn't it?--- - - - for the purpose of, of serving the community and of getting a job and making income.

And this lie that you told the investigators was done with the intention of protecting yourself, wasn't it?---No, that is for exercising my right.

Why did you need to lie?---Because, because the investigators were abusing the, abusing the notice so that - - -
40

Well, did you ring up a lawyer and ask for some legal advice about the validity of the notice?---Validity of the notice I checked within, within the, you know, 30 minutes or so, I checked, I checked the signature, yes, it was David Ipp's signature.

THE COMMISSIONER: Ms Davenport, I really think the circumstances of all of this speak for themselves. Let's move onto another topic.

THE COMMISSIONER: Statement of Brian Burge.

MS DAVENPORT: Dated 8 April, 2010.

THE COMMISSIONER: That statement of Mr Burge is Exhibit 28.

#EXHIBIT 28 - STATEMENT OF BRIAN BURGE DATED 8/04/2010

10

MS DAVENPORT: I'll just go back to the Upper Lachlan Shire Council. You applied for a position as Director of Works and Operations with that council in December of 2009. Is that correct?---It could be, yes.

And again you sent them a covering letter and a resume that was substantially false, is that correct?---Yeah, it could be so.

20

Well, do you want to have a look at the documentation? You'll find your resume towards the back, if you go right to the back, you'll see the last documentation, the last, I think, 15 pages is a covering letter from you and a copy of your resume?---Yeah.

You agree that that's the resume that you gave, you sent to the Upper Lachlan Shire Council?---Yeah.

And again you were unsuccessful in even obtaining an interview, is that correct?---They did not interview me, no.

30

Yes, I tender those documents, Commissioner.

THE COMMISSIONER: Yes. I think that's Exhibit 26. Are you tendering a statement with that or - - -

MS DAVENPORT: The statement, I'm sorry, Commission, is a statement of Kevin Kara, K-A-R-A, the Human Resources Coordination, Upper Lachlan Shire Council dated 15 February, 2010.

40

THE COMMISSIONER: Exhibit 26 comprises the statement by Mr Kevin Kara and Mr Gamage's application for a position with the Upper Lachlan Shire Council and accompanying documents.

#EXHIBIT 26 - STATEMENT OF KEVIN KARA DATED 15/02/2010 AND ACCOMPANYING DOCUMENTS

MS DAVENPORT: Commissioner, I do intend tendering the transcripts of the conversations on 8 and 9 April between Investigator Riashi and Mr

Gamage, however, at this stage we don't have sufficient copies so I'll do that, I'll delay that until tomorrow if that's all right.

THE COMMISSIONER: Yes.

MS DAVENPORT: With the exception of that matter, that, that's the evidence.

THE COMMISSIONER: Well, Mr Harris, do you want to cross-examine?

10

MR HARRIS: If I may with leave.

THE COMMISSIONER: Yes.

MR HARRIS: Do you remember the circumstances of completing the application form to the Institute of Engineers, namely, do you remember speaking with Mr Sivarasa about that?---No.

No?---No, I can't remember.

20

All right. Did you say that you had written in the part of that application form which had the words, "I first came to know Don in Sri Lanka when I was supervising Bill Gilbert Constructions," I just didn't remember, did you say you wrote those words in?---Going through that document is it - - -

It's Exhibit 18 if that's - - -?---It is not my writing but to all fairness it is, I must have persuaded him to do that.

30

All right. In fact, you didn't know him in Sri Lanka, you met him in this country, is that correct?---I think that, I think that is a fair assessment, yes.

All right. Just excuse me, please Commissioner. And the, can I just ask you, earlier this afternoon you referred to the reference and it's in relation to a job application where Dr Don Perera was listed as a referee and you'd agree that he hadn't worked for a firm called Global Management?---No.

40

And I concede he's not a doctor. You said that was just made up and not provided by him. Does that mean to the best of your knowledge that Don Perera was not aware that you were creating that reference?---Yeah, that is a fair thing to say so - - -

Yes, you hadn't consulted Don Perera about doing that?---No.

To the best of your recollection?---No, I never did.

All right. Thank you, Commissioner.

THE COMMISSIONER: Ms David?

MS DAVID: Yes, Commissioner, thank you.

Mr Gamage, you've been asked some questions about the computers. Was it your intention to comply the section 22 notice and hand to ICAC your computers?---Yeah, the - - -

THE COMMISSIONER: Was it intention when?

10 MS DAVID: When, when did you intend to do that?---On a later date, the - - -

THE COMMISSIONER: I'm sorry, Ms David, there are two, there are two elements in that question which - - -

MS DAVID: All right.

20 THE COMMISSIONER: - - - do not necessarily coincide. The first is, concerns Mr Gamage's intention and then the second concerns, his intention to comply with the notice, the second is his intention to hand over the computers to the, to the investigating officers.

MS DAVID: Perhaps I - - -

THE COMMISSIONER: They don't coincide necessarily.

MS DAVID: If I perhaps rephrase the question, thank you, Mr Commissioner. In the notice it referred to computers?---Yes.

30 When did you or did you intend to deliver those computers to Michael Riashi?---Yes, I did.

When did you intend to do that?

THE COMMISSIONER: At what stage did you have that intention or, you have to define that question more closely. At that time, intention is a state of mind so at that, what time were you asking Mr Gamage about his state of mind?

40 MS DAVID: At the time when the notice was served on you - - -?---Yes.

- - - you failed at that time that Mr Riashi, to give the computers to Mr Riashi?---No, I did not fail to give him, but he - - -

THE COMMISSIONER: But you refused to give it to him didn't you ---Say again?

You refused to give it to him at that time?---I refused to give that time.

Yeah?---Yeah, that is true.

MS DAVID: Was it, at that time was it your intention to give it to him at another time?---Yes.

When did you intend to give it to him, the computer to him?---Yeah, that, that is, that is up to the two, two people so the, the notice says when - - -

10 THE COMMISSIONER: No, the question is when did you intend to give it to him? You didn't, you refused to give it to him at that time. Did you have an intention to give it to him later?---Yes.

When?---Then that, the, the answer (not transcribable) would have dependent on the arrangement we would have made together, Michael Riashi and myself.

MS DAVID: So it was your intention to make an arrangement with him to hand over those computers, was it?---That's right.

20 All right?---Yes.

THE COMMISSIONER: Did you try to come to an arrangement with him then?---Yes.

You did?---Yes.

How did you do that?---I asked him, so I, I told him that it is your responsibility to talk to me and make arrangement so shall I do it? He said no, I want to do it now. I want to take it now.

30 All right.

MS DAVID: When you, sorry?---I want to elaborate little bit. And I said, in that case you are breaching the notice, not me. He said, you are not a lawyer and I am not a lawyer so don't talk to me law. Those are the words he told me. I said, okay, I'm not, I'm not going to talk, talk law about it.

40 Mr Gamage, did at any time you attempt to make any changes to any of the information on that computer?---No, that was not the intention.

THE COMMISSIONER: Did you make any changes?---(NO AUDIBLE REPLY)

MS DAVID: Did you make any changes on the computers?---No, I did not have time to do anything, no.

When you, if I just go back now. We've heard about you in relation to the, your conversations with Mr Blackadder?

THE COMMISSIONER: Sorry - - -

MS DAVID: If I could just - - - -

THE COMMISSIONER: Excuse me a moment.

MS DAVID: Yes, certainly.

10 THE COMMISSIONER: Now, Mr Gamage, you are well aware that lying to the Commission is an offence?---Yes. Lying to the - - -

Commission, to this inquiry, is a criminal offence?---Yes.

And that I must inform you that the Commission has a discretion whether or not to recommend to the Director of Public Prosecutions to commence criminal proceedings against a person for any offence but I'm talking about lying to the Commission now?---Yes, yeah.

20 So I want to ask you again, did you remove anything from the computers when, after the investigator had left?---Did I remove anything from the - - -

Yes, did you delete anything?---No, I didn't.

Did you try to?---No, I didn't try. I did not have time to - - -

You didn't touch the computers again from the time you put them in the boot until they were handed over to the Commission? You didn't operate the computers?---No, I didn't even see.

30 All right?---Mmm.

MS DAVID: Thank you. Mr Gamage, you were, when you were contacted, I'm just taking you back to the conversations in, to the job application for the Woollahra, Director of Technical Services at Woollahra. Did you ever submit any application for that job?---No, I didn't.

40 After you conversations with Mr Blackadder on 26 October, did you have any conversations with him about submitting an application that week?
---26 October?

Yes?---Which, what is that? The first conversation or second conversation? You had conversations with him on 26 October. That was a Monday, you recall, and you had sent him your - - -?---Is that the first - - -

Yes?---Is that the first - - -

No, on the 20, I think you spoke to him on the 25th, a Sunday?---Right.

And then you spoke to him on the 26th?---Right.

Did you, after the 26th, did you talk to him again about submitting an application?---No, I did not have any intention to apply for that job.

And you did not submit an application, did you?---No, I didn't, no I didn't.

10 So you submitted a resume and that was for the purpose of - - -?---Obtaining the position description.

Position description, that's correct?---Yes.

Now, did at any time you offer a bribe to Mr Blackadder?---No, I didn't.

Now, Mr Gamage, just going on to your, you were working at the Coonamble Council?---Yes.

20 And you worked there for a year, didn't you?---Yes.

And during that period of time you had a performance review, is that correct?---Yes, only one performance review took place.

And when was that?---I think after, a little after six months, seven months or so, so - - -

30 And what was the outcome of that performance review?---Outcome of the performance review was, General Manager was very satisfactory and he highly regarded my performance and he, he recommended salary increase of \$4,000 to the Council and the Council was delighted and Council approved \$4,000 salary increment as a result of that performance review.

And you were terminated from the Coonamble Council after the ICAC inquiry had begun, hadn't you?---Yes.

Prior to that time, had anybody made any suggestion to you about poor performance in your position?---No, actually my performance was highly regarded by everyone in the Council.

40 THE COMMISSIONER: I must say, I regard the whole issue of performance or bad performance a red herring.

MS DAVID: I appreciate that, your Honour, sorry - - -

THE COMMISSIONER: Can I stop counsel assisting in going into it and I will stop you from going into it - - -

MS DAVID: Yes.

THE COMMISSIONER: - - - because I'm not going to make any findings about - - -

MS DAVID: Yes, certainly, Commissioner.

THE COMMISSIONER: I mean the, the, the, the issue is were the grounds given by each council to the extent that it's an issue but it figures very small in this inquiry.

10

] MS DAVID: Yes, your Honour, Mr Commissioner, I appreciate that. If I could just have a moment.

THE WITNESS: May I say something, Commissioner, with respect - - -

THE COMMISSIONER: It is really, I mean you must, this is a matter for Ms David and she - - -

20

MS DAVID: I think it's best not to, Commissioner, there is this one matter just in relation to Cobar and I appreciate again that, I would, raise a question that I would ask, Commissioner, allow me to ask of Mr Gamage.

THE COMMISSIONER: All right.

MS DAVID: You indicated, Mr Gamage, that you were, prior to being terminated at Cobar, you reported certain allegations of corruption to the Mayor, is that correct?---That's correct.

30

What was the nature of those allegations?

THE COMMISSIONER: Well, I'm going to stop that and answer me, why is that relevant?

MS DAVID: Well, it is - - -

THE COMMISSIONER: Why do I, why does this Commission need to know the nature of the allegations against people who are not here to defend themselves?

40

MS DAVID: Well, I appreciate, Mr Commissioner, but I would just say that there were certain suggestions put to Mr Gamage about why he was terminated and - - - - -

THE COMMISSIONER: The open nature of the allegation has no bearing on why he was terminated, does it? You've led the evidence that he made the allegations and it was before he was terminated. Now, I will not allow evidence expanding the nature of those allegations while the persons against whom they were made are not here to defend themselves.

MS DAVID: Yes, Commissioner. Nothing further.

THE COMMISSIONER: Yes, do you have any questions?

MS DAVENPORT: Yes, Commissioner. In relation to Mr Perera who you used as a referee, apart from listing him as a referee, you actually asked him on your behalf to answer questions if he was telephoned. Is that correct?
---Yes.

10 Yes? You need to answer.---(not transcribable) can you be more specific or
- - -

Well, for example, you asked Mr Perera that if he was contacted by any of the persons whom you had offered him as a referee to that he was to give you a glowing reference. Is that right?---When did he give reference?

He has on a number of occasions, has he not, been contacted by telephone by persons whom you have nominated him as a referee?---Yes, yes, yes he must have, yes.

20

In fact, on one occasion you asked him to use a different name. Is that right?---I can't remember – I must have but I can't remember.

And you – he knew really nothing about your work capacity - did he at all?
---That is true, yes.

He's never worked with you anywhere.---No.

30 In fact, he's a fellow countryman that was staying in a boarding house that you were running at Liverpool.---Yes.

And - - -?---Oh no, that is not true but so he and I, um, were in Russia together – he/we studied together.

He was a chemical engineer. Is that right?---He's a chemical engineer – I'm a civil engineer.

You never worked together.---No, but we studied together.

40 He was at a different institution that also happened to be in Kharkov. Is that correct?---Yes, that's right.

And – but you agree that he knew nothing about your work experience, he'd never worked with you.---No, that is true.

And what I want to suggest is that you coached him as it were, to respond if he was contacted by any of the people that you applied to – you coached as

to what he was to say about his knowledge of your work. Is that correct?---
That's true.

And in fact – you asked him one occasion to use a different name, didn't
you? Not Don Perera but another name? Nalin Harsha. Sorry.---I think
Nalina Harsha reference was given by someone else to my recollection.

When you applied for Coonamble Shire Council you submitted Mr Perera as
a referee – sorry – Nalin Harsha as a referee?---Yes, yes.

10

And what I suggest to you is that in fact you gave the telephone number of
Don Perera?---(NO AUDIBLE REPLY)

THE COMMISSIONER: For Nalin - - -

MS DAVENPORT: For Nalin Harsha.---I think I gave someone's number
to my knowledge. May be – Nalin Harsha's reference was given by, by
another person.

20 Somebody else who was making up lies for you?---Yes, yes.

What I suggest to you in relation to Coonamble Shire Council – it was
actually Mr Perera who pretended to be Nalin Harsha?---That could be so
but how – that – yes I think you are right, I think you are right.

So you- - -?---I think you are right.

You asked him to lie about his knowledge of your work capacity.---That is
true, yes.

30

And on that occasions you asked him also to take on a false identity and to
lie?---False identity?

Well, to say that he was Nalin Harsha not Don Perera?---Yes, yes.

Who was the other false referee who pretended to be Nalin Harsha?---Yeah,
one Mr Fernando.

Mr Fernando.---Yes.

40

You got him to pretend he was Nalin Harsha too did you?---I thought, I
thought Fernando did, in fact, yeah, it was wrong so Don Perera has done it.

All right. Commissioner, there is just one other matter, one other document
that I seek to tender and it relates back to a Woollahra Council. It's a
statement of Gary James, the General Manger, and it goes to the issue of the
salary package that was being offered in relation to.

THE COMMISSIONER: Exhibit 29 is the Statement of Gary James.

MS DAVENPORT: And, it's dated 12 February 2010.

THE COMMISSIONER: Of that date, yes, thank you.

#EXHIBIT 29 – STATEMENT OF GARY JAMES DATED 12/02/2010

10

THE COMMISSIONER: And can Mr- - -

THE WITNESS: Can I have a look?

THE COMMISSIONER: I beg your pardon.

THE WITNESS: Can I have a look.

THE COMMISSIONER: Yes. Can Mr Gamage be excused?

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MS DAVENPORT: Well, Commissioner, tomorrow I'm going to tender, subject to - - -

THE COMMISSIONER: Ms David can be here. Will you be here tomorrow?

MS DAVID: Yes, certainly.

MS DAVENPORT: He can be excused then Commissioner.

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THE COMMISSIONER: You do not have to attend tomorrow, Mr Gamage.

THE WITNESS: Sorry?

THE COMMISSIONER: You do not have to attend the Commission tomorrow.

THE WITNESS: Thank you.

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THE COMMISSIONER: Ms David, there is something that I just want to raise with you.

MS DAVID: Yes.

THE COMMISSIONER: It's not the practice of the Commission to have oral submissions, submissions are in writing. There is one issue that I'm, concerning which I'm not clear what your attitude is. You didn't cross-

examine Mr Blackadder about his evidence concerning conversation which – in which there is evidence that the word “bribe” was used.

MS DAVID: I know, that is correct, your Honour I - - -

THE COMMISSIONER: Well, that means that you can't submit that he's not telling the truth, I won't allow that then. But you did ask, because that's quite unfair to him – that's standard practice. You did ask Mr Gamage whether he bribed anyone and you got an answer that obviously satisfied you so I assume that what you are saying, that you, that you're going to argue that if Mr Blackadder's evidence is accepted that is not, that evidence does not constitute evidence of a bribe because otherwise I do not understand what the purpose was of your question.

MS DAVID: Well, your Honour, Mr Commissioner, in the transcript there is no reference to the word, he doesn't use the word bribe.

THE COMMISSIONER: I didn't say he did, I just said that there is other evidence, there is other evidence – in fact that of Mr Gamage – where he says in that conversation he's told Mr Blackadder currently according to him as a big joke, not a big joke as a joke that it was a big bribe.

MS DAVID: That was in the earlier conversation.

THE COMMISSIONER: Well whatever conversation it is, I don't want to go into that but let me put it this way. You didn't cross-examine Mr Blackadder about any of the conversations to which he testified concerning the payment to him, the offer to him that he paid \$15,000. No, the – it is quite clear from the opening of Ms Davenport that as Counsel Assisting she is going to argue that that evidence constitutes evidence of a bribe. That can hardly come as a surprise to you.

MS DAVID: That's correct.

THE COMMISSIONER: Now, if you're not going to suggest – if you're not going to submit that Mr Blackadder's evidence is false to the extent that it differs from that of Mr Gamage, what are you going to argue? If you are going to argue that his evidence does not make out that a bribe was made then it's open to you to do that.

MS DAVID: Yes.

THE COMMISSIONER: But you can't, I'm now giving you the opportunity of dealing with what is my provisional state of mind – mainly that it is not open to you to contend that any of Mr Blackadder's evidence is false.

THE WITNESS: That is unfair for me.

THE COMMISSIONER: Just be quite now please. This is not a matter between – this is a matter between Counsel and myself.

MS DAVID: Well – I – in relation to the last phone conversation when I examined Mr Blackadder he said that he used, Mr Gamage had used the word bribe in that record of conversation which is not the case. There is no reference to Mr - - -

10 THE COMMISSIONER: I don't want to go into the issue of who said what. I'm talking to you about a matter of principle now. The principle is that you can't suggest that a witness has not been telling the truth when you haven't actually suggested that directly to the witness himself.

MS DAVID: Yes.

THE COMMISSIONER: That is a very well-known and well entrenched legal principle based on procedural fairness.

20 MS DAVID: Well, in this situation, I mean, the allegation is clearly against Mr Gamage and our submission would be that it doesn't satisfy, the conversations do not satisfy that there or constitute or are sufficient to constitute a bribe.

THE COMMISSIONER: No, I understand that and it is open to you to do that.

MS DAVID: Yes.

30 THE COMMISSIONER: All I'm saying to you is that it is not, what is not open to you is to say that Mr Blackadder was in any respect inaccurate or untruthful in his evidence.

MS DAVID: Well, my submission is that it is open that he is inaccurate.

THE COMMISSIONER: But you, but you didn't put that to him.

MS DAVID: Well, I appreciate, Commissioner, but I guess in this forum, I mean the allegation, it's not a - - -

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THE COMMISSIONER: In this forum, like any court, like a court, we do attempt to afford procedural fairness to witnesses and we do expect counsel to comply with the usual rules.

MS DAVID: Well, with respect, Commissioner, in this forum, I mean, the rules of evidence - - -

THE COMMISSIONER: This is a rule of procedural fairness. It is, this comes under the rubric of evidence, that's true, but I will be very surprised, can you, can you imagine what would happen if counsel assisting did not put to you a person, an affected person against whom she was asking for a finding of corrupt conduct that the witness was guilty of corrupt conduct, could that ever happen and assume that the Commission then made such a finding I would imagine any competent lawyer acting for that person would apply to the Supreme Court for a review of the decision. Now, why doesn't that apply in equal measure to other witnesses? Why is it only affected
10 persons who are entitled to procedural fairness?

MS DAVID: Well, my submission respectfully is that because he is not a person that is - - -

THE COMMISSIONER: At risk of a finding.

MS DAVID: Well, he is potentially at risk of a finding.

THE COMMISSIONER: Yes, he is.
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MS DAVID: But, but in that regard the, the inquiry is about, the allegations are clearly about Mr - - -

THE COMMISSIONER: But you've got to put it to him, Ms David. If you're going to say you're not telling the truth about this, you have to put it.

MS DAVID: Well, I, perhaps your Honour, sorry, Commissioner, that in relation to these proceedings, the question of whether it is necessary to put, there is a rule in Brown v Dunn, in these proceedings perhaps it's a matter
30 that I should have clarified at the outset but - - -

THE COMMISSIONER: Well, there is more to it than that, there is the transcript, there's the telephone, there's the recording of the telephone conversation and there's no, been nobody who you can put this to and you've given no indication that you contend that the telephone recording is, you're going to submit that it has been tampered with or is inaccurate in any way so at the moment there is no possible basis to call anybody to prove it. In fact, Mr Blackadder was called with the specific purpose no doubt of leading some evidence to show that the recording is accurate and he wasn't
40 cross-examined by you, he wasn't questioned so I'm just putting this to you so it doesn't come as a surprise to you that I will not allow that kind of evidence. If you want Mr Blackadder to be recalled it may be a different, a difficult matter practically because I'm not going to adjourn this inquiry. You'd better just speak to counsel assisting to see whether arrangements can be made but I, I'm not particularly sympathetic to such a course because there was every opportunity to do that. I assumed that you weren't doing it because you didn't want to, you weren't intending to challenge his evidence. I mean, this isn't just an ordinary Brown v Dunn matter. This is a matter

that goes to the very heart of the witness's integrity and to then say that he was lying when it's not even been put to him would be grossly unfair.

MS DAVID: Yes. I appreciate what you are saying, Mr Commissioner, I guess it's, and I will seek some instructions and also speak to counsel assisting, I, my position is that it's really as, is a question of what, at what, I mean, we're, it's not a normal inquiry, sorry, hearing in the sense that we don't know what evidence that the, that the ICAC has. It's very difficult for us to cross-examine in those circumstances and certainly in certain other
10 forums - - -

THE COMMISSIONER: There is something that's called an application for an adjournment, you had a lunch time, you had your client's version.

MS DAVID: Yes.

THE COMMISSIONER: I don't see that there's any difficulty.

MS DAVID: Well, well, with respect, Mr Commissioner, there is. I mean,
20 at that stage that Mr, and we're not, and I appreciate he was recalled in relation to the telephone call but we're still, at that point I am still or we are still unaware of all the evidence that is available to the Commission. It's very difficult in those circumstances to in a sense cross-examine blindly.

THE COMMISSIONER: Not blindly. Mr Blackadder had given all his evidence and you knew what your client was going to say. There's simply a direct conflict between Mr Blackadder and Mr Gamage. There's no other evidence that's relevant. They are the only two parties to the conversation. What's the problem?
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MS DAVID: Well, at the time that Mr, for example, at the time that Mr Gamage is, sorry, Mr Blackadder is giving his evidence we, there was no, he didn't give any evidence that the phone call was taped. He gave some evidence of a phone call. He gave evidence actually that differed - - -

THE COMMISSIONER: No, but that was, I'm not going to debate this further.

MS DAVID: No, I appreciate that and I don't want to harp on that.
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THE COMMISSIONER: Because the fact is that you knew that the evidence he was given, you knew what he was saying about the telephone call and you knew what your client was saying about the telephone call and you didn't put the one, your client's version. You didn't seek to falsify Mr Blackadder's evidence. What really must, what was a surprise undoubtedly was the fact that the conversation was recorded but that didn't stop you from putting Mr Gamage's version.

MS DAVID: Yes, I appreciate but again I just - - -

THE COMMISSIONER: But I'm only raising this because this is the first time that I can give you the opportunity of dealing with something that rather surprised me. I assumed that you were simply going to argue that whatever Mr Blackadder said that didn't constitute a bribe but when I heard your question to Mr Gamage, it wasn't clear to me what you were doing so I asked you. Anyway, you think about it, Ms David, and we'll, I take it we'll adjourn till tomorrow at 10.00am and all will be revealed.

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**AT 3.49PM THE MATTER WAS ADJOURNED UNTIL
10.00AM, TUESDAY, 1 JUNE, 2010**

[3.49 pm]