

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

PUBLIC HEARING

OPERATION CALPURNIA

Reference: Operation E09/1462

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 2 FEBRUARY 2010

AT 1.45PM

Any person without 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: Mr Gormly.

MR GORMLY: Commissioner, I indicated before lunch that there was a, that there was likely to be an application in relation to Mr Haddad.

THE COMMISSIONER: Yes.

MR GORMLY: In fact I've spoken to everybody, to all parties and there appears to be no opposition to that course - - -

10

THE COMMISSIONER: Very well.

MR GORMLY: - - - and so, if we may, Commissioner, we just proceed straight to the evidence of Mr Haddad.

THE COMMISSIONER: Yes, thank you.

MR GORMLY: I call Mr Haddad.

20 THE COMMISSIONER: Will you swear Mr Haddad. Mr Haddad, do you wish to be sworn or do you wish to affirm your evidence?

MR HADDAD: I'll be sworn in, please, Commissioner.

THE COMMISSIONER: Sworn. Okay.

THE COMMISSIONER: Yes, Mr Gormly.

MR GORMLY: Commissioner, I'm assuming that my friend will want a section 38 order in the usual way.

THE COMMISSIONER: Yes.

10

MR GALASSO: Yes, Commissioner.

THE COMMISSIONER: I take it that that is correct, Mr - - -

MR GALASSO: Yes, Commissioner. Commissioner, as a matter of formality should I first seek leave pursuant to section 33 of the Act? We seem to have jumped over legal representation formalities but perhaps if I could make that application?

20

THE COMMISSIONER: Have I not given you leave? Well, you better just explain to me what I'm supposed to do because I don't know.

MR GALASSO: I, I, I think, as I understand the Act and pardon me if I'm being overly formal but I think an application needs to be made pursuant (not transcribable).

THE COMMISSIONER: I thought I'd given you leave, Mr Galasso.

30

MR GALASSO: I wasn't aware of that, Commissioner.

THE COMMISSIONER: Oh, sorry, well I may not have. So you have leave.

MR GALASSO: With (not transcribable).

THE COMMISSIONER: Yes.

MR GALASSO: That being the case, would it be appropriate, Commissioner, if Mr Haddad could be offered the section 38 declaration.

40

THE COMMISSIONER: Yes.

### SECTION 38 DECLARATION

THE COMMISSIONER: Mr Haddad, pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers

given by you and all documents and things produced by you during the course of today's hearing are to be regarded as having been given or produced on objection and accordingly there is no need for you to make objection in respect of any particular answer given or document or thing produced. The order is for the duration of your evidence today. If you are required to return to give evidence on other days and you wish to avail yourself of the protection afforded by an order, it will be necessary for you to apply for another order?--- Thank you, Commissioner.

10 Yes. Nothing further at this stage, Mr Galasso?

MR GALASSO: No.

THE COMMISSIONER: Yes, Mr Gormly.

MR GORMLY: Thank you, Commissioner.

Mr Haddad, what is your full name?---Sam Gabriel Haddad.

20 You are currently the Director General of the New South Wales Department of Planning. Is that correct?---That's correct, yes.

How long have you been in that role?---For five years in a couple of months.

Right?---Yeah. I was appointed in December 2005.

How long have you been involved in planning?---For 30 plus years. I joined the Department of Planning in January 1978.

30

I gather you started life as an engineer. Is that correct?---My background is chemical engineer, yes, and I've got a Master in Chemical Engineering as well, yeah.

All right. Now, in terms of the projects that are being dealt with by your Department across New South Wales, where does the WSELIA project stand in terms of importance?---It is quite an important projects of state significance. It's an area that's been identified by successive governments since, since the late sixties as important in terms of employments. It is an area that became particularly important as part of our Metropolitan Strategy 2005 and when I became Director General of the Department I was particularly interested in making sure that we provide employments close to home.

40

Right?---That's, that's, that was a very critical aspect of, of my strategic advice to governments. We were developing the south-west sector for residential developments and my advice to government consistently was that

we would not be able to get housing in this area unless we provide good employment options.

All right. Thank you. Now, it's been an ongoing project for many years. Is that so?---It has been an ongoing project for a number of years. It started with specific sites in this area and then it - - -

I'm going to stop you - - -?---Sure.

10 - - - because there's just some specific answers I'm after, Mr Haddad?  
---Yeah, yeah, sure.

If there's something specific you want to say, please say so but just at the moment I just need shorter answers. Can I also trouble you to pull the microphone a little closer to you if you wouldn't mind, I'm having trouble hearing you?---Yes, yeah.

20 In about, during the course of your dealing with this area, you have become aware, have you not, of the interests of the Badgerys Creek Consortium, is that so, a group of three landholders in the area being Sydney University, Mr Ron and Roy Medich and another family. Is that correct?---That's correct, yes.

Over those times have you dealt with the Badgerys Creek Consortium representatives?---I did, yes.

Right. And I think that includes all three, the Medichs', Sydney University and the other family?---Ah, mostly with Mr Roy Medich - - -

30 Roy Medich?--- - - - and his consultants. I think once with Sydney University to the best of my recollection.

Right. Now those consultants have consisted in part of Ms Sonia Lyneham, is that so?---That's correct.

And also at times Mr Graham Richardson?---No, Mr Graham Richardson was acting as a lobbyist, as a registered lobbyist, on other projects but partly on that project as well, not as a consultant but as a registered lobbyist.

40 Right. All right. So there's a clear distinction in your understanding of who is a registered lobbyist on the one hand and who may be a consultant or an expert on the other?---Very clear distinction, yes.

And you have met Mr Roy Medich?---Mr Roy Medich?

Mr Roy Medich?---Yes.

Yes. All right. Now, and I think you've met him on a number of occasions?---On a number of occasions, yes.

And I think you've identified all of those by dates in documents you've provided to the Commission?---I have, yes, yes, I have.

Now, he has a brother, Ronald, Ron Medich. Have you ever met that brother?---Never. I've never met Ron Medich.

10 Right. Have you ever spoken to him on the telephone?---Never. I have not spoken to him on the telephone ever.

Have you ever had letters from him or correspondence?---Never, never. I haven't had that (not transcribable)

I think the driving force for the Badgerys Creek Consortium has largely been Roy Medich. Is that so?---That's correct, definitely.

20 Now, Mr Haddad, you will have heard a suggestion or an allegation in the course of these hearings and perhaps earlier that you had originally provided some encouragement for the Badgerys Creek Consortium, but that later there was a refusal to that Consortium of a rezoning. Are you aware of that?---I'm aware of that, not in the context of, of an outcome but rather in the context of a process to start the rezoning process. And I think I want to highlight the difference between the two.

Sure. I think you're saying that there has never been an approval for a rezoning. Is that what you're saying?---Never. What otherwise would that matter.

30 Right. Now is it correct to say that you were initially and I'm talking about 2007, encouraging about the process to the Badgerys Creek Consortium? ---I'm not sure that I can say encouraging. I had the submission before the Department and advice from departmental officers in relation to this land, with the land there. And at the time, given the size of the lands and, and in the context of providing employment, I was, and I think I used the word sympathetic to start the process.

40 Yes. Yes?---And I was sympathetic to start the rezoning process through the relevant provisions of the legislation.

Now, you would have no doubt heard a reference to a letter that I read from yesterday in the opening of May, 2008, in which I said that you appeared to be applying the brakes to that kind of sympathetic encouragement. Do you recall that?---If I may, I'm not, if I can just clarify applying the brake. In the, in the context if I may - - -

Mr Haddad, rather than that I put those words to you?---Yep. Sure.

Why don't you tell us what happened between 2007 when you were sympathetic and August, 2009, when there was ultimately a decision to postpone or delay stage 3 and therefore the BCC land?---There was a significant interest in providing additional well located employment plans in this area, well beyond this particular site. We had a number - - -

10 THE COMMISSIONER: I beg your pardon, Mr Haddad, do you mind repeating that, I didn't hear?---We had, I'm sorry, Commissioner, we, there was a significant interest by government to provide additional employment lands in this area, well beyond this particular site. We had taskforce, a taskforce established to be able to identify additional employment lands. The, I suppose the significance, the importance of a much broader area became much more apparent during that time. And we have asked government to provide us with additional resources to be able to investigate this broader area and we received these resources. It was at this time that I would not endorse a submission provided to me by officers of the Department to start - - -

20 MR GORMLY: What time are we talking about here?---I'm sorry, that was about the time when, that was I think in late, to the best of my recollection, it was in 2008, I think, some time then. But essentially what, what my thinking was at the time was that we were going to embark on this strategic study for the entire area and that it was inappropriate, you know what, inappropriate is not the right word, but it would, it would be inefficient to study this particular site, the ex-CSIRO in isolation without putting it into the strategic context of the entire site.

30 That is 830 acres, 40 acres - - -?---Something like that.

- - - (not transcribable)?---That's correct. So that we can understand the relationship in terms of infrastructure, in terms of servicing and particularly (not transcribable) that I was particularly interested in which is the order of release of the land given that we were looking at this broader area.

40 The ultimate release of the land?---The ultimate release and the giving of it. So basically it wasn't really sort of put in the (not transcribable) but it was (not transcribable) looking at these sites in the context of this broader area, that's what you're saying. We'd only be looking at the whole area but concurrently I didn't tell anybody not to continue this process of looking at this area if they so wish, if they so wish. And departmental officers advised the appropriate authority. That means that I didn't say we shouldn't be also reversing this cycle, no, but I said definitely my advice to Government was at the end any decision on this site would have to be (not transcribable) in the (not transcribable) context of the whole area. That was my thinking at the time and I discussed that with the then Minister and that was the outcome.

That was, who was the then Minister?---Mr Sartor.

Mr Sartor. Right. And I think there was a decision made at some stage that there would be in effect a definite postponement and I think that was a Cabinet decision about 11<sup>th</sup> of August, 2009?---It was not, I'm sorry, it was not the definite postponement, it was a decision that we would then, we will be emphasising the whole area.

Yes?---We'd be studying the whole (not transcribable).

10

Sure?---And that we will not be progressing the beginning of the process formally for this site but if the performance, the developers wanted to progress their own studies meanwhile, I recall at one stage being asked whether they can have a draft Director General requirements for their own sites and I said if they want to have access to draft requirements that's fine in draft so that they can, they can sort of progress work. But that's made me think (not transcribable) make sure that progressing this site was going to be in the context of the strategic area.

20

Would it be fair to say then that you meaning the Department and Government generally had an interest in them continuing to perhaps develop their own plans pending when you were prepared to bring about a release? ---Well, I mean under my interest it's sort of, yeah, if, if, I mean by the time we have the whole area ready if they had also their own studies done as specifically to their area and they could produce their studies they would have had to go on merits through the process and the process is established by legislation, the Environmental, Planning and Assessment Act.

30

Now to the best of your recollection when was there some kind of a decision communicated to you that there couldn't be a rezoning of that BCC land now?---To the best of my recollection that would have been in 2008 some time but I'm sorry I don't have the exact date. I'm happy to provide that later on.

Now, to what extent was this project going to go to Cabinet and require Cabinet approval?---It was going to go to Cabinet once the studies for the entire area would have been completed.

40

Did it go to Cabinet?---Yes, it did.

When was that?---It did go to Cabinet in July 2009. To the best of my recollection in July 2009.

Right. Now, Mr Haddad, it's been suggested that the decision that was made in July 2009 was in some way influenced by knowledge of the tape that Mr McGurk made of his conversation with Mr Medich. Now to the extent that you know anything about that what is your knowledge?---It was not influenced by the tape.

THE COMMISSIONER: You're being asked what did you know about the tape?---No, it was not, I didn't know about the tape and it was not influenced. It was influenced by, by the studies that were done and (not transcribable)

I understand that, Mr Haddad, but the question was did you know about the tape that we have - - -?---No, Commissioner.

10 - - - listened to?---No, Commissioner.

When did you first hear about that tape?---I first heard about it a couple of days after the announcement of the, of the murder. And I heard about it, yeah, on, on the media.

On the media?---That's correct.

MR GORMLY: Mr Haddad, when you heard or received a communication from Mr Sartor about not having a rezoning now but rather at the end of this process was that consistent with your understanding of the way there had been progress over this area in the previous months?---It was, yeah, it was generally consistent certainly with my thinking, with the advice that was given to me as I said the previous month was, was a briefing note commenting the progressing of this site, the processing of this site but it was consistent with my thinking in terms of studying the whole area.

THE COMMISSIONER: Can I just ask?---Yes.

30 This briefing note who provides the briefing note?---I think the officers, executive directors and - - -

Who signs it?---I think the briefing note was signed by, was signed by an executive director, by firstly a director and executive director and ultimately by myself before presenting it to the Minister. Now the fact that I signed the briefing note means that, that I believe what's in the briefing note. In this case I did not sign this briefing note.

40 And why is that?---Because I thought, I thought they wanted to discuss it with the Minister in the context of progressing the entire site before agreeing to progress this particular site in isolation.

MR GORMLY: So what was the effect of the briefing note?---The effect of the briefing note to the best of my recollection was to progress the, the, the studies of this, of this site.

Right. This site being the BCC site?---That's correct, yes.

And you didn't sign it, you spoke to the Minister and that briefing note did not proceed or it proceeded and there was a decision against it?---It did not proceed.

Right. To the best of your recollection when was that? Just the year will do for a start?---I think (not transcribable) in 2008 I think. 2007, 2008, (not transcribable), yeah.

10 Sure. Now, Mr Haddad, you understand that there is some allegations that there was an improper relationship between you and Mr Ron Medich such that both in the past and at the time you were amenable to corrupt processes by which Mr Medich would receive some benefit for planning purposes for land here. Do you understand that those allegations in general terms have been made?---Yes.

And that there's also an allegation that you had been persuaded by some Minister to grant some benefit to the Medich land. Understand that there's an allegation like that?---Yep.

20 Yep. And that there's some allegation that you have been paid monies by the Medich's or through someone to you for a benefit to Medich land. Understand there's those allegations?---Yes, I do.

Right. What do you say of those allegations?---I refute them entirely and I find them completely, completely offensive and completely - I mean, I have been personally and professionally including my family but myself in particular very much affected by, by those allegations, quite significantly. So I refute them completely. If remotely anybody would have had any, any suggestions, anybody, anybody I would have, I would have very  
30 aggressively taken action immediately, immediately without any thinking and I would like please to put this on record without any doubt.

Right. Well, let's go through them. I'm sorry to do this and I just want your short response?---Yep.

Is it true that you have had any kind of an improper relationship with Mr Ron Medich in the past by which you would give him favourable treatment on any land project?---No, definitely not.

40 Is it the case that you have ever given favourable treatment to the Medichs' for some improper benefit in relation to Gerroa?---Definitely not. Never.

(not transcribable)?---I haven't, I haven't been involved in the Gerroa project at all. At all.

THE COMMISSIONER: Sorry. Can you just explain that, Mr Haddad? ---I have not, sir, Commissioner, I have not been involved in this Gerroa case at all, I have been made aware of it once I received the request for

information from the Commission, that was there and I examined the file and I have not been involved in any past rezoning of the Gerroa nor any current development application.

You played no role in regard to Gerroa at all you say?---No, Commissioner.

MR GORMLY: Did the file from Gerroa ever pass through your hands?  
---I'm sorry?

10 Did the file, any files relating to the land at Gerroa - - - Not, to the best - - -  
- - - ever pass your - - -?---Not to the best of my knowledge, no.

Right. And do you know the land or did you know at the time about this piece of land at Gerroa that's owned by Mr Roy Medich?---No, sir, I didn't.

Now, have you ever provided some improper benefit to Mr Roy Medich or anyone else for that matter, related to the Medich's in respect of favourable planning treatment for the Badgerys Creek land owned by the Medich's?  
20 ---No, I did not.

Or for that matter any land in the BCC?---No, I did not.

Have you ever received any payment or any form of improper inducement through any intermediary from the Medich's in respect of anything?---No, I did not. Not a hint of that, no.

You've had some dealings with Mr Graham Richardson in relation to the Medich's. Have you ever received any improper payment or inducement of  
30 any kind from Mr Richardson as an intermediary in respect of the Medich's?---Never. I've only met Mr Richardson in an official capacity in the offices of the Department. Never met him outside that, never had any dealings with him outside that, never.

THE COMMISSIONER: Have you ever received any benefit, any payment from Mr Richardson, whether proper or improper?---Never, Commissioner, never.

MR GORMLY: Have you ever received, and I appreciate this duplicates  
40 something I've asked you, but have you ever received two payments from anyone related to the Medich's, each of \$15,000?---Never.

Right. Would you say that you had any kind of a friendship or any kind of a relationship with Mr Ron Medich?---No.

Now, Mr Haddad I want to ask you some, is there anything else you'd like to say in, in response to those allegations?---No. Just to emphasise that my dealings with the, with these developments and development (not

transcribable) are based on the merits and solely on the merits. Again, I just want to emphasise that (not transcribable) you know, had quite an impact on myself and on the Department from such allegations that I value my integrity and I would never ever allow any hint of or suggestion by anybody in that regard.

10 Now, you understand that Mr Medich, and you'll no doubt have heard on the tape that Mr Medich claims that you are his connection for the purposes of some improper benefit. What do you say of that?---I, I don't know what he meant by that. I'm (not transcribable) on the tape, I certainly don't have, as I said, I've never met him. I've never spoken to him.

It's false is it?---Yes. I've never met him. I've never spoken to him. I don't know in what context, I think it's, it's up to others to say what it is, but - - -

So it's not true?---It is absolutely not true.

20 All right?---It is absolutely not true.

Now Mr Haddad, you'll have recalled that I've asked you some questions about Mr Richardson. I'm about to ask you some questions about other matters and I do not have Mr Richardson in mind when I ask these questions. Do you understand? These are general questions?---Yes, I do.

Now, of course, Land Planning and Land Development can be a risky area for a public officer. Correct?---Yes. Yep, that's correct.

30 Because there are high, high amounts at stake and people with considerable interest in them. Correct?---Yep. Yep, that's correct.

Does your department have corruption prevention procedures in place?  
---We have, we have a number of, of protocols and, and procedures in place. Having said that, I have recently initiated quite a significant programme to strengthen those procedures.

Do you, when has that last been considered?---I think it started only six months ago or so.

40 All right. Now I want to turn specifically to the area the use of consultants, experts advisors and lobbyists?---Yes.

I just have some questions in that area?---Yes.

Firstly, I think you earlier said that you distinguished clearly between lobbyists, experts and consultants?---Yes.

Why is that?---Consultants usually are technical people. They act on behalf of developers or for them in a technical context, context. They undertake studies of a technical nature. They (not transcribable) on developments. They prepare studies. So they're technical people.

Right. Is their input from a landholder point of view of benefit to the Department?---I'm sorry, can you repeat that?

10 When you get representations or studies from consultants - - -?---Yes.

- - - that have been obtained by landholders, does the Department find them useful?---(not transcribable) are useful. My personal view is that I've never taken them as independent studies. They then undergo an independent assessment by the Department. So consultants present studies on behalf of developers. And those studies are assessed and they are assessed independently by officers of the Department.

20 Right. So you see them as a form of technical information but as advocates as well?---Well, I suppose they, they, they present, they present the, I mean if I can put it in a way, I haven't seen a consultant study telling me that the project shouldn't go ahead. So, they, they come, they come in studies, and I'm not saying that they don't put actual information, but the position that I have been taking is, and others may disagree with me, that they have to undergo an independent evaluation on top of what's been presented to us.

Now in the hierarchy of the Department - - -?---Yes.

30 - - - that will make decisions about a landholders land, is there at present any point in the hierarchy to which you or below which you do not wish departmental officers to have contact with consultants?---Not, not, I mean usually department officers, as part of their job, they have, they must have contact with consultants. So, that's, that starts from all officers, but of course, they assessment process is undertaken at different levels within the Department. And then different levels of management in both or otherwise, recommendations made.

40 Is the same true for lobbyists?---Lobby, yeah, yeah, generally, except that lobbyists, lobbyists are not really sort of, they don't present the merits, the merits component of the projects. So, and as you said, lobbyists, I suppose, they lobby for the development in terms of wanting the development to, to proceed. Wanting to know when it can proceed. Wanting to know whether there are any outstanding issues to proceed. And I think there is, there is (not transcribable) I'm not sort of very much familiar with them, there is another component of, of lobbyists. They, they also assist or they provide assistance to, to the developers, to the proponents. It is said that the planning system in this jurisdiction, in this (not transcribable) is a complex one and submissions (not transcribable) that some developers need help

from lobbyists on the (not transcribable) system. It's not my view, but this is a view. So they have this function as well.

So in effect they do develop some degree of expert knowledge about the field? Is that so? Lobbyists?---I'm, I'm not sure about the field, but they have, I suppose, they, they give advice as to the interfacing with the government, between developers and the government.

10 So so as you and the Department are concerned is there a useful role for lobbyists?---Look, I think for me just answer it that way. Lobbyists are, registered lobbyists are part of the system. They are part of the system. So it is, it is a government policy to have registered lobbyists.

20 THE COMMISSIONER: But that's not the question?--- My, yes, Commissioner, yep. The question, sorry the answer is that I think, if I may answer it this way, if you don't mind, Commissioner, I think we have, we have recently tightened protocols regards the interfacing between registered lobbyists and between the Department as a result of recommendations from the Upper House inquiry. And I'm instructed that this is going to be independently audited and it'll be - - -

MR GORMLY: Independently what?---Audited, audited and I make sure that the results are available, the results of this. However, having said that, coming to the answer, I think it may be useful at some stage to rethink some of the fundamentals behind just managing the interface.

THE COMMISSIONER: What - - -?---But there's meaning, sorry, Commissioner.

30 Let me ask you a direct question?---Yeah, yeah.

Do lobbyists ever help the Department of Planning?---No.

No. And the use of lobbyists must take up the time of the, some time of the Department?---Some time, yes, Commissioner.

I assume that's wasted time?---Ah - - -

40 It doesn't help?---It doesn't help. You know, whether it's wasted, it is, it's, it's time from the Department, it could be, I mean, there may be other areas.

All right, thank you.

MR GORMLY: Is there any - - -?---If, if that's yeah.

Right. Just looking at the other side of that - - -

THE COMMISSIONER: I understand that's just a personal view, Mr Haddad?---It is, well, yeah, I mean, as I'm saying it is, it will be more, more appropriate probably to, to put the submissions of everything in that role to be able to, to sort of see where, where the value added is not and that's, that's my view. Thank you, thank you, Commissioner.

MR GORMLY: But is there a degree to which lobbyists are a voice of the person using them? Do you understand what I mean?

10 THE COMMISSIONER: You'll have to explain that, Mr Gormly?

MR GORMLY: Yes.

Is there a degree to which a lobbyist is an, is simply an advocate for their client?---Yes.

THE COMMISSIONER: I think we might have taken this as far as is necessary, Mr Gormly.

20 MR GORMLY: Yes, all right, yes, Commissioner, yes. Well, in fact, Commissioner, that really terminates the questions that I have on that matter.

THE COMMISSIONER: Yes, thank you. Yes, thank you. Now, I need to know from counsel who wishes to cross examine?

MR GAME: Commissioner, I wish to ask a few questions.

30 THE COMMISSIONER: Yes. Well, just a moment, Mr Game, before you go first I just need to find, I'm just, I'm not stopping you yet, I just need to know who wants to.

MR GAME: Thank you.

THE COMMISSIONER: Are you, Mr Faulkner?

40 MR FAULKNER: We don't wish to cross examine but might I foreshadow that I will be strongly opposing any attempt by Mr Game to continue his exercise that he began yesterday, as I foreshadowed to you yesterday morning - - -

THE COMMISSIONER: All right. You don't have to foreshadow anything.

MR FAULKNER: It's fishing and yet at the moment your, your, Commissioner - - -

THE COMMISSIONER: Mr Faulkner, I'm sorry, I don't mean to be rude and I really don't intend to be but I understand what you're saying but I think that the time - - -

MR FAULKNER: Well, will I have an opportunity to object?

THE COMMISSIONER: You will.

MR FAULKNER: Thank you.

10

THE COMMISSIONER: The time for you to make your objection is if and when there is a question asked which you don't like and you will have every opportunity to object.

MR FAULKNER: Thank you.

THE COMMISSIONER: Now, Mr Game.

MR GAME: (not transcribable)

20

THE COMMISSIONER: But before you do you and I are now going to have a discussion and I know that you and I, that you've been waiting for and so have I. What do, I first want to know precisely what your interest is in representing - - -

MR GAME: Yes (not transcribable).

THE COMMISSIONER: And I'm not sure who you are representing. Perhaps you can explain that.

30

MR GAME: Yes. I'm representing Mrs Kimberly McGurk in her personal capacity and I'm representing her as executor of the estate, that is to say, as representative on behalf of - - -

THE COMMISSIONER: I under that.

MR GAME: - - - Mr McGurk.

40

THE COMMISSIONER: Now I do want to make it clear, as I said in the beginning, I am of no mind to stop you representing and I certainly accept that there is a certain class of questions that you're entitled to ask but before dealing with that I need to know what you say your interest is in representing Mrs McGurk in those two capacities?

MR GAME: Yes.

THE COMMISSIONER: What is it that you are trying to do?

MR GAME: What I am trying to do is to protect insofar as I am able to do the reputation of Mr McGurk and that is a legitimate matter.

THE COMMISSIONER: Well, I'm not, I am, for the purposes of this inquiry, I will accept that.

MR GAME: Commissioner.

10 THE COMMISSIONER: I do think though, it may not be irrelevant to mention it, that the reputation of a dead person is not regarded by the law with the same degree of importance - - -

MR GAME: No, it does not.

THE COMMISSIONER: - - - as it does a person who is alive.

MR GAME: I understand that, I accept that.

20 THE COMMISSIONER: And that may or may not be relevant but nevertheless, I accept, as I say, that you have the right to represent these persons in this inquiry. Right. So you've mentioned the reputation of Mr McGurk. Is there anything else?

MR GAME: Yes, your Honour. There are legal interests and may I not hesitate to say in no sense do I seek to, as it were, elicit evidence for any collateral purpose but I must say to you there are legal interests that exist for the estate and I've, we've written a letter to you telling you what those legal interests are.

30 THE COMMISSIONER: Well, I haven't seen that but I am aware that there is litigation pending between Mr Medich and the estate. Is that what you are referring to?

MR GAME: That's correct. And my position is purely - - -

THE COMMISSIONER: (not transcribable) you say you're entitled to do it like that.

40 MR GAME: My only defence, that's to say, my only defence is - - -

THE COMMISSIONER: I am, that is, if anybody says anything that - - -

MR GAME: (not transcribable)

THE COMMISSIONER: - - - that you, I accept that but I, I can tell you that my hackles rose, as I'm sure you saw, when I heard the tape being played, a part of it that related to the shredding of trust deeds, which had nothing to do with this inquiry and had a lot to do with that litigation.

MR GAME: Your Honour, I had absolute, I had nothing to do with the litigation, that was to give the context to what was occurring between the individuals.

THE COMMISSIONER: All right. Just by chance.

MR GAME: And it did make it clear what the context was.

10 THE COMMISSIONER: Just by chance it bore on the litigation.

MR GAME: Absolutely. I can tell you it did not occur to me in my head that that had any (not transcribable).

THE COMMISSIONER: Well, I accept that, Mr Game. All right. I understand that. But that's a defence. Right. Anything, is there a third issue?

20 MR GAME: No, no, no, but I was just going to tell you, there is another, again only defensive, but there is an outstanding costs question in the Local Court in relation to the dismissed charges relating to the fire bombing.

THE COMMISSIONER: All right. Now - - -

MR GAME: Again, only defensive.

THE COMMISSIONER: Can we just come back to the reputation - - -

30 MR GAME: Yes.

THE COMMISSIONER: - - - of Mr McGurk. Now, I have some questions to ask you about that. The reputation of Mr McGurk in this inquiry is potentially at risk in regard to certain of the allegations. I'm not going to deal with allegations 3 and 12 because I have already told you what my attitude is towards them - - -

MR GAME: Yes.

40 THE COMMISSIONER: - - - and you're safe there.

MR GAME: Yes.

THE COMMISSIONER: Let me just stay with the allegations that concern Mr Haddad. The reputation of Mr McGurk in relation to the allegations concerning Mr Haddad depend on the truth, depend on whether he was telling the truth when he was reporting what he was said, what was told to him by Mr Medich.

MR GAME: Yes, but from the (not transcribable) that's correct but from the, could I - - -

THE COMMISSIONER: Yes. Is there anything else?

MR GAME: Yes.

THE COMMISSIONER: What?

10 MR GAME: What else there is is this. If you consider this, if I get leave to ask my few questions of Mr Haddad I will make it plain from the first question that I make no allegation against him of any kind.

THE COMMISSIONER: Well, that's, that is, that is a, it is one of the things I wanted to ask you.

MR GAME: And I'll say that straight up to him but, and it's, and it's very clear from the evidence he's given that the evidence he has given is heartfelt and compelling and I have no, as there's no doubt that a strong impression  
20 one gets from his evidence. But, in respect of Mr McGurk and his position, the question was whether or not he was entitled to, shall I say, give some credibility to that which Mr Medich was putting to him.

THE COMMISSIONER: Mr Game, can I put your mind at rest.

MR GAME: Yes.

THE COMMISSIONER: If I accept that Mr McGurk was accurately reporting what Mr Medich said to him, I will not make an adverse finding  
30 against him in respect of that matter.

MR GAME: Thank you, Commissioner.

THE COMMISSIONER: Therefore there is no need for you to go into any question as to whether there was any degree of probability attached to what Mr Medich was saying.

MR GAME: Yes. That, that may be so but - - -

40 THE COMMISSIONER: It is so.

MR GAME: Could I just - - -

THE COMMISSIONER: I'm telling you, it is so.

MR GAME: Well - - -

THE COMMISSIONER: That's what I intend to do.

MR GAME: Thank you. That may allay all of my concerns but may I add one thing which is this.

THE COMMISSIONER: Yes.

MR GAME: As this evidence of Mr Haddad stands, again I don't know what other evidence has been given, but there are - - -

10 THE COMMISSIONER: Been given?

MR GAME: Sorry, what other evidence there is touching on the matters I'm about to mention to your Honour. Those matters are these, that there are, there is material which is publicly available, it's on the internet, it's parliamentary reports that has relevant dates of relevant meetings and decisions that are relevant to your processes and those could be extracted from Mr Haddad by me in a few minutes and they would assist the Commission, in my submission.

20 THE COMMISSIONER: Mr Game, there are couple of, there are, yes, sorry, you finish.

MR GAME: No, no, and I think that if you gave me leave to ask them you would see that the dates do have some significant but may I say this. I am mindful of a matter that's not being investigated by the Commission but that on the 5<sup>th</sup> of , and this again, absolutely no concern to Mr Haddad, but on 5 September there was a, that's to say two days after Mr McGurk is killed, Ms McClymont says that he told her he had information which put his life at risk. So that the context from a perspective of the interest that I represent is  
30 in a sense rather more grave than - - -

THE COMMISSIONER: I don't understand that. I don't understand how that bears on anything that Mr McGurk said.

MR GAME: The way - - -

THE COMMISSIONER: In relation to the allegations.

MR GAME: No, no, what it does bear on is this. Is that in the, in,  
40 Mr McGurk is saying to Ms McClymont the series of allegations and he is concerned for his life - - -

THE COMMISSIONER: For his own personal - - -

MR GAME: Yes.

THE COMMISSIONER: Yes.

MR GAME: And then he, then he's short - - -

THE COMMISSIONER: Yes.

MR GAME: - - - on, in an execution.

10 THE COMMISSIONER: Mr Game, you do understand as, and I know that you do, that in this, in my opening statement I said, and I think that I should reiterate it, this Commission is not investigating anything to do with the murder of Mr McGurk. That is beyond the jurisdiction of this Commission and we would be acting unlawfully if we were to do that. And the fact matters relating to his murder have only relevance insofar as they could bear on the allegations which have been announced as being the matters that this Commission is investigating.

MR GAME: May I put that another way. I am concerned to maintain, as I said, for Mr McGurk's reputation. He clearly put credit on what he heard because it - - -

20 THE COMMISSIONER: I told you I will accept that he was entitled to do that.

MR GAME: All right. Now, can I come back to what I was saying before, your Honour, which is that in my respectful submission there are some dates of some meeting that would assist the Commission. I could - - -

30 THE COMMISSIONER: In the context of this inquiry it would be wrong for me to talk about suspecting gifts from Greece but let me put it that I suspect gifts from counsel who are not assisting the Commission. It has the same connotation. Mr Gormly and those assisting him and perfectly able to put whatever is necessary relating to what is required to investigate the Commission. I will only allow you to ask questions that bear on the reputation of Mr McGurk. I will give you full liberty to ask those questions subject to one thing, that the reputation of Mr McGurk depends on, for the purposes of this inquiry, whether he was telling the truth when he was repeating what Mr Medich said to him. Mr McGurk's reputation does not depend on the truth of what Mr Medich said. That is an entirely different matter.

40 MR GAME: No, no, I accept that without question.

THE COMMISSIONER: All right.

MR GAME: But I do, but I do say, and I think that the question of whether or not Mr McGurk was entitled to put credit on that which was put to him by Mr Medich is relevant to the question.

THE COMMISSIONER: I have given you my attitude to that and I should also say my understanding, without being educated by counsel, is that any material that is forthcoming from the parliamentary inquiry is privileged and you would not be able to use that and nor would I.

MR GAME: Your Honour, I've researched that question and there are cases that say that it can be used.

10 THE COMMISSIONER: And there are cases that say that it can't.

MR GAME: There are cases, but I, one thing that can be done is that it can be put to the witnesses as an aid to them. That's all I - - -

THE COMMISSIONER: All right.

MR GAME: - - - and the cases say you can do that.

20 THE COMMISSIONER: My ruling, Mr Game, is that you are entitled to ask Mr Haddad questions concerning the reputation of Mr McGurk subject to that reputation depending on whether he accurately and truthfully repeated to everyone with whom he reported those statements, the truth. I'm not sure if I put that correctly, but anyway I think you understand what I mean. Mr Galasso?

MR GALASSO: Commission, would you hear me as a contradictor to the application - - -

30 THE COMMISSIONER: Yes. You don't want Mr Game to ask those questions at all?

MR GALASSO: No, Commissioner, for the reasons that he's advanced himself. He's identified for you three bases upon which he appears before this Commission. The second and third of those may be discarded as being relevant to any application by - - -

THE COMMISSIONER: The second and third don't arise on Mr Haddad's evidence.

40 MR GALASSO: No. In respect of the one that remains, the first one he's identified, mainly reputation, he puts it as the reputation of Mr McGurk as a function of his repeat, my words, of what was told to him by Mr Medich. There's no assertion that the compass of what was told to him by Mr Medich is anything beyond what may be described as the elephant in the room and that is the tape if the Commission has the tape - - -

THE COMMISSIONER: No, it's more than that, Mr Galasso. There are other allegations and, thought about that. Why don't you wait to hear what

questions Mr Game is going to ask now, if anything, then you can object to any particular question.

MR GALASSO: My objection though, Commissioner, is that the answers, that on the basis of the way in which Mr Game seeks leave - - -

MR GAME: Can I just say this, to cut it short. I know you hate me interrupting, but according to your ruling I think I'd be trying my luck to ask any of the questions.

10

THE COMMISSIONER: That's what I thought. Thank you. I appreciate your quickness of mind and I meant that sincerely.

MR GAME: Sorry, the answer is I'm not, I, on the basis of your ruling I'm not going to ask - - -

THE COMMISSIONER: I understand that. Now, Mr Galasso, have you got any questions?

20

MR GALASSO: Two of formality, Commissioner.

Mr Haddad, I believe you provided to the Commission some time last week or the week before, a copy of your curriculum vitae?---Yes, yeah.

And that's not been tendered but, Commissioner, may I tender that as a curriculum vitae of Mr Haddad?

THE COMMISSIONER: Yes.

30

MR GALASSO: In terms of your background, Mr Haddad, you outlined that to the Commissioner - - -

THE COMMISSIONER: Excuse me, Mr Galasso. This curriculum vitae will be Exhibit 4.

#### **#EXHIBIT 4 - CURRICULUM VITAE OF SAM HADDAD**

40

MR GALASSO: You indicated, Mr Haddad, that you have a Bachelor of Engineering majoring in chemistry, correct?---Chemical engineering.

Chemical engineering. You have a Master of Applied Science in Chemical Engineering and a Master of - - -

THE COMMISSIONER: Mr Galasso, I don't want to be rude, but we can read.

MR GALASSO: If it please the Commission.

THE COMMISSIONER: And this is not an employment application.

MR GALASSO: I wish to emphasise, Commissioner, Mr Haddad's longstanding position in the public sector.

THE COMMISSIONER: That's a matter for the submissions.

10

MR GALASSO: If it please the Commission.

Mr Haddad, you indicated to the Commission earlier that the allegations that have been made that involve you have affected you and may we take it that affected you in a significant way?

THE COMMISSIONER: I won't allow that, Mr Galasso. That is, the evidence has been given. It's not a relevant question to the issues I am concerned with.

20

MR GALASSO: If it please the Commission.

THE COMMISSIONER: Yes. Any re-examination, Mr Gormly?

MR GORMLY: No, that's it.

THE COMMISSIONER: May Mr Haddad be excused?

MR GORMLY: Please.

30

THE COMMISSIONER: Yes. Mr Haddad, you're free to go?---Thank you. Thank you, Commissioner.

**THE WITNESS EXCUSED**

**[2.40pm]**

THE COMMISSIONER: Next witness.

40

MR GORMLY: I call Mr Ron Medich, Commissioner.

THE COMMISSIONER: Do you wish to be sworn in, Mr Medich, or would you affirm?

MR MEDICH: Sworn in.

THE COMMISSIONER: Sworn in. Would you swear Mr Medich in please.

THE COMMISSIONER: Mr Gormly, do we adjourn for tea at all, what is the custom?

MR GORMLY: The custom is not to, Commissioner. The custom normally would be just to sit from 2.00 till 4.00 but we have had an early start.

10

THE COMMISSIONER: Yes. I intend unless counsel object to sit until 5.00. If there's any objection I won't but I intend to sit until 5.00 and we will adjourn at 3.15 for quarter of an hour.

MR GORMLY: Just excuse me, Commissioner, one moment.

THE COMMISSIONER: Mr Game, if it's inconvenient to you I won't.

MR GAME: I'm sorry, Mr Medich. And also I've no doubt that we'll get through the evidence. Because Mr Haddad is gone I've got no doubt that we'll get through the evidence.

20

THE COMMISSIONER: What time do you wish to adjourn?

MR GAME: Could we adjourn at quarter to 4.00 which is - - -

THE COMMISSIONER: Quarter of an hour earlier.

MR GAME: Quarter of an hour earlier. Well, it's a matter for your Honour.

30

MR GORMLY: I know what Mr Game is referring to, Commissioner, we both sit on the Bar Council and there is a - - -

THE COMMISSIONER: We'll adjourn at quarter to 4.00.

MR GORMLY: I'm not asking for quarter to 4.00 myself, I'm happy with 4 o'clock.

THE COMMISSIONER: We'll start tomorrow at half past 9.00.

40

MR GORMLY: Can that be done? Thank you, Commissioner.

THE COMMISSIONER: Yes.

MR GORMLY: Right. Mr Medich, I'm sorry, I missed all that. Were you sworn in?---Yes, I was.

Can you tell us your full name?---Ronald Edward Medich.

What's your occupation, Mr Medich?---I'm a property developer and investor.

Now, Commissioner, I understand that Mr Faulkner wants to raise something now so I think it relates to a statement and perhaps it's best dealt with now.

10 THE COMMISSIONER: Mr Faulkner, may I say that my present thinking is that everything that I said to Mr Game applies to you in relation to Mr Medich. Do you follow that?

MR FAULKNER: I do. The matter I raise now is just briefly this. At a time convenient to you we will be seeking to tender a statement signed by Mr Medich and already provided to the Commission staff last Friday. But what I want to emphasise now is that statement contains as an exhibit, as an annexure some, a few pages of the transcript corrected by Mr Medich as at last Friday. At the time that I seek to read his statement I'll be seeking to substitute for those pages the latest correction, corrected version of the transcript as at last night.

THE COMMISSIONER: I'm not sure if I understand that. I can understand that you want to, you want to use a different transcript to the one that's been put in?

MR FAULKNER: Correct. And that's been put in his statement.

30 THE COMMISSIONER: I beg your pardon?

MR FAULKNER: A transcript that is different from the pages of transcript that were put in his statement last Friday.

THE COMMISSIONER: In his statement last Friday?

MR FAULKNER: Yes.

THE COMMISSIONER: What's his statement last Friday?

40 MR FAULKNER: We provided a written statement - - -

THE COMMISSIONER: I see.

MR FAULKNER: - - - from Mr Medich - - -

THE COMMISSIONER: I have not seen that.

MR FAULKNER: No, no, I'm merely informing you so that there's no misunderstanding at the moment that when I come to tender his statement I will be seeking to rely on the transcript in the form that has been admitted by you today.

THE COMMISSIONER: I understand. Yes, thank you.

MR GORMLY: Are you tendering the statement?

10 MR FAULKNER: If it's convenient I'll tender the statement now then.

THE COMMISSIONER: Well, I will accept the statement on the basis what that - - -

MR GORMLY: I'm sorry, can I just say this? It's true that on Friday a statement was delivered and I was asked about whether or not a statement could be presented and I said well, one can be. Having received the statement I was going to oppose it partly because it contains material that seemed to me to be irrelevant to the inquiry and there was (not  
20 transcribable) material relating to Mr McGurk scattered all the way through it and it didn't say anything that we didn't already have from Mr McGurk, from Mr Medich. And so I was proposing to oppose and at least oppose those things where they have some adverse opinion of Mr McGurk. Now, I've told my friend that I wouldn't include it as part of the material but that he was free to tender it if he wished to do so and I think that's what is happening at the moment.

THE COMMISSIONER: Yes.

30 MR GORMLY: I just wanted the Commission to know what the history was.

THE COMMISSIONER: Well, I will allow it in material that is opinion evidence about Mr McGurk. I will allow Mr McGurk to put in - - -

MR GORMLY: Mr Medich.

THE COMMISSIONER: Mr Medich, I beg your pardon, to put in a statement as to what he says the transcript should really be. And is there  
40 anything more?

MR GORMLY: No, Commissioner. And if we could perhaps, if Mr Faulkner and I could perhaps go through the statement we'll identify those parts that fit with your ruling, if I may say so we'll delete them.

THE COMMISSIONER: All right.

MR GORMLY: We'll agree to - - -

THE COMMISSIONER: Mr Game, is there anything you want to say at this stage?

MR GAME: Yes.

THE COMMISSIONER: I mean, you will have ample opportunity to deal with it when it actually arises but if you have anything that's helpful at this stage so that we can avoid that why don't you mention it?

10

MR GAME: I will just mention this. We have not heard of this statement until a short time ago and we don't have it.

THE COMMISSIONER: I understand that. Nor do I.

MR GAME: So we would really want to have an opportunity to consider it and - - -

20

THE COMMISSIONER: Well, Mr Faulkner, what are we doing, is that statement go to - I think - if you're going to use a statement that's supposed to correct another statement then Mr Game is entitled to both statements is he not?

MR FAULKNER: I'm not sure if Mr Game's entitled to anything without telling us what position he's here contending for. That's my difficulty. That's why I continue to oppose his position because, Commissioner, you continue to give him a free ride, with respect.

30

THE COMMISSIONER: I don't see much respect in that, Mr Faulkner.

MR FAULKNER: (not transcribable).

THE COMMISSIONER: One thing that I'm used to and with that you should actually be careful.

40

MR FAULKNER: Well, Commissioner, Mr Game refuses or does not put forward his position, his contention so that we can assess the merit or fairness of any question that me might ask, any submission that he might make or any request that he might make except he says I'm here to look after Mr McGurk's reputation in that narrow area that you, Commissioner, have now confined him to. But in my submission until Mr Game puts forward a contention, a position that he is pursuing we are entitled to oppose any attempted use that he might make of the material that we've put into the Commission because we don't know where he's going or intending to go except he's clearly on a big fishing exercise.

THE COMMISSIONER: Mr Game?

MR GAME: Well, I've already put my position.

THE COMMISSIONER: You have.

MR GAME: So I won't - - -

10 THE COMMISSIONER: You have but I think that what Mr Faulkner is entitled to know is are you contending that, are you making any, do you wish to contend that anything that Mr Medich said that is relevant to the allegations is false. I don't, as I understand your attitude now I don't think that is part of your case. You're really there to show that Mr Medich said something and no more.

MR GAME: Yes. Well, I'm there to - - -

THE COMMISSIONER: And to protect, you're also in a defensive role.

MR GAME: Yes. But I'm there to, shall I say, defend Mr McGurk's, sorry, let me put it this way.  
20

THE COMMISSIONER: You're there to defend the dissemination by Mr McGurk of whatever he disseminated.

MR GAME: Yes. And I'm there to defend the, shall I say the inference which Mr McGurk naturally drew from that which Mr Medich said. And that he was entitled to give credibility to it and that this meeting had a particular context. And it's not the particular context which Mr Medich is putting on it.

30 THE COMMISSIONER: Mr Faulkner, I think that is adequate. So I'm going to, Mr Gormly would you, will you, it's, it's of course open to you to tender the statement whenever you wish. I suggest that you do speak to Mr Gormly about it.

MR FAULKNER: That's what we, that's the course that we will take.

THE COMMISSIONER: And I think Mr Game has asked to see the statement.

40 MR FAULKNER: If you directed, we have a copy we can give him.

THE COMMISSIONER: Well, I think that would be helpful. It will only be used in accordance with the directions have given, by Mr Game.

MR FAULKNER: Yes, Commissioner.

THE COMMISSIONER: Mr Gormly.

MR GORMLY: Thank you, Commissioner. Mr Medich, you are the brother of Roy Medich. Is that so?---That's correct.

The two of you have interests in property. Is that so?---That's correct.

Mr Medich, do you and your brother operate in a partnership or do you operate as separate entities?---We used to operate together, now we operate in separate partnerships.

10 Right?---Apart, apart, apart from the CSIRO site and a site called Meron (?) Park.

They're the only two sites you have together are they?---We have together, yep, that's correct.

Right. Commissioner, I am reminded and I'm grateful for it that I am aware that Mr Medich would like the section 38 protection and I forgot to raise it.

20 THE COMMISSIONER: Yes, of course. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Medich and all documents and things produced by him during the course of today's hearing are to be regarded as having been given or produced on objection. And accordingly there is no need for Mr Medich to make objection in respect of any particular answer given or document or thing produced. The order is for the duration of Mr Medich's evidence today. If he is required to return to give evidence on other days and he wishes to avail himself of the protection afforded by the section 38 order, it will be necessary for him to apply for another order.

30 MR GORMLY: Now, the two of you owned land at the Badgerys Creek area called - - -The CSIRO site.

Yes. Are the lands that you hold there owned together or are they separate areas?---No, they're owned entirely fifty, fifty, the one parcel of land.

40 Thank you. But you have not both been involved in the progressing of an application for a rezoning. Is that so?---Mostly my brother was doing it with our consultants. And I sometimes attended the Badgerys Creek Consortium meetings and I spoke to Graham Richardson on quite a few occasions to see, you know, what was happening. And that's about it. But I personally didn't handle anything to do with it as has come out in the parliamentary inquiry and when I was at the Commission previously.

Now, is it correct to say that you have never attended any meeting with departmental officers in relation to Badgerys Creek land?---I actually have never been to the Department on any matter.

Just answer the question. Is it correct to say that you have never attended any meetings with departmental officers?---No.

Right. Have you ever attended a meeting with Mr Haddad?---Never.

Have you ever met Mr Haddad?---Never.

Have you ever spoken to him?---Never.

10 Have you written to him?---Never.

Have you had any communication with him at all?---None.

Either personally or through anyone else?---Never.

Right. Lets just go straight to the transcript. Mr Medich, I'll read you a passage.

THE COMMISSIONER: What page is it, Mr Gormly?

20 MR GORMLY: We're going, Commissioner, to page, it's about 82. I've just got to pick it up. Yes, page 79, I think of the new transcript. I'll just give you a copy, Mr Medich?---I think I've got a copy here.

I doubt whether you have this copy, Mr Medich?---Oh, okay.

I have opened it at page 79. You'll see half way down the page, line 14, you see the statement by you, "and what, what do you intend to do with Gerroa?" Do you see that?---Right. Yep.

30 That's, you're asking Mr McGurk that question?---Yes.

Who owned the land at Gerroa?---I do.

Right. Why were you asking him what he intended to do with Gerroa?  
---Well, see what you've got to understand that this meeting when I came in there (not transcribable) the meeting in (not transcribable) - - -

40 I'm going to stop you Mr Medich, if you wouldn't mind. I appreciate what you're trying to do, but can you just answer that question. Why was it that you were asking Mr McGurk what he was going to do, what he intended to do with the land at Gerroa?---Well, because he's the one that had those consultants do the work previously, Graham Boys and David Furlong. And he also raised some issue about adjoining lands.

How much control did Mr McGurk have over this land at Gerroa?---  
Technically, nil, as far as I'm concerned.

Did he have any interest in the land?---Falsely, he attempted to.

All right. The land was in your name was it?---It was.

Right. Now, you'll see then that there was a discussion between you and Mr Medich, where, you and Mr McGurk, where Mr McGurk is telling you about work being done by Graham Boys and David Furlong. Do you see that?---What line is that?

10 Well, it's really the rest of that page?---Oh, okay.

Do you see that the reference there to Graham Boys, David Furlong?---Yes.

They've been doing some work?---Yeah. That's right.

Now, at the foot of that page, at line 24, Mr McGurk says, "And Graham Boys and David Furlong both got plans, I met them. Two days ago I met David Furlong at lunch and Richie, the day before that. Who is that Richie?---That Richie Vereker.

20 Right. They think now's the time to go back in and do whatever you've got to do in terms of development consents. Now's the time for it?---Yep.

And you say, "Well, I've got connections there too, so I don't care. If they, if they can get it through, they can get it through. But I can get it through too." Correct?---Yes.

At that point Mr McGurk, at your invitation has been telling you what he intends doing with your land. Is that right?---Well, with my land. Well, he had this, we had a joint venture agreement that, you know - - -

30 All right. Let me, let me withdraw it. He is telling you what he is proposing and what he has been doing in relation to the Gerroa land?---But he hasn't done anything.

But that's what he's telling you.

THE COMMISSIONER: That's what he's telling you?---(not transcribable)

40 MR GORMLY: No, we're not, we're not telling you that, we're asking you that?---Nothing ever happened with it and nothing was going to happen with it.

All right?---What you've got to understand, that when I went into this meeting, we were shadowboxing against each other, because I didn't trust him when I went into the meeting. It was recommended to me, I didn't even want to go to this meeting, but one of my lawyers said, "Try to go in there and find out what's happened with the money that he's misappropriated." And I went into that meeting, you can disregard anything that ever happened

in that meeting because we were shadowboxing against each other. He had ulterior motives and the only motive I had when I went into this meeting was to find out what's happened with my money.

Right?---Most people wouldn't understand some of this conversation.

Right?---But I assure you this all part of the litigation that's happening.

10 Just look at that last answer of Mr McGurk on that page, you'll see, the one that starts, "Because I think that's, that's the best way forward." He's telling you what he is proposing to do with the land and he is telling you that he's using a couple of consultants and that now's the time to get development consents. Do you agree with that?---Oh, that's what he's saying.

Yes, that's right?---That was never going to happen.

20 When you say that's never going to happen, what do you mean?---Well, that was raised at that meeting.

Did you want him to do that or not?---Definitely not. I already knew what he was when I went into that meeting.

Are you saying that you did not want him to proceed using Graham Boys and David Furlong and lodging a - - -?---There would be no one that had anything to do with him that would ever be - - -

30 No, Mr Medich, I'm just going to get you to answer the question if you wouldn't mind. Did you want Mr McGurk to continue to develop this land in the way he had described or not?---No.

Right. Now at the foot of that page - - -?---Yeah.

- - - after Mr McGurk has been urging on you his proposal, you say, "Well, I've got connections there too so I don't care. If they, if they can get it through they can get it through but I can get it through too"?---Yes.

Let's just turn the page?---Yes.

40 Mr McGurk says, "Well, if you think that your, your connections are better than then you should use your connections." You see that?---Yes.

Because what you've just said to Mr McGurk is I can get it through myself?---Yes.

And you then say, "Yeah, you still got to pay them though, they don't do it for nothing"?---Ah hmm.

And he says, "Well, David," and that's a reference to David Furlong, correct?---Yes.

And a, is a consultant and he's going to be looking for money"?---Yes.

Any consultant to going to be looking for money if they do work. Correct?  
---Correct, yeah.

10 But you were talking about your connections, weren't you, when you said -  
- -?---No, I - - -

Wait a second, when you said, "Yeah, you still got to pay them though, they don't do it for nothing"?---Well, the only connections that I had with a consultant - - -

THE COMMISSIONER: The question is you were talking about your connections?---But I don't have any connections.

20 The question is were you talking about your connections or not when you said - - -?---No, I've got - - -

- - - when you said, "You still got to pay them"?---When I used, no, I wasn't, I was talking about my consultants.

MR GORMLY: So you say that when you said, "You still got to pay them though," you weren't talking about the connections you were referring to in the top line, you were talking about consultants?---No, when I use word connections I was doing that to fob him off.

30 Right?---Because I never had any intention of him doing anything down there, as has been proven by subsequent events.

Let's just move on. You'll see some more discussion where Mr McGurk is endeavouring to encourage you to use his consultants?---Yes.

Is that right? You see down there about line 8?---Well, as I say, this is all continuing the shadowboxing.

40 Sure. You see Mr McGurk says, "Well, he's a consultant," referring to David Furlong, "and that's, that's what he gets paid to do"?---Ah hmm.

In terms of the other connections that you've got, what I want to know or something like that, I don't know what they do, et cetera, whatever is said in the rest of that paragraph, it's Mr McGurk encouraging you to use the consultants he's suggesting?---That's correct.

Right. And you then give a response, "You're right there." You see that?  
---Yeah.

What were you referring to when you said, "You're right there"?---Well, we were talking about local councillors.

THE COMMISSIONER: Where, where - - -?---The councils.

But what was right? When you said, "You're right there," what were you saying was right?---Well, that we'd have to go to the Kiama Council.

10 MR GORMLY: Well, where, where is that said? I see the word "council"?---Well, that's the council we're referring to. Now, we've, we already had a DA on this site but that, doesn't anyone understand that?

Yeah?---We, we already had a DA.

Do we, are we to understand from that that when you said, "You're right there," all that was occurring was that you were agreeing with Mr McGurk that there had to be consultants who'd get it off to council in some way?  
---Correct.

20

All right. Let's just move on then?---Well, where else is it going to go?

Right. And then Mr McGurk says, "To what?" and you say, "Not to council," you say, "Sam Haddad, the whole bloody lot of them"?---Yes.

And McGurk says, "I'd rather use David Furlong," because he would know perfectly well who Sam Haddad was, wouldn't he?---Ah hmm.

30 Do you agree or not?---Yes.

And you say you know David Furlong. Is that you mean when you say, "I know him"?---I had met him before.

Okay?---He used to be a real estate agent.

Don't worry about that. You knew him?---Yeah.

40 Then we get to this line, McGurk says, "I don't know Sam Haddad. I don't know, I don't know Sam Haddad but you know." Do you see that?---Yes.

I think your solicitor tells us that you have in mind that maybe the words read, "I don't know," at the end?---That's right.

But whatever you say there, whatever Mr McGurk said there, the next thing you say is, "He's the Director General, Planning Department, it comes to him before it goes anywhere else, the minister, he signed off on it"?---Yes.

And Mr McGurk says, "So he'd be your connection," and you say, "Yeah"?

---I didn't say, "Yeah," I said, "mmm".

You accepted what he was putting to you, didn't he?---No, I did not.

THE COMMISSIONER: If you said, "Yeah," or if you said, "Mmm" you accepted what he was saying?---Technically not, Commissioner.

What do you mean technically?---No, I'll tell you.

10 What do you mean technically?---Well, I'll, I'll explain that to you. You have a look at some of the, you know when you go through the transcript of this tape, when I didn't want to give him an answer I went, "Mmm," on many occasions if you look right through the transcript.

Why didn't you want to give him answer?---Because it's none of his business what I was going to do because I already knew what he was when I came into that meeting.

20 He wasn't asking you what you were going to do, he was asking you whether Mr Haddad was your connection?---But that, I didn't confirm that he is my connection. I just said, "Mmm." I didn't want to give him an answer who I was going to use if I was going to use anyone and let me tell you I was intending to do anything there. We already had a DA on that site.

MR GORMLY: Mr Medich, go to the bottom of page 79?---Right. Yeah.

You and Mr McGurk are in a conversation there where you say that you can get this DA through the process. Correct?---Yes.

30 Through the use of your connections?---Not my consultants because - - -

Mr Medich, look at the line there, "Well, I've got connections there too"?  
---I just explained that.

Yeah?---I said to you earlier all as I was doing was fobbing him off.

Now, Mr Medich, turn over to page 80?---Yes.

40 You're the one at line 18 naming Mr Haddad instead of a consultant David Furlong and you are accepting not rejecting the proposition that he is your connection. Isn't that right?---This is not correct.

Well, I - - -?---Because what I, what I was doing in that particular line was saying that when I do things, which I always do, using proper consultants, as I've always done on any development I've ever done, you know, from my past record it speaks for itself, I am talking about going from the very bottom of the council to the very top which is Sam Haddad, the Director General of Planning in the Department.

Are you telling us, Mr Haddad, that in this conversation you were being truthful with Mr McGurk?---I was not being truthful with Mr McGurk at all because I, as I said, I was shadowboxing with him, all as I wanted to do was to fob him off.

10 Yeah?---Because I was there for one, one reason alone and you can see how crafty he was during, during, you know, the whole tape that was going on and really trying to the stage of asking where, where is my money that he'd stolen.

Mr McGurk, you lied to, Mr Medich, you lied to Mr McGurk about whether or not you had a connection with Sam Haddad, didn't you?---I didn't have a connection with Sam Haddad.

Yeah. You had no connection with Sam Haddad?---I didn't say I did. I said, "Mmm, mmm."

20 And it would be quite incorrect for you to say that Sam Haddad was your connection in any sense whatever, wouldn't it?---That's 100 per cent 'cause he never was.

Yeah, that's right. But you were telling Mr McGurk that?---I wasn't telling him that. When he asked me, "So he'd be your connection?" I said, "Mmm." I didn't want to tell him any connection I had if I had one.

30 Mr Medich, I put it to you that you lied to Mr McGurk quite deliberately asserting that Sam Haddad was your connection and that you did so precisely for the reason you give, that you were trying to fob him off?---Oh, well, I didn't mention his name. Down here he said, "So he'd be your connection?" I went, "Mmm," and they've got, "Yeah," in the transcript.

You'd just been boasting about having connections that enabled you to get it through?---I don't have any connections.

No but you'd been boasting about it, haven't you?---I wasn't boasting about it.

40 Well, what's this mean, "I've got connections there too. I can get it through too." What's that mean?---The only way you can get it through Kiama Council is to use consultants and go through the local council. This is a piddley site down the South Coast. Why would it be going to Sam Haddad?

That's quite right?---Yeah. And you know what's happened since this? Nothing.

Mr Medich, let me just stop you. We are not talking about this site. We are talking about you endeavouring to push Mr McGurk away from yourself. Isn't that right?---That is 100 per cent correct.

You did not want to do business with him any more, did you?---Definitely not.

And you did not want to be involved with him in the Gerroa site?---100 per cent.

10

And there's no way in the world you're going to let him anywhere near Badgerys Creek. Is that right?---100 per cent.

THE COMMISSIONER: We're also talking about something that's much more serious, Mr Medich. We're talking about you using the names of people whom you didn't even know as pretending that you did know them and that you had, were in some kind of relationship with them where they would do things for you if they were paid?---I didn't say that at all. Where's does it say I paid them?

20

Do you see at line 15 there's a passage that starts, "If they don't put it through either as asked or as asked" - - -

THE COMMISSIONER: Fifty-seven, was it?

MR GORMLY: Fifty-seven, Commission. I'm so sorry, I'm using the - - -

THE WITNESS: Mr Gormly, can I add one thing here?

30

MR GORMLY: Yes, certainly, Mr Medich?---Can I add one thing. You've got to remember that I went in here, this guy has illegally taped a conversation so why should I worry about using someone's name when it was a totally illegal, you know, conversation, that was never, ever going to go anywhere? All I wanted to do was to find out where my money was that had been misappropriated.

You didn't know this was being taped at the time, did you?---That's what I'm saying. So why would I be worried about anything I would've said in that conversation?

40

That's my point, Mr Medich?---That's what I'm saying.

You, you didn't know it was being taped so what you said - - -?---So why would I be worried about one on one, him and me?

Wait for a second. You spoke in this conversation thinking that the only person in the world that you were having a conversation with was Mr McGurk, correct?---Correct.

You had no idea it was being recorded?---No.

So you were going to feel free to say what you liked to get whatever it was that you wanted out of this conversation?---The only thing I wanted to know from him and I was chasing him for a long time is to find out what he's done with the money he misappropriated from me. It's as simple as that.

10 Mr - - - -?---And I never even wanted to go to this meeting, to be truthful.

Mr Medich, what did you think that Mr McGurk would do with the information that you had just given to him that Mr Sam Haddad, Director-General of the Department of Planning, might be in your pocket?---But I'm disagreeing with you. I never said that.

Yeah, well, I'm putting it to you that you did - - - -?---Well, I put it to you that I didn't.

20 And I'm putting it to you that you were very careless of Mr Haddad's reputation and position and authority by misusing his name in this conversation the way you did?---I disagree with you because I'm saying to you that when he asked me my connection, I went, "Mmm" because I didn't want to tell him who my connection, I never had one.

You're the one who raised the name Sam Haddad, aren't you?---I don't know if I did.

30 Well, Mr Medich - - -?---No, he's the one that raised it further down the track to say is, is he your connection. I didn't raise it.

You said, "Sam Haddad, the whole bloody lot of them". Do you recall that? ---Yeah, what we were referring to there - - -

Bottom of page 82, Mr Medich?---Yeah, no, I recall that. And what I, I told you, and what I was referring to there that was, when you go into a development you start from the local council and go into the Planning department if, if that was the type of site that you had to do that to.

40 When you referred to Sam Haddad and then described him on page 83 as Director-General, Planning Department, and it was suggested to you that he was your connection, you should have been saying to Mr McGurk, no, he's not, I've never met the man?---No, but what I said was, "Mmm". I didn't give him an answer.

Isn't the only appropriate and responsible answer that you should have given there was that, no, he's not my connection?---No, because I went "Mmm". I didn't give him an answer.

So you thought it was quite O.K. for Mr McGurk to leave that meeting thinking that the Director-General of the Department of Planning might be your contact?---Why would I think he's going to leave the meeting and say, and think that?

Well, you - - -

10 THE COMMISSIONER: Because when you asked him, when he asked you, "So he'd your connection" you didn't tell him that he wasn't your connection?---I didn't have any connections. I didn't want to tell him who, well, I had a connection.

Look what Mr McGurk says after you say, according to you, "Mmm". He says, "All right". What did you think he meant when he said "All right"? ---I didn't pay any attention to it, to be honest.

Didn't that indicate to you that he was, in accepting that what you had said was true?---No, because - - -

20 What did you think he meant?---No, no, Commissioner, you have to understand that the reasons I was there. I wasn't paying particular attention to anything that was said at that meeting. That's why when later on people told me about a tape, I'd hate to tell you what I told Mr Richie Vereker when he first told me there was a tape and what Mr McGurk could do with it.

Yes, Mr Gormly.

30 MR GORMLY: Let's just go back to page 57. We were distracted for a second there, Mr Medich, by your answer, but if you just go back to page 55?---Hang on.

You got page 55?---Yes.

Go down to line 16?---Yep.

You'll see there you're talking about the impression that other people might have about you, aren't you?---Yes.

40 And - - -?---This was to do with the fire bombing articles that appeared in the newspapers for something I had nothing to do with.

Yes?---And my name was mentioned in the articles.

Yes, that's right, you're talking about the article, aren't you?---That's right.

Right. Now, at line 16 you say, "If they don't put it through, let's say, as asked or (not transcribable) so well I might bloody well bump them or something like that"?---Yep.

And you then say, "Particularly if they're being paid or whatever, you know?---Where does it say that?"

At that very line, line 17, Mr Medich?---Mmm.

10 "Particularly if they're being paid or whatever, you know"?---Yes.

You said that, didn't you?---Yes, I did.

What were you referring to?---Well, the person in question that I was talking to this about was Graham Richardson.

I'm sorry, Commissioner.

20 THE COMMISSIONER: Proceed, Mr Gormly.

MR GORMLY: You say that the person you're referring to in that sentence was Mr Richardson?---No, but that's the person I was referring to because I had a meeting with him and he said, "These newspapers, is there any truth in them?" I said, "Absolutely not."

Well, isn't it the case that back on the previous page you were referring to Mr Richardson? He's the lobbyist there at, at the bottom of page - - -

30 THE COMMISSIONER: Fifty-four.

MR GORMLY: - - - fifty four?---Hang on.

Do you see that?---Hang on. That's correct.

And he was warning you that if you were involved in any such thing you'd go to gaol?---Correct.

40 Well, the topic changes then, doesn't it? Go to the top of page 55 and just reading down from there, "You're talking about pushing the fucking thing through"?---Well, we're talking about the application that's gone into the Planning Department.

Where, at Badgerys Creek?---That's correct.

Yes. Now we're talking about Badgerys Creek, is that right?---Yes.

And you get further down there, "I just said, it's got no legs to it, it's all bullshit". What were you referring to there?---The fire bombing.

And then - - - -?---Mate, I had nothing to do with that.

And then, "O.K. mate" says Mr McGurk?---And my name was mentioned in the newspapers and McGurk was the one that was charged for it (not transcribable).

Just look at the transcript. Medich, "That's the type of headache I've been reading about in the newspaper". Do you see that?---Yes.

10

And then Mr McGurk goes back to Badgerys Creek, doesn't he? "Why would" something or other, "Why would I mean, even though that, why would that have an impact on, why would that have an impact on you getting that thing at Badgerys Creek"?---Right.

See that?---Yes.

Now, that's the topic then, it's the impact of that on Badgerys Creek?---Yep.

20 Well, down on line 16 you're talking about - - -?---Hang on. Line 16 on what page?

Same page 55?---Okay.

Yep?---What are you talking about there?---What we're talking about there is if I'm the type of person that goes around fire bombing homes and threatening people, I might do that to someone that I paid, like Graham Richardson, and that's the type of person I am, which I'm not.

30 That's the, you're saying that's the impression people might get?---One hundred per cent.

Well, Mr Medich, are you talking in line 16-18 about any officer in the Planning Department?---Definitely no. I don't know any. I've never been to the Planning Department in my life.

You say that the "particularly if they're being paid" bit is a reference to - - - ?

---Consultants and lobbyists that I'm paying.

40

THE COMMISSIONER: So what did you mean when you said that you might bump them?---Well, belt them or whatever, you know. Like the fire bombing but, the Tilley house got fire bombed down at 42A Worsley Road.

So "if they don't put it through", what does that mean?---Well, if they don't get the results, that's, that's what I'm referring to.

Who's they?---Well, I was actually referring to Graham Richardson because Richardson was the one that spoke to me about it.

That Graham Richardson didn't get what result?---Well, he was the lobbyist that was helping us try to get the properties through.

So what, you tell me if he didn't get what through?---Well, it could've been Meron(?) Park, the CSIRO site or other things that were happening that my brother was doing.

10

If you're talking about Badgerys Creek, Mr Medich, are you really suggesting that it was anything other than Badgerys Creek?---That's the thing that McGurk raised in there that he was referring to but he - - -

(not transcribable) responding to that?---Yeah, that's right.

And you're saying that if they don't put it through I'll bump them?---I didn't say that. I said - - -

20

Just read line 16 and 17. What did you say?---I said, what I was saying there that people might think that I'll do something like that if I was a fire bomber and arsonist like happened down at 328(?) Wolseley Road 'cause this is all relative to the newspaper articles that appeared in the paper.

MR GORMLY: Let me take you now, Mr Medich, to page 84?---84?

THE COMMISSIONER: It's the wrong page, Mr Medich. You'll be given the correct page now.

30

MR GORMLY: Forgive me, Commissioner, I won't be a moment. Page 81 I'm after?---81?

Yes?---Hang on.

You got page 81?---Yes.

All right. I will take you to the, first of all to the top part of the page where you're still talking about Dave and Graham. You see that?---Yeah.

40

You've had that discussion that we talked about earlier but I want you to move down the page now to line 22 where Mr McGurk says something? ---22?

Yep?---Yep.

Now Mr McGurk says, "Well, he wants to do what he wants to do, you know what I mean? So let's see. I don't know if you want to use him on your Badgerys Creek thing but he's a good lobbyist." See that sentence?

---Hang on.

Line 22, Mr McGurk speaking, "Well, he wants to do what he wants to do."  
See that?---Yes.

Now he is suggesting there, that is, Mr McGurk is suggesting to you that you might use this lobbyist that he's promoting, that is, the consultant, one of the consultants Dave or Graham, Dave probably - - -

10 THE COMMISSIONER: Dave Furlong?

MR GORMLY: Yes. On Badgerys Creek. See that?---Yep.

He's calling him a lobbyist but he's actually a consultant isn't he?---Well, sometimes they said he's a lobbyist, I don't know to be truthful.

But that's what he's talking about, he's urging David Furlong (not transcribable) for use at Badgerys Creek?---Which was a joke, yes.

20 Yep. Now your response to that is, "I'm well advanced on that."?---Yes.

Now, Mr McGurk seems surprised, you are?---Ah hmm.

Because you weren't well advanced on that really were you, it was still very much an outstanding issue?---Well, it was.

Just turn the page. Mr McGurk has obliged to back off a bit. "Right. Well, if you were advanced then there's no point in going on with it."?---Yep.

30 And is he talking there about going on with perhaps using Dave Furlong?  
---Hang on. Where's this?

He suggested to you on the previous page that you use Dave Furlong at Badgerys Creek?---Yep.

Yeah. And you're saying something to him that implies that you don't need Dave Furlong?---Yes.

Correct?---Yep./

40

And you didn't want to use Dave Furlong on Badgerys Creek did you?  
---Definitely not.

And you're absolutely certain that your brother, Roy, wouldn't have wanted to have Dave Furlong thrust on him in Badgerys Creek. Correct?---  
Definitely not.

Yeah. Because your brother was the one who had the substantial running of Badgerys Creek?---Correct.

And that was the split up between the two of you, your brother was running Badgerys Creek not you. Is that right?---That's right, correct.

Yeah. Now, isn't it the case, Mr Medich, that what you were doing there is exactly what you were doing in relation to, in relation to Gerroa, you were fobbing Mr McGurk off?---That's 100 per cent correct.

10

And Mr McGurk is starting the process of perhaps having an involvement in Badgerys Creek, isn't he?

THE COMMISSIONER: He was trying to?---I don't think that was the case, to be honest.

MR GORMLY: All right. You think maybe he's just pushing his Dave Furlong forward?---No, I think he was just trying to raise the issue for his own evil purposes as we know.

20

All right. But we're talking about Badgerys Creek here and he's suggesting the use of Dave Furlong and you're saying no. Isn't that right?---Yes, correct.

Is that another example, Mr Medich, of you trying to push Mr McGurk away from you?---That is 100 per cent correct.

And of no longer having an engagement with him?---That's correct.

30 Mr McGurk knew very well both of us going into the meeting what I thought of him I can assure you. My solicitor advised me to keep my cool when I went in there which I think I did even though the whole thing was a waste of time 'cause I never found out where my moneys went. He was always diverting away from the issues.

THE COMMISSIONER: All right, Mr Medich, you've answered the question.

40 MR GORMLY: Mr Medich, do you accept that it was complete inappropriate, wrong of you, to refer to Mr Sam Haddad in this conversation in the way you did?---I, definitely.

Do you accept that it had the potential to cause Mr Haddad damage?---I, I do.

In your statement, that has not yet gone into evidence, you seem to have some expression of regret there. Is that right?---Yeah, I do, I regret for him and myself, the way we've been vilified over these whole issues because my family's very upset about it too, the same as Mr Haddad's.

Yeah?---Because nothing has ever happened.

Now, your regret is in relation to your family. What about Mr Haddad?  
---The same, I just said, Mr Haddad's and my own family.

Thank you, Commissioner.

10 THE COMMISSIONER: Yes, thank you. Now, Mr Faulkner, ordinarily  
you would go last. Do you want to - - -

MR FAULKNER: Go last.

THE COMMISSIONER: Do you want to go last?

MR FAULKNER: Mmm.

20 THE COMMISSIONER: Do you want to do anything, well, we'll, we  
won't deal with your statement yet we'll deal with that tomorrow.

MR FAULKNER: Yes.

THE COMMISSIONER: Yes. All right. Now, Mr Game, it's a matter  
between you and Mr Galasso as to who goes next. Have you had any  
discussion between the two of you?

MR GAME: No.

30 MR GALASSO: I can shortcut that matter, Commissioner.

THE COMMISSIONER: Yes.

MR GALASSO: I have no questions.

THE COMMISSIONER: You have no questions. Very well, Mr Game.

40 MR GAME: Commissioner, one thing is that I don't know what is going to  
occur in relation to this statement but obviously I would look to have an  
opportunity to cross examine him on the statement which would mean that,  
if I received that - - -

MR GORMLY: (not transcribable)

MR GAME: Well, I'll start now and then review it.

THE COMMISSIONER: Yes.

MR GAME: Mr Medich, you said in your evidence that you'd spoken to your solicitor before you went to this meeting?---That's my solicitor.

Ah hmm?---That's correct.

10 And he told you to be careful about what you said?---Ah, no, what he said to me was to go to the meeting. I actually didn't want to go to that meeting and I am sorry I didn't follow my own gut instinct but he said, 'cause I was going there for the specific purpose to see if I could find out what's happened to my misappropriated funds.

Mr Medich, there were no misappropriated funds, were there?---Yes, I'm sorry, there were.

You didn't ask a single question about that subject, did you?---No, no, that's because he, he kept fobbing, fobbing it all off. Yeah, it has been asked.

20 You did not ask a single question at the - - -?---That is incorrect. Look, check your transcript.

Well, Mr Medich, at page 74 the subject of your one-third, his, Mr McGurk's one-third interest - - -

MR FAULKNER: No, objection (not transcribable)?---I object to that. The one-third is to do with shares in, in Amazing Loans.

30 MR GAME: Yes, it's one-third in relation to Amazing Loans and you were conceding his entitlement to it, were you not?---I was not conceding his entitlement. Your Honour, sorry, Commissioner - - -

You said, I am not running - - -?---No, I don't want to answer this because this guy is getting into something that we are legally in dispute at the moment.

THE COMMISSIONER: You've passed on from that?---I beg your pardon?

40 You've passed on from that now. He's passed on, Mr Game is not asking you about that any more?---Because we have litigation - - -

Yes, well, he's not asking you about that I said. I understand that, Mr Medich. I did explain to you, Mr Game that, the topic of that litigation is not the subject of this inquiry.

MR GAME: I know your Honour, I understand perfectly. But it arose out of the (not transcribable) by Mr Medich.

THE COMMISSIONER: Yes, I understand that. Yes. It's not a major issue.

MR GAME: I know. Now, Mr Medich, I don't know whether you need reminding of this, but you did make a statement to the police on 10 April, 2009. Do you remember that statement?---I made a statement, yeah.

10 And do you remember in respect of people being named, you said that Mr McGurk had brought people up and he deliberately brought up these subjects didn't you?---What subjects?

Subjects relating to people who you've made payments to. That was your assertion in that statement wasn't it?---Can you repeat that?

MR GORMLY: I object to that, Commissioner, only because no one has any context to understand - - -

MR GAME: I'll deal with that later. I'll deal with that later. I'll come back to it. Mr Medich, can I just take you back to the transcript to begin at page 20 79?---Hang on.

You see there, you say, "And what do you intend to do with Gerroa?" ---Yep.

30 You brought the subject up not Mr McGurk?---Yeah. That's to do with, we had, see now this is getting, again, into this litigation, Commissioner. I don't want to answer these questions because it's going to come down to trustees in something that was illegally signed, fraud. To be honest with you.

You have experienced senior counsel acting for you. He is able to object when he wishes. I, I - - -?---Commissioner - - -

Just a moment, Mr Medich. Mr Game, I'm not sure what the value is of all of this.

MR GAME: I'm only just - - -

40 THE COMMISSIONER: I mean, I'm not sure what you're getting at actually, and that's the truth. I don't really understand so I'm not qualified to express (not transcribable) to stop you yet, but the, I mean, if one just thinks about your interest in this again, I think you'd have to explain fairly, for the benefit of Mr Faulkner and myself, what the point is of, or what the general area is of cross examination. I know that it's quite difficult to do that without alerting the witness, and you may not want to do it now, but it's something that I think you should think about overnight.

MR GAME: Yes, certainly, your Honour. At the moment I am just, there are two aspect that are significant. One is Mr Medich is stepping away from his assertion, his assertion in here that he was referring to any corrupt arrangements. He's denying that and I wish to test him on that. He's denying that he made that assertion. And b, he his asserting in effect that he was led into this by Mr McGurk, both of which are false in my submission and I'm entitled to cross examine him on that subject. And that's the current focus of attention.

10 THE COMMISSIONER: All right. Do you have any objections to that Mr Faulkner?

MR FAULKNER: Yes, I do. And I don't accept the second aspect of it, that the evidence is that he was led into it by Mr McGurk. What is, all that's been done now is a re-canvassing of the examination which was a contested examination by counsel assisting. And we are now embarking on a path in respect of a contention that Mr Game accepts, that is, Mr Medich has said that he gave, what he said to, what he said to McGurk was false, Mr Game, doesn't contest that.

20

THE COMMISSIONER: Do you want to say anything, Mr Gormly?

MR GORMLY: Commissioner, I think I'm troubled by Mr Game's second category, that is that he was led into it. I'm not quite sure what Mr Game means by that.

THE COMMISSIONER: Yes. I, I, so am I. Mr Game, I don't think it matters who was led into it. I just don't see how that's presently relevant. What's presently relevant is whether, is what Mr, what Mr Medich said.  
30 And I must say that Mr Medich's subsequent subjective explanation as to what he said is at the moment to me of minor importance. The plain meaning of the words used speaks for itself.

MR GAME: I accept that, but Mr - - -

THE COMMISSIONER: And I don't see what the point is of cross-examining - - -

MR GAME: Well, at the moment - - -  
40

THE COMMISSIONER: Was it ever suggested, you would, the only, the only point that you would have to meet on this is that if it's suggested that Mr McGurk should have understood Mr Medich differently than saying that Mr Haddad was his connection.

MR GAME: That's the assertion that's been made - - -

THE COMMISSIONER: Yes. Mr Faulkner, is that contention going to be raised?

MR FAULKNER: No. Just let me clarify that, that is, will be contending that Mr McGurk should have understood - - -

THE COMMISSIONER: Yes.

10 MR FAULKNER: No. We're dealing with the subjective issue only.

THE COMMISSIONER: Yes. Do you accept that Mr McGurk correctly understood this tape to mean that Mr Medich was saying that Mr Haddad was a connection of his who he had paid to get things done?

MR FAULKNER: No. We don't accept anything that might have been in Mr McGurk's mind but I'm not going to contend for that.

20 THE COMMISSIONER: No. I understand what you're saying but I, you're not contending that if Mr McGurk did understand that, that was not a reasonable interpretation placed on the words Mr Medich used?

MR FAULKNER: Correct.

THE COMMISSIONER: And where do you, what's left then, Mr Game?

MR GAME: Well, there is a question of shall I say the credibility of the part that Mr Medich is giving in relation to this, his answers, and - - -

30 THE COMMISSIONER: You'd have to be more specific, I think. I'm not sure that you mean. I don't see how that arises, actually. That's what I'm trying to, trying to be more specific myself.

MR GAME: Yes, understood. In this, counsel for Mr Medich says to you Mr Medich, he, he's not going to submit that Mr McGurk might have construed this any particular way but Mr Medich is asserting to you that nothing that is said, as it were, conveyed that inference so that what counsel says does not agree - - -

40 THE COMMISSIONER: All right. Let me tell you that as far as I'm concerned that is, those answers do not stand against the plain meaning of the words that were uttered.

MR GAME: Well, that simply means, your Honour, that I'm pushing at an open door in respect of the proper construction in terms of what Mr McGurk would infer from this.

THE COMMISSIONER: Well, let's be quite clear about this. Mr McGurk went far in what he said.

MR GAME: Yes.

THE COMMISSIONER: He told the journalist things that aren't on the tape. As far as I'm concerned that's got nothing to do with Mr, what Mr Medich says.

MR GAME: No, but they may have come from, they may have come from other conversations.

10

THE COMMISSIONER: They may have. That's all, I'm not saying that I'm finding against Mr McGurk on that. All I'm saying is that to the extent, all I'm saying is that the words used by Mr Medich must be regarded as bearing their ordinary meaning in the English language and that Mr McGurk was entitled, as far as I am concerned, to understand them in that way. So to that extent you're pushing at an open door but I think it's easiest if I refer to specific allegations so that we understand each other exactly.

20

MR GAME: There's a short thing I wish to put to you, Mr Commissioner, which I would prefer to put in the absence of the witness but I can say it in his presence if required. It's a short thing. It can be said in two minutes.

THE COMMISSIONER: Well, if you tell me that it will prejudice your cross-examination I'll ask Mr Medich to leave the room. But if you can possibly do it with Mr Medich present it could be better.

30

MR GAME: He's asserting - apart from this conversation Mr Medich is asserting, shall I say, a general context for this entire meeting and the conduct by Mr McGurk which is resisted and which relates to Mr McGurk's reputation is asserted in effect that Mr McGurk had evil purposes, he's asserted in effect that totals illegal, he's effected in assert that he was blackmailed. That's, that is the substance of what (not transcribable) asserted.

THE COMMISSIONER: I'll allow cross-examination on those because that does in my opinion bear on Mr McGurk's reputation and that is what said and there is evidence to support those inferences.

40

MR GAME: And in my submission, Commissioner, cross-examining him on the content of what occurred in respect of Gerroa this part of the conversation is relevant to what was occurring - - -

THE COMMISSIONER: I don't see why.

MR GAME: Well, what, the difference is this. The difference is that Mr Medich is asserting that this is, shall I say, that there is an innocent explanation for this part of the conversation. Now, just because your Honour says that you won't accept that that doesn't dispose of - - -

THE COMMISSIONER: I didn't say that. I said that the construction that Mr Medich now puts on the words is maybe something he believes but it's not something that is consistent with the ordinary view of the English language.

10 MR GAME: No, but the position he takes in respect of this touches on the context he attempts to give in respect of the entire exchange between the two of them. That is to say my case is positively asserting not merely a matter of construction or inference by Mr McGurk, he is positively asserting a corrupt relationship and in my submission - - -

THE COMMISSIONER: Corrupt relationship between?

MR GAME: Between himself and various persons one of whom he has, it would appear, falsely named.

THE WITNESS: Rubbish.

20 THE COMMISSIONER: Be quiet, Mr Medich. Do you mean, I don't understand that, Mr Game. Do you say that he is now having in his evidence now asserting corrupt - - -

MR GAME: No, I'm saying now in his evidence he's asserting an innocent explanation for the two critical exchanges.

THE COMMISSIONER: And that's correct.

30 MR GAME: And in my submission I'm entitled to test his proposition that he had, that he had an innocent state of mind about those things at all.

THE COMMISSIONER: Why is his state of mind relevant?

MR GAME: Because he's asserting, he is asserting a particular relationship between himself and Mr McGurk. In my submission there is no room in that, in what the substance of the exchange for Mr Medich to be acting, shall I say, innocently when he puts forward these propositions about corrupt relationships.

40 THE COMMISSIONER: I still don't understand what it's got to do with whether the allegations are proved or not. Yes, Mr Gormly.

MR GORMLY: Can I just propose here that Mr Medich has been cross-examined or examined on his current innocent explanation and by me for the purposes of elucidating material for the inquiry as a whole. That's been done. The question now is, I would submit, whether there is any utility in, or any entitlement in Mr Game to cross-examine in effect on the same topic.

THE COMMISSIONER: I think we should all think about it and come back tomorrow morning. Shall we start at half past 9.00 and we continue the debate? I think that discussions between counsel on this issue would be helpful.

**THE WITNESS WITHDREW**

**[3.44pm]**

10 AT 3.44 THE MATTER WAS ADJOURNED ACCORDINGLY [3.44]