

SKYLINEPUB02294
10/08/2018

SKYLINE
pp 02294-02340

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION SKYLINE

Reference: Operation E17/0549

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 10 AUGUST, 2018

AT 2.00PM

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

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

THE COMMISSIONER: Yes, Dr Chen.

MR CHEN: Ms Bakis, you had the opportunity over lunch to review, I think it's folder 16, did you not?---15.

15, is it?---That's what I got.

10

Well, that had the Advantage agreements in it, did it not?---It had the collaboration agreement, the call option deed and one of the other ones, yeah.

All right. And did you have an opportunity, Ms Bakis, to go through the collaboration agreement?---Ah, yes, briefly, yes.

20

All right. And are you able to identify now, having looked at it, whether or not there is such a term in there that talks about the provision of new bathrooms et cetera in line with the notice that was issued for the community housing?---No, that's not in that deed, that's in another deed.

All right. And which other deed is it in?---Oh, sorry, I should have done that, um, oh, I don't know what it was called, but it was definitely another deed about how, how the community housing would be repaired, renovated et cetera.

30

I see. Well, you would have also observed, would you not, Ms Bakis, that when you look at the collaboration agreement that there are other matters that are dealt with such as the provision of financing and matters of that kind, the work that was to be done?---Yes.

And who was to finance it, Ms Bakis?---Well, Advantage was to source the financing.

Right. And this is for the development and rezoning costs and matters of that kind. Is that right?---Yes.

40

And who ultimately was to bear the burden of those costs, Ms Bakis?
---Of the, the financing and development costs?

Yes.---They, I thought they were going to be shared.

Well, you've had an opportunity, you're the drafter of this agreement, you've had the opportunity to go through it. Where is the provision that tells us who is to bear the cost of this?---I don't, does it discuss it? I'm not sure if it discusses it. I can't find it.

Well, Ms Bakis, isn't this the effect of the agreement, that although maybe in principle the funding may have been required to be sourced by Advantage, ultimately the burden of all of this, the financial burden, was cast upon the Land Council?---That, that wasn't the intention of the document.

Well, have a look if you would at volume 15, page 146, and clause 6.3 subparagraph F, and would you please tell the Commissioner, what is the intent of that clause?---(No Audible Reply)

10

Subclause F. Do you see it, Ms Bakis? "In order to secure the costs incurred by the purchaser," et cetera. Do you see that?---Yes.

"The owner and the trustee hereby charge each of the properties in favour of the purchaser with the repayment of those costs and any interest thereon and the owner and trustee," et cetera. You can read the rest.---Yes, I see that.

20

So how was that provision supposed to work, Ms Bakis?---Well, the, like I said before lunch, the idea was that these agreements weren't final. I know they were signed but that the community would all agree as to how this would work. It was a joint venture. It, the, it could have been that a fourth draft of this would have said that they would share the costs 50/50.

Ms Bakis, I'm going to suggest to you that you're accepting the proposition that the burden in this document of the costs of developing these lands would ultimately fall upon on the Land Council. Do you agree?---On the face of it, that's what it says here, yes.

30

And it does a bit more as well, doesn't it, it creates a charge over properties of the Land Council to ensure that those costs can be recovered?---Yes.

And that is the police station in 57 James Street, Hamilton. Isn't that right? ---Um - - -

Well, if you have a look on the next page, Ms Bakis, or sorry, 59 James Street, I apologise. Do you see that?---Yes, yes.

So it's actually transferring the title of that property, isn't it?---Yes.

40

That's a land dealing, Ms Bakis, isn't it?---Yes.

Under the Act?---Yes.

And also, Ms Bakis, it appears to be that one of the other matters that are proffered in this agreement to secure the costs and the burden on the Land Council is that a lease is to be entered into. Do you see that?---Yes.

Described as, "Three year auto renewal," or, "Extendable terms." Does that comply with the Aboriginal Land Rights Act, Ms Bakis or not?---I don't know.

Ms Bakis, what is the interest that the law recognises that is created by a charge?---Sorry? Sorry, what was the question?

10 What is the interest that the law recognises that is created by a charge of the kind that you created in this document?---It's a property interest.

Well, let's be a bit more specific. What is the legal interest created by a charge?---I don't know what you mean.

Well, you were drafting this agreement, Ms Bakis, where the Land Council has put its trust in you to give them proper advice to execute these agreements and a charge is created and I'm asking you, how does the law characterise a charge in the way that clause 6.3F has created?---Well, it's an equitable interest. Is that what you're suggesting?

20 I'm not suggesting, I'm asking you to explain what the interest is. Do you know?---No.

No. And not knowing that, you wouldn't know whether it does or does not comply with the provisions under the Aboriginal Land Rights Act, would you?---Not right now.

Well, not at all, Ms Bakis.---Not right now.

30 Do you mean by that, that if you went away and researched it, you could find the answer? Is that what you're suggesting?---I might remember in an hour. I'm not, I'm not - - -

Ms Bakis - - -?---Right now I'm just not thinking straight. I've not had a good week, Mr Chen.

40 Well, Ms Bakis, now that you've had a look at these agreements, let's go to a couple of the other ones. Now, let's have a look, if you would, please. The call option deed that you drafted, now, there's volume 15, page 117. Do you see that as the cover page, Ms Bakis? You can look at it in hard copy if you like, if you'd prefer to look at it in hard copy, please do so. ---Thank you. Yes.

Now, Ms Bakis, it's unclear from the material, why it is that two of these documents have been executed, one on 7 June and one on 10 June. Why were two such agreements executed?---Have you read my file? It would have explained it there, I hope.

Well, I'm asking you now to assist the Commission.---I, I honestly don't know. There must have been an error in the first one or a change requested. I don't know.

Let's have a look then, please, at volume 15, page 120. Have you got that in front of you, Ms Bakis?---Yes.

So, if you look at the recitals, you can see that some of the parties are identified as the owner and the grantee. Do you see that?---Yep.

10

And the owner's granting Advantage, is it not, a call option, is that right? ---Yes.

Or in fact, another person nominated by the grantee, isn't that so?---Yes.

So, the structure is, is that the options created and granted in favour of either Advantage or whoever Advantage chooses, correct?---Yes.

Without restriction?---Yes.

20

Now, if you look down, Ms Bakis, at clause 1.1, subclause A, you'll see that an amount has to be paid pursuant to this agreement so that the grantee can secure the benefit of option, isn't that right?---Yes.

And that amount is what? Do you know?---Someone's helpfully scribbled 50,000, I think. Isn't that what is in the schedule?

All right. So you don't have a recollection at all? Is that the position?---I think it's 50,000.

30

All right. So is this the position, that - - -?---It's 50,000. It's on page 129.

- - - Advantage has to pay the sum of \$50,000 to get the benefit of this option, is that right?---Yes.

And if you look at subclause B, Ms Bakis, of clause 1.1, you can see that, "A separate call option is granted for each of the properties and each of the call options or call option may be exercised independently of every other call option." Do you see that?---Yes.

40

So the structure and the way this agreement works, Ms Bakis, enables, upon the payment of a fee, Advantage to have the benefit – or its nominee – of exercising an option in relation to one or all of the properties at its discretion, correct?---Yes.

And so the very thing that has been repeatedly put back to questions that I've put to witnesses or have been put on your behalf or by Mr Petroulias that there was cherry-picking is really something that is permitted by this

very document itself, is it not?---Yes. That was the point of this whole collaboration agreement, is that everyone would agree which properties would be sold or developed.

Let's come back to my question, Ms Bakis, is that what this document enabled Advantage or whoever it chose to do is to exercise an option to choose the good properties and leave the bad ones, isn't that right?---With the agreement of the Land Council.

10 Well, Ms Bakis, they've paid the money. Once this is approved, they are entitled to call upon the option pursuant to the terms of this agreement, isn't that right?---Well, this, the whole point was this wouldn't be approved in its current form. The whole point was that it would, an agreement would be, would, would – I don't know what the point is. There would be cherry-picking. The community, together with Advantage, would agree which properties should be developed, which ones shouldn't, which, which ones would be sold, which ones would be a joint venture. That's right.

20 So coming back to my question, Ms Bakis, on the face of this document, Advantage or its nominee can choose which properties it wants, isn't that right?---Yes.

Now, Ms Bakis, what was the position in relation to the payment of this \$50,000? Was it paid or was it not paid?---I think it was paid via a bill of exchange, from memory.

And no doubt you, as the lawyer for the Land Council, approved that, did you?---I presumably did.

30 Well, you know Mr Green signed it, don't you?---Oh, I don't know. I don't
- - -

Well, Mr Green, whilst you were in the hearing room on the last occasion, was taken to that very document.---Was he?

Well, Ms Bakis, if you don't remember, I'll go through it.---I honestly don't remember. I honestly don't.

40 That's all right.---I can't remember that far back right now.

No trouble, Ms Bakis. I will take you through it, then. Ms Bakis, what are the legal requirements for a valid bill of exchange?---I don't know.

Is it a creature of the common law? Is it a creature of a statute? What's the position?---It's the common law.

Entirely a common law concept, is it?---I believe so.

Well, you drafted this document, didn't you, that was signed by - - -?---I don't know, I don't know (not transcribable)

Well, I'll show it to you. But you were the solicitor for the Land Council who prepared this document, presumably, did you?---I don't know.

THE COMMISSIONER: Just while there's a pause, is there a separate copy of volume 15, hard copy?---You can have mine back.

10 MR CHEN: I think you might need to keep it in front of you, Ms Bakis.

THE COMMISSIONER: Thank you.

MR CHEN: So it will just come up on the screen, Ms Bakis, now. So this is a document, as you can see, that apparently Mr Green has signed. Do you see that?---Yes.

And is that a valid bill of exchange or not?---I don't know.

20 Well, Ms Bakis, did you draft this or did somebody else draft it?---I must have had help with this one.

I'm sorry, I didn't hear that?---I must have had help with this one.

Right. Who would have helped you draft this?---I would have found a template somewhere.

Well, is that within your office or out of your office?---It could be either.

30 Well, Ms Bakis, you know that Mr Green has signed this and apparently it's been signed by somebody on behalf of Advantage, and my question to you is, where has this come from and your answer is what?---Sorry, where, where is the, the, where – what are you asking?

Well, how has this come about, Ms Bakis, that Mr Green is signing a document which you are unable to say whether it is or isn't valid. How has that come about?---As the drafting of it or the signing of it or the - - -

40 Well, let's start with the drafting, Ms Bakis. I'll take you back a step, Ms Bakis. The agreement required on the face of it the payment of an option fee which you've identified by the note on it to be \$50,000?---Yes.

And instead of \$50,000 being paid, this document appears. And my question is, how has it come about that this document has been substituted for the payment of money?---Isn't that referred to in one of the documents? I don't, I don't remember. I just don't remember.

And you don't know who prepared it or whether it was you or not. Is that the position?---Well, I would have signed off on it but I don't recall preparing this.

And you signed off on it, but you don't know whether this is a valid bill of exchange or not?---I just don't remember.

10 What does "sans recours" mean in the context of this bill of exchange, Ms Bakis?---I don't, I don't know. I don't know why that's there. I never use that sort of thing. This is unusual.

You're unable to say - - -?---Yeah.

- - - what the legal significance, if any, of those words are?---No.

Why is Mr Green signing it, Ms Bakis, do you know?---Without recourse. Um, why is Mr Green signing it? Um, I don't know. I, I can't recall without - I just don't remember.

20 Well, Mr Green's evidence, can I suggest to you, was that you gave him absolutely no advice about this, and that sounds, with great respect, to be accurate. Isn't that right? You gave him no advice about it?---If I gave him this document to sign I would have explained it to him.

THE COMMISSIONER: No, but it's not what you would have done, it's a question of what you remember doing.---And I said I don't remember doing anything, but - - -

30 MR CHEN: Well, Ms Bakis, you can see, can't you, from at least the two documents we've gone through so far, sorry, the three, the call option deed, as well as the collaboration agreement, that there was plainly envisaged at that stage of the transaction that a company called Awabakal LALC was to be involved. Isn't that right?---Yes.

And of course that's the company that you did not disclose to Mr Hickey or his firm as being relevant. Isn't that right?---Now, is that, yeah, okay, if that's what it said, that's what it said.

40 Well, Ms Bakis, I'll take you -?---Literally, my head is not right and I can't even remember what I said an hour ago. I, I am not kidding when I say that, I'm not being evasive.

Well, I'll take you to the dates, Ms - - -?---No, I don't need dates, I just need - - -

Well, just look at the cover sheet of the collaboration agreement, volume 15, page 135.---Yep.

That's the entity that was in fact registered at the time, wasn't it?---Sorry, what are you asking me? I'm just confused as to what you're actually trying to say.

Awabakal LALC Trustee was in existence at the time and was a party to this agreement, was it not?---Yes.

10 And it executed documents such as this one as part of these agreements, isn't that right?---Yes. But, but the auditors knew that.

THE COMMISSIONER: Sorry, what was that?---The auditors knew that and then had the deed and they could have read that for themselves.

20 MR CHEN: No, but you were telling them that that company was not relevant and that a new one was to be formed on 20 July, 2016. Isn't that right?---Oh, so presumably, I'm guessing what my thought process was. I thought that perhaps the new trustee company needed to be incorporated to replace the old one.

So, you did not disclose, let's be clear, the existence of what you described as the old one and its relationship to these transactions, isn't that right? ---The auditors knew about Awabakal LALC Trustees, they knew what its role from reading this agreement, so I'm not sure what you're trying to suggest.

30 Well, what I'm trying to suggest, Ms Bakis, is you told them that by sending an unsigned collaboration agreement and by telling them in an email that the company was to be incorporated on 20 July, 2016. That's what you said, when in fact it was an active entity engaged in these series of transactions with the other companies.---So, on 20 July, there's an email where I'm saying to them that – I just, I, I, I just don't understand. Sorry, I'm, I don't, I don't understand. I, I, just – so there were two companies. The auditors knew about the existence of this entity and that it had a role and the fact that the company had a different New Zealand company number shouldn't have impacted on their role as auditors.

No. That's not what I put.

40 THE COMMISSIONER: Ms Bakis, I think you - - -?---Sorry. I'm, I'm really not, I'm not following where you're going.

No.---You've got to help me.

I think - - -?---Just tell me what I've done wrong and I'll work backwards.

That answer was not dealing with the point of the question. It's a question of what you represented to the auditors.---Right.

As against what in fact was the case concerning the trustee company.---So, I told the auditors that the trustee company was being set up?

That's right.---And that's true. That was true at that point.

But you did not tell them that there had been a trustee company that was up and running in relation to these transactions.---Well, in the ten minutes I had to respond to that email, yeah, I probably didn't.

10

MR CHEN: Now, Ms Bakis, there was also to be, was there not, as part of this Advantage arrangement, a project management or management agreement, isn't that right?---That's right.

And was that document ever executed?---I don't know.

Was it ever prepared by you?---I think so.

20

And do you know where that document is, if it's not on your file?---I'm assuming the Commission doesn't have that document, so I don't know is the answer.

Well, the way in which that management agreement was conceivably to work within the context of the collaboration agreement and the call option agreement and the other Advantage agreements was similar to the way, I take it, Ms Bakis, it was to work in relation to the proposed Solstice transaction, is that right?---Yes.

30

And so the manager was to have the functions described and defined within the collaboration agreement. Is that the position?---I think so. I'm not sure. Are you talking about Solstice or this one?

No, I'm talking about this one.---Right.

And by this one I mean Advantage.---Yes. Sounds like a deal that wouldn't have been approved by NSWALC, doesn't it?

40

Is that your opinion, Ms Bakis?---Well, as it stood here at this point in time, I would say that's the case. That, and that, and that's why it was a working document.

Everything was up for grabs afterwards, was it?---Sorry? Nothing's up for grabs until it's approved by, by NSWALC. There's nothing up for grabs. There's systems in place.

You see, Ms Bakis, as I understand really what you've been saying before and after lunch is that these agreements were really agreements to agree, at some later point in time, with the input of the members, the community, the

board and anyone else. Is that really what you're saying?---The point of these agreements was to lock in Advantage so that they wouldn't waste everyone's time. So that, you know, we knew they were serious. It was made very clear to them that this was a working document.

THE COMMISSIONER: And did that influence some of the terms and conditions that were put into this agreement? That is to say, to make an attractive agreement to Advantage so they wouldn't back away?---No. No. We were very upfront with, with Advantage.

10

There seem to be some conditions here in the collaboration agreement, to which your attention's been draw, which potentially put the Land Council in a very disadvantageous position.---That's right.

And you've been taken to clause 6.3F.---Yes.

20

Which created a legal liability in the Council in the four respects that that clause referred to, that is the costs, the charge placed on the properties, the caveats over the properties, and the obligation to grant a lease with a maximum term of 99 years. You'd agree that that clause, that provision, could place the Council in serious jeopardy?---If that's what they didn't want, yes, that's right. But, yes, I agree. No, I agree, yes.

Particularly in relation to costs, that's an unquantified sum.---I agree.

Well, you were acting at this time as the solicitor for the Land Council. Why would you agree?---Because I knew it didn't, it didn't matter.

30

6.3F.---It didn't matter.

Why? It did matter. If this is all preparatory to establishing a relationship so that Advantage wouldn't back away, then the drafting of an agreement in those terms certainly didn't favour the Land Council. It was very much against their interests, wasn't it?---It's bad drafting, yes.

40

Well, it's not the drafting so much as the substance of the clause in the four respects I've mentioned. It made them subject to an unquantified amount of costs, charged the properties in respect of that in favour of the purchaser, placed caveats over the properties and bound them to grant a lease extendable to the maximum term of 99 years. How could any of that be in the interests of the Awabakal Land Council?---It couldn't.

Well, you drafted this agreement whilst solicitor for the Land Council? ---Yes.

Don't you see an evident conflict of interest or didn't you then?---What's the conflict?

You don't see it. Are you serious?---I see bad drafting.

Well, your partner, Mr Petroulias, is very much behind - - -?---Oh, okay, we're back to Petroulias, okay.

- - - establishing these - - -?---Oh, okay, right.

- - - commercial relationships with these various companies, including Advantage, wasn't he?---Yes.

10

And you knew that he was pursuing them because potentially there was money to be made from them, in favour of him or any corporate vehicle he was using?---Yes.

At the same time as being his partner whilst he was pursuing those commercial transactions, you're here drafting an agreement for the Awabakal Land Council when it's their land that's the subject of those same transactions.---Yes.

20

Which included clauses very detrimental potentially to the Land Council. ---Yes.

How could you act in that way when you're meant to be the solicitor with a duty of loyalty and an obligation to safeguard the interests of the Land Council?---This document has no legal effect, and I knew that.

No, but you - - -?---And, and, and perhaps, perhaps I should have just not mentioned that.

30

I'm trying to just understand your mindset of how you could even bring yourself to draft an agreement like this on behalf of which involved your other client, the Land Council, when you had a duty of absolute loyalty to the Land Council. What were you thinking?---I actually don't remember. I actually don't remember putting this in. And there must have been some thinking behind this. But I was always comforted by the fact that none of this would go anywhere until everyone had agreed on the terms of these documents.

40

You would agree that you would be bound, if you were going to draft a clause like this which could impose liabilities on your client, to take the strongest steps to explain the position you were in, being a position of actual conflict of interests. Would you not agree?---I'm, I'm trying to - I don't know.

But you didn't advise your client, the Land Council, about your conflict. ---I always, they knew, I can say this a thousand times, they knew about the conflict.

But in the actual - - -?---It was evident to everybody.

But in the situation of actual conflict as dramatic as this, imposing liability on your, drafting an agreement which potentially was directed to impose burdens on your client of an unquantifiable nature, you would be bound to just cease acting for them, wouldn't you, and say I must step away from this because of the actual conflict of interest I'm in?---Perhaps, yeah.

10 And you'd have to put it in the clearest terms, in written form, so that they could understand your point of view, and you would, consistent with your duty, be obliged to put it in clear terms in writing so that they would know. Is that not the situation?---I don't remember how Mr Petroulias or if he was going to benefit from this. I just don't recall the details.

You see the fact that you were drafting the agreement in these terms shows a cast of mind that you were working to support Mr Petroulias's interests, as you said, so that Advantage wouldn't back away. Isn't that the case?
---I, I, I don't think I said that, but um - - -

20 Yes.

MR CHEN: Well, Ms Bakis, I took you through your affidavit that you put before the Land and Environment Court earlier today where in particular in paragraph 10 you talked about the importance of the court permitting the collaboration agreement to be put before members, "Because if an order was made not permitting that it will result in a financial loss to the Aboriginal land community of Awabakal because the deal involves above-market consideration and renovation of all community housing and the deal may not be able to be resurrected with this party or a deal entered into with some
30 other party on such favourable basis." Now, Ms Bakis, perhaps you can correct me but I've been hearing that what you're saying is in fact that none of these agreements are worth much at all and it's all going to be renegotiated at a later point in time. So, what's the position?---That's the position. The, that they would be renegotiated at some point in time.

THE COMMISSIONER: How can you maintain the position as stated in your affidavit as just summarised?

40 MR CHEN: Would you like to see on the screen, Ms Bakis?---Yeah. Can you just reread that all, say it to me again?

I might tender the folder, Commissioner, of Land and Environment Court material and it's at page 8, sorry page 7 to 8.

THE COMMISSIONER: Sorry, where's the material?

MR CHEN: I mean to tender it, so it's electronic folder, Commissioner.

THE COMMISSIONER: And it's entitled?

MR CHEN: Land and Environment Court material.

THE COMMISSIONER: That folder will be admitted. It'll become Exhibit 101.

#EXH-101 – BRIEF - VOLUME 63 - LAND & ENVIRONMENT

10

MR CHEN: So, you can see down the bottom, paragraph 10, Ms Bakis?
---Yes.

Well, on the one hand you're deposing that it's important that the court permit this deal to go ahead, isn't that right?---Yes.

20 There's no suggestion at all in this affidavit that it's open for further negotiation or discussion between any or all of the parties, is there?---Yeah.
I'm not sure why counsel didn't put that in there.

THE COMMISSIONER: I'm sorry, I can't hear you.---Sorry.

MR CHEN: I think you said, "I'm not sure why counsel didn't put it in there".---This was drafted by counsel.

THE COMMISSIONER: Yes, but - - -

30 MR CHEN: Ms Bakis, you signed this.---I know, I know I signed it.

THE COMMISSIONER: I don't think it's - - -?---I'm not saying that's an excuse, I'm just trying to remember why that was left out.

You're seeking to pass the buck?---I'm definitely not passing the buck.

Because you would have read the affidavit before you signed it.---I'm not passing the buck. It was just a comment.

40 Well, now let's get back to what you're being asked about.

MR CHEN: Could you answer my question, Ms Bakis, please?---What's, can you ask it again?

There's no reference at all in this paragraph or any parts of this affidavit about this collaboration agreement being the subject of some further discussion or negotiation between any or all of the parties at any point in time, is there?---No, but it's a given with any Aboriginal land deal that the thing could be changed at any point. That's the, that's what happens.

So, really, the matters that you're putting before the court then are plainly incomplete, are they not?---That's one way of looking at it.

Well, the other way of looking at it is that it was deliberately incomplete, isn't it?---No. It wasn't deliberate.

Yes. You see, how - - -?---I don't remember this going through my mind at all when I was, when I was signing this affidavit.

10

You see, Ms Bakis, the reason why you're now suggesting that this was all the subject of further negotiation and that this is the way the Aboriginal community works is because you are unable to come up with a plausible, justifiable explanation for your conduct in what has gone on in drafting these documents, isn't that right?---It's completely incorrect.

Well, let's have a look at another one, Ms Bakis. You would know of course the Forlife agreement, wouldn't you, which is in volume 15, page 166? 166, Ms Bakis, if that assists you?---Yes.

20

Now, you remember this document, don't you?---I've seen this, yes.

Well, have a look at page 171. You in fact signed it for Awabakal. Do you see that?---Well, Debbie signed that.

Well, it's got signature and that's your signature, is it not, on the right-hand side?---Yeah, it says KNL, yeah, I've signed it KNL for Awabakal.

30

Right.---But the two signatures on the left are Debbie and Richard. Okay. Yes.

Well, you're signing it. That's your handwriting surely, in that - - -?---I'm not denying I signed it.

All right. No, but it's your handwriting where it says, "Client, KNL for Awabakal?"---Yes.

Isn't that right?---Yes.

40

And what was the key financial terms that this agreement imposed upon the Land Council, Ms Bakis, do you know? Well, you're flicking through it, you obviously don't know off the top of your head. Is that the position? ---You've just asked me a question about the document - - -

Well, no, I'm asking you - - -?--- - - - and I'm flicking through it. Okay.

I'm just asking you - - -?---So - - -

- - - do you have a recollection about what - - -?---What's the date of the document?

Well - - -?---Given that I'm not allowed to look at it.

- - - 13 June, 2016.---13 June?

Yes.---And this is from Forlife to Advantage?

10 Yes.---Well, they were going, there was going to be a \$300,000 fee for planning work.

And you know, don't you, that that fee was payable immediately upon execution of this agreement. Isn't that so?---No, that's not true.

Not true at all?---Not true.

20 Right. And what do you say the effect of the execution of this agreement was, Ms Bakis?---I recall that that 300 wasn't payable until certain conditions were met. It's in a, there wasn't, this document did not, did not create an immediate liability for 300,000.

Well, you know, don't you, that Advantage commenced proceedings seemingly on the basis that it somehow had acquired the right under this agreement, don't you?---Advantage?

Yes.---Yes.

30 And you were the solicitor for Advantage suing on that agreement, weren't you?---Yes, yes.

And so at least Advantage was asserting that this document created an immediate liability to pay \$300,000. Isn't that right?---Is that what they were saying? I don't, I don't recall the timing of the 300. I don't recall that.

Well, let's work through it. You do know that Advantage were suing for an amount of \$300,000, don't you?---Yes.

40 And they were suing, apparently claiming they had entitlement to sue upon this agreement. Isn't that right?---Yes.

And the \$300,000 was in fact the initial amount that was supposed to be paid, according to Advantage, upon execution of this agreement. Isn't that right?---That's the bit that I doubt. I, I thought that the 300, the liability arose later, that there were conditions on this arising. That was my understanding, I could be wrong.

Well, just have a look if you would, at page 169. This is in volume 15. And you can see that in the fourth paragraph it says, "Should you wish to accept it," et cetera, "Please sign it with an initial payment. Final acceptance of this fee proposal is constituted upon signing of the acceptance form." Do you see that?---I do.

And if you go back to page 171, that's exactly what you did.---Something bothers me about this. I - - -

- 10 Well, there are some concerns about it and I'll take you to them, Ms Bakis, but - - -?---No, that's not what I'm referring to, Mr Chen. I'm, I'm concerned that there's documents missing here. There were more documents around this.

Well, Ms Bakis, what do you think they are?---I've got no idea right now.

- 20 Well, just on the top right-hand corner you can see it's page 6 of 6 and - - - ?---Now, I've seen some documents on the Advantage side that I, I remember there were conditions on this 300 because I – I don't know. I don't recall.

Well, Ms Bakis, could I just suggest to you, and I'll move straight to the point, that you verified and certified a statement of claim filed on behalf of Advantage suing precisely upon this very debt.---Okay.

And that you were claiming in those proceedings the \$300,000.---There is no doubt about that. I'm only debating as to when this liability rose. That's, that's my only, that's why I'm um'ing and ah'ing, so - - -

- 30 Well, it arose sufficiently at a time that you'd commenced proceedings by statement of claim on 29 March, 2017, Ms Bakis.---Oh, by then it had definitely crystallised, yes.

THE COMMISSIONER: Who were the parties to those proceedings?

MR CHEN: Knightsbridge was one plaintiff. Second plaintiff was Advantage Property Experts Syndication Limited, and the defendant was the Land Council by its administrator, Mr Lawler.

- 40 THE COMMISSIONER: You remember this litigation?---Yes, I do.

You commenced proceedings against your client or former client, claiming that amount of money?---Yes, I do. I'm not, I'm not disputing that it happened. That's not what I'm saying here.

MR CHEN: So you were prepared to certify the statement of claim, to commence it in the court to claim on this agreement, Ms Bakis.---Yes.

So there couldn't have been any doubt in your mind if you, as the solicitor for both parties, certified it, isn't that right?---So did I certify it on the basis of that agreement only?

Well, you certainly certified it as including that claim upon that agreement, Ms Bakis. Would you like to see it on the screen?---No, it's okay.

So you accept, don't you, that you considered that this created a liability in the Land Council, isn't that right?---Yes.

10

And, Ms Bakis, you would well know that that liability arose because it had been executed on 8 July, 2016, isn't that right?---What had?

This agreement with Forlife.---Where does that date come from?

It comes from the statement of claim, Ms Bakis, but if you - - -?---Oh. But that's different to this, the date on this document.

All right. Well, just accept - - -?---That's why I'm confused.

20

All right. I apologise. Assume it's on or around the time of this agreement in June or July 2016, when it's executed.---Yes.

And of course, Ms Bakis, that's a liability that arose prior to the Land Council being able to even submit for its consideration to the members this property deal, isn't that right?---It's more complicated than this.

THE COMMISSIONER: Would you just answer the question, please. ---No.

30

MR CHEN: Well, Ms Bakis, I'll put it a different way to perhaps simplify the proposition that I'm putting, that this is an agreement that created a liability that arose before the members of the Land Council would even consider whether it would proceed with the Advantage proposal, isn't that right?---That's not my recollection.

Well, that's - - -

THE COMMISSIONER: It's not a question of recollection. It's a question of facts.---No, it's not, because - - -

40

You've got the facts of the letter with Forlife on the one hand and you've got the fact members of the Land Council had not considered or decided on what to do about the land on the other. Those two facts are being put to you as indicating that this liability was created before members of the Land Council even had the opportunity of considering whether they were going to go ahead with this project. Do you accept that?---I, I don't accept that.

Why don't you accept it?---I, it's more complicated than it's being presented here and that's why I won't accept that.

Well, you see, you've got in front of you a copy of this letter set to create the debt. You replied upon it and sued the Land Council to recover it but this document is dated 13 June, 2016 and by that time, certain members of the Land Council certainly had not met to consider and agree on whether they were going to sell the land, had they?---That's right.

10 Well, then it must follow, as night does follow day, that this liability was created in circumstances where the members had not yet made up their mind about whether they were going to sell the land, isn't that right?---And I'm suggesting that the liability wasn't created at that point.

And why do you say that? On what basis?---I, I, there is a document in my head somewhere - - -

Well, why don't you - - -?---That - - -

20 I'm sorry, go on.

MR CHEN: Is it the addendum agreement, is that what you're thinking about?---The what?

The addendum agreement or agreement addendum?---I don't know, I don't know. I, I, just don't know. I - - -

30 THE COMMISSIONER: But did you plead any other - - -?---I don't remember, I don't know, I don't have anything here, I can't answer anything. I don't, my recollection is that 300 did not arise before any - at this point.

Well, why would you sue on the debt if it didn't?---It arose at some point, it did arise. There's no doubt about that.

I'm sure the pleadings will identify when it said the or alleged that the debt arose. When was it in the statement of claim?

40 MR CHEN: 8 July, 2016.

THE COMMISSIONER: Well, there we go.

MR CHEN: By the addendum agreement.

THE COMMISSIONER: So, that's the date you chose to allege an agreement was entered into and which entitled you to bring the course of action. It's obvious, isn't it, that that debt that you were suing for, it was

incurred prior to the Land Council members making a decision on selling the land?---If that's what's happened, yes. That's what happened, yes.

MR CHEN: And as you know, the members may or may approve any land transaction, Ms Bakis, isn't that right?---That's right.

And so at any point in time, despite the fact that this agreement had been signed, it was quite unknown whether the members would or would not support any transaction with Advantage, isn't that right?---That's right.

10

THE COMMISSIONER: See, Ms Bakis, I think this is just another demonstration, it seems to me, that you were really not attuned to your obligation to the Land Council, that you allowed this liability to be created against the Land Council, that you were not acting interests of the Land Council. What do you say?---The Land Council has agreed, had signed a property deal with Advantage and everyone agreed that preliminary planning work would need to be done before this was approved by NSWALC and just because they're a Land Council, doesn't mean they get everything for free. It, there had to be an acknowledgement that money was being spent on this. There was a lot of planning going into this project.

20

But it seems that - - -?---So, I, I appreciate that you don't want me to have any of their money spent, but if money is being spent legitimately by other people, then they should pay for it.

It seems to me though that by your own hand in the signing and committing, that the Land Council - - -?---No, Debbie Dates and Richard signed that.

30

All right. By allowing this to go forward, and creating an immediate liability of \$300,000, not an inconsiderable sum, you would be bound, wouldn't you, to warn your client about entering into such an agreement. ---And I did.

Because there may never be anything developed at all.---And I did.

Oh, you did. Is that in the letter?---I'm sure it's in a memo, briefing paper, it's in some document. The documents that I've been shown here, all of those documents. So, they, they were warned about this.

40

In what terms did you write to the Council about this matter?---Oh, I don't know.

Forlife?---I don't know. I, I - - -

Well, you sounded so confident that it was that you had written a document.---I would have. I would have.

No, I'm not asking you again, you keep using the phrase, "Would have" - - -
?---I, my - - -

I only raise that because, you see, the phrase "would have" doesn't tell us, is not addressing what in fact has occurred or not.---Yes, I did.

Now are you saying that you wrote to, is it the board of the Land Council, pointing out that this is incurring an immediate liability and they should be cautious about incurring such a debt, given that there may be a decision not to go ahead with the project?---Yes, I did.

You did. In those sort of terms, is that the message?---Well, I actually don't remember but I'm going to say I did because I'm sure I did.

You're sure you did.---This is very biased. None of my documents are being put up here.

MR CHEN: Well, if - - -?---I mean in fact there were, even Ray Kelly admitted that I spoke about that, that 300,000.

Well - - -?---I mean there's evidence been put before this Commission that's been completely ignored.

Ms Bakis - - -

MR PETROULIAS: Commissioner, if it will assist, it actually is in a briefing document. It's very unfair. She actually did brief them. She warned them not to sign, not to enter into an - - -

30 THE COMMISSIONER: Mr Petroulias - - -

MR PETROULIAS: Why can't she be shown a document?

THE COMMISSIONER: If she ever did write it, it'll be in, it would have been swept up by the summonses and she was bound to produce - - -

MR PETROULIAS: She did.

40 THE COMMISSIONER: - - - the document.

THE WITNESS: And I did, and they're not being presented here. It's very, very one-sided.

MR CHEN: It's not, Ms Bakis. The question I think the Commissioner asked you is whether you did.---And I said I did.

Now - - -

THE COMMISSIONER: Did you – sorry, you continue.

MR CHEN: Ms Bakis, you know, don't you, that the, I'll use a neutral term, the arrangement with Sunshine fell over, didn't it?---Yes.

And are you able to say or pinpoint roughly when that arrangement fell over?---Tony Zong was required to pay an option fee, he never paid it. So, sorry, to answer your question, when it, when it fell over or why it fell over?

10 No. My question was when.---When. Sorry. March/April '16.

You secured, did you not, some advice from Jackson & Associates, did you not?---Yes, yes.

And that was advice which you asked or requested that they prove as some independent body to look at whether or not the Sunshine transaction was complying with the Act, the Aboriginal Land Rights Act or not. Is that right?---Yes.

20 And you, did you brief Mr Jackson or not?---I don't remember. I remember speaking to him about it.

And it was really to get an independent opinion I take it of whether or not the agreement did or did not comply. Is that right?---Yes.

Nothing to do with you?---Sorry, nothing to do with me?

Yes. It's not your advice, it was - - -?---Oh, I might have suggested to him what I wanted put in the letter, yeah, I might have.

30 Right. What do you mean by that?---I don't remember.

THE COMMISSIONER: Did you mean to say by that, suggest to him what he might write in the letter?---No, no, it wasn't along those lines, it was how, how much he needed to write and how, how much detail, I mean it was, I think from memory it was a very straightforward question.

40 Did you endeavour to influence him in what advice he might give in any way?---I, look, I might have had a chat to him about, look, this is a very straightforward question, there's not much of a grey area here.

Well, again if we could get rid of that word might.---Did I influence him? That would have been the extent of my discussion.

I'm not interested in what might have happened, I'm more interested, as you would understand, in what happened. Did you have a conversation with him and if so to what effect?---I don't remember.

MR CHEN: Anyway, to the extent you have any recollection about what you might have spoken to him about, it was only that you were suggesting it didn't need to be a doctoral dissertation. It could be something short and to the point, is that it?---I don't remember.

Well, you certainly wouldn't have sought to influence his result or his opinion to go one way or the other, is that right?---It wasn't necessary. It wasn't that sort of issue.

10 So is the answer to my question that is not what you did do?---That is not what I did do.

And it would not be proper to do that, would it?---That's right.

And when you got the advice back from Mr Jackson, I take it you sent it on to the Land Council, did you?---Yes.

You're sure of that?---It, I, I think I presented that to a meeting.

20 THE COMMISSIONER: Sorry, I couldn't hear.---Sorry. I think I presented that to a meeting, I think.

MR CHEN: Well, I'll just show you the advice so you get the timing of this right, Ms Bakis.---Please.

This is volume 16, page 44. That's the advice, Ms Bakis, is it not?---Yes, yes.

30 And by this stage, though, the Advantage agreements had been the subject of a resolution by the board, isn't that so?---Probably.

Well, I'll just assist you. That resolution that the board execute the Advantage agreements is dated, sorry, was on 7 June, 2016. So this is many weeks or at least two weeks afterwards, this advice.---Yes.

And by that stage, though, Ms Bakis, you would know that the Sunshine proposal had already been categorically rejected by the board in April of 2016, isn't that right?---Yes.

40 So - - ?---What were the dates, sorry?

Sorry, I - - ?---What date was that?

Well, the resolution by the board to reject the Sunshine proposal was 8 April, 2016.---Thank you.

So this is, as you can see, more than two months after that event.---Yes.

Why was it now that you were seeking this advice, Ms Bakis?---I don't remember. I don't remember.

Well, you sent this advice, didn't you, to Mr Fisk at Sunshine, didn't you?
---Oh, did I. Oh, right, okay. Yeah.

Well, I'm asking you.---Well, I must have. If you say so.

10 No, I'm - - -?---I don't remember. I honestly don't remember sending this to Fisk. I probably did.

Well, Ms Bakis, Mr Petroulias was not a lawyer in June of 2016, was he?
---No.

And at any stage – I withdraw that. Mr Petroulias has never held or had never been admitted as a solicitor in this state, has he?---I'm not sure. You'd have to ask him that.

20 And Mr Petroulias, to your knowledge, has never held a practising certificate in the period 2014-2016, isn't that right?---That's right.

You see, it would not be appropriate, would it, for Mr Petroulias, say, to be liaising with Mr Jackson about this, would it?---Maybe if it was a United Land Councils-type issue. That's the only thing I can think of is that he was, if, if this has been draft – I can't even remember why it was drafted. I just don't remember.

30 Well, it's simple, Ms Bakis. It's dealing with the Sunshine proposal.
---Right.

So, my question to you, Ms Bakis, it's got nothing to do with Mr Petroulias at all, does it?---It's got a lot to do with him.

Well, just explain that if you would, Ms Bakis?---Well, Sunshine – I look, I don't, I just don't remember the circumstances of that letter being drafted. I don't remember why it was done.

40 I'm not asking you that.---Well you, well you, I don't know what you're asking. I, can you - - -

My question to you, Ms Bakis, it's got nothing to do with Mr Petroulias, this issue around Sunshine, does it?---Well, they were the ones that brokered that deal and they were looking to broker the Solstice deal.

THE COMMISSIONER: Sorry, who's they?---United Land Councils. So, they, they, they – it wasn't like they had no involvement.

MR CHEN: I'll try again, Ms Bakis. This is in June of 2016 and the board has already resolved to reject the Sunshine proposal. You accept that, surely?---Yes.

Because the advantage deal had already been signed by now, isn't that right?---Yes.

The board has resolved on seemingly your advice amongst other, to proceed with Advantage and not anybody else, isn't that right?---Yes.

10

My question to you, Ms Bakis, is why then in June of 2016, does this letter to Jackson & Co have anything to do with Mr Petroulias? Why?---I don't know why you think of what you just said has anything to do with this letter.

I thought that's what you were saying, Ms Bakis, that it's got something to do with United Land Councils and Mr Petroulias. Is that not right, if it is, we'll move on.---I, I just don't understand what you're asking me.

20

All right.---You've just got to get to your point because I'm lost.

Well, Ms Bakis, I'm just trying to understand what the purpose behind securing this advice was?---I, and I have said about five times already, I don't remember. I honestly don't remember.

You see, Ms Bakis, you certainly remember receiving it, don't you?---I, I do, yes.

30

And you certainly remember discussing it with Mr Petroulias, don't you? ---Yes.

There can't be any doubt about that, can there?---No.

And you would have also talked to him about how has this advice come about, surely, why it was requested, things of that kind?---I don't remember that detail.

40

Well, Ms Bakis, it's the case, isn't it, that this is an advice that Mr Petroulias drafted entirely and just emailed in to Jackson & Co, isn't that right? ---Perhaps. I don't, like I said, I just don't remember it.

I'll show you, Ms - - -?---I don't remember the circumstances around this.

- - - Bakis. You've seen in front of you the letter from Jackson & Co, surely? Is that still in front of you, Ms Bakis?---No.

And if you have a look please, at volume 16, page 39, you can see that - - - ?---I don't have 16, I've got 15.

It will be on the screen. Would you like the hard copy, Ms Bakis?---Oh, sorry. No, no. You're right. you're right.

So, volume 16, page 39, you can see an email from NP. Now, I should ask you, is that you or Mr Petroulias that's with those initials?---That's Mr Petroulias.

10 Are you sure of that?---I never use that email address.

And you don't, you're not responding - - -?---No, Mr Chen,

- - - or sending that on his behalf?---No, Mr Chen.

Now, you can see that he's attaching that advice letter to Knightsbridge. Do you see that?---Yes.

20 Now, Ms Bakis, there's no good reason, is there, why you wouldn't be able to provide such simple, easy advice as to whether the Sunshine transaction was a transaction that complied with the act, is there?---There's a million reasons why I wouldn't but, you know.

Well, let's try and go to the key ones. What would one of them be?---Time.

What's another one?---Time. I - June '16. There was a lot going on. I was drafting submissions to the minister. I suspect I didn't have time but - - -

30 I thought that Jackson & Co had - - -?---And, and perhaps Jackson and Nick has spoken and Nick had offered to assist. I don't know the circumstances.

Well, let's have a look, Ms Bakis. If you turn to the next page you'll see that in fact Mr Petroulias has written it all.---Oh, there you go.

And you see Mr Petroulias, you'd have to accept, is an interested party in all this transaction, Ms Bakis, surely?---Yes. So?

And so he's writing the entire advice that is sent on to Mr Jackson.---Yes.

40 You think that's acceptable, do you?---Well, Peter Jackson is an independent lawyer, he's a smart man. He would have made his own inquiries. There is no way he would have just signed this off without checking any of it.

THE COMMISSIONER: There are a number - - -

THE WITNESS: And - - -

THE COMMISSIONER: Sorry.

THE WITNESS: Sorry, you're right.

THE COMMISSIONER: There are a number of unusual features about it though. You've got Mr Petroulias in effect intervening here and instigating a letter of advice on a legal question concerning the Sunshine transaction. He drafts the letter, he sends it to Mr Jackson, then Mr Jackson re-engrosses it on his letterhead and sends it to, addressed to the Awabakal Local
10 Aboriginal Land Council care of Knightsbridge North Lawyers.---Yes.

It's like a triumvirate all working together here on what seems to be a plan with some subterfuge involved in it. That is, it's really not Mr Jackson's letter at all, it's Mr Petroulias's, but it's disguised to make it look as though it's an advice between lawyers. All of that raises a number of issues. It is very strange, isn't it? What was Mr Petroulias up to?---I think all that shows is he wrote a really good letter and Peter really like it and he checked it and it was all good so he did the old cut and paste.

Do you see anything improper about this three-cornered arrangement?

20 ---Well, Mr Jackson is completely independent. I don't have any relationship with Mr Jackson. He's not involved in this. I don't see why he would have just, if he's, I might have said to him, ring Nick and get the details of the deal and they had, and I'm guessing here, this is what it's all about here, so, and Nick may have said to him, well, it's stupid for me to speculate. I'm not even going to speculate.

But, madam, Mr Jackson's not acting as an independent lawyer here, he's acting as a puppet and the puppet master, so far as this letter is concerned, is Mr Petroulias. He's dancing to his tune.---Yeah, but Peter Jackson's not
30 like that.

He can't be, you can't call him an independent lawyer in this instance.

---Well, he is, he is.

By adopting Mr Petroulias's letter and passing it off as his own?---It happens all the time.

Is that, did he - - -?---Counsel drafts things that I need to send out to cut and
40 paste.

Do you regard that as - - -?---It happens all the time.

Do you regard that in this case, this letter of 21 June, as both a letter written independently by a lawyer and - - -?---Yes, I, yes, I do.

- - - secondly, that it's written in an entirely proper circumstance?---Well, the alternative was that Peter would - this is just nonsense questioning, sorry, with respect, but - - -

You see it's neither independent nor proper conduct here, is it?---He is, Peter is independent, it's independent. He made, he made the relevant checks here.

MR CHEN: Well, I - - -?---I can assure you. I know Peter. He just wouldn't just, oh, yeah, that sounds great, I'll just send it on.

10 Well, Ms Bakis, there was certainly no politics involved at the time that this letter was requested from Mr Jackson in the Land Council, was there?
---What, what does that mean?

Well, I'm just asking you, was there any politics - - -?---There's always politics in the Land Council.

Well, about getting - - -?---Every day.

20 About getting an advice from you, there surely wasn't any politics about that, was there?---No.

And you can see as well that in the letter there were a number of factual assertions in there. Isn't that right?---Okay.

Well, you accept that don't you that there are a number of factual assertions in there?---Are there? Can you put the letter up.

Of course.---Okay. Can you scroll down.

30 Well, I'll just take you to the first paragraph. It says, "There are concerns about the validity of the sale at law due to vagueness and a number of matters." Do you see that?---Yes.

The Land Council didn't have any concerns about it, did they? They've rejected this proposal in April of 2016.---Yeah, I'm wondering if this has anything to do with the caveats. I'm just, I just don't remember.

40 Well, I'll assist you, Ms Bakis, by suggesting that the caveats were lodged on 6 July, 2016, certainly the ones by Sunshine.---Oh, okay. Sorry. That's different timing. Okay. So what are you asking?

Well, the point that I've put to you, Ms Bakis, is that this is asserting, this draft letter that Mr Petroulias has sent on about, that there were concerns about the validity of the sale at law due to vagueness. Do you see that?
---Yes.

The Land Council or the board of the Land Council had no such concerns, Ms Bakis, at that time or at all because they have rejected the proposal

outright on 8 April, 2016. Isn't that right?---There must have been a reason for this letter to go out. I don't - - -

Well, I put it to you - - -?---And for the life of me I don't remember what it was.

Just pause for a moment. I think the transcript stopped. Test. Is it working? All right. So, Ms Bakis, I'll just have, have you got volume 16 in front of you?---No, I've got 15.

10

All right. Well, this will come up on the screen. If you have a look at 44 if you would.---Yes.

And I may need to put this question again, Ms Bakis, to ensure that if there was a problem with the recording it picked up my question and your answer, but you can see can't you in the first paragraph that there were "said to be concerns about the validity of the sale at law due to vagueness - - -?---Yes.

20

- - - and a number of matters." Ms Bakis, there were no concerns as at June, 2016 by the board of the Land Council at all, was there?---I don't recall that.

And the reason why this has been stated as a fact was to assist at least Mr Petroulias in what he was proposing to do with Sunshine. Isn't that right?---Sorry?

The purpose of this was to assist Mr Petroulias. Isn't that right?---I don't know.

30

Well, Ms Bakis, you do know that the board of the Land Council had rejected this proposal in April of 2016.---Well, it could be that Tony Zong was going back and nagging them and I've probably got that somewhere in my files but I, I don't know. It doesn't mean, just because they've rejected it it, doesn't mean that this, this deal doesn't keep coming up.

Well, the board of the Land Council know nothing of this, Ms Bakis.---Oh, the board of the Land Council know nothing about anything according to their evidence.

40

THE COMMISSIONER: Well, they probably weren't filled in with the - - - ?---Oh, they were, I can - - -

- - - on this correspondence at all.

MR CHEN: Well, Ms Bakis, as well, if you turn to, please, page 45, you can see as well that there's a statement that these are unenforceable against "Kempsey Local Aboriginal Land Council".---Yes.

And also there's this reference to being able – in the fifth paragraph – “because Sunshine could cherry-pick”. Do you see that?---Sorry, where's that? Which - - -

Well, it's in probably the sixth paragraph.---Oh, okay.

10 So after the two numbered ones it's the third paragraph, and just above where the hand is now, if the hand goes above. These are all matters, Ms Bakis, that are factual matters of which Mr Jackson would have absolutely no knowledge at all, isn't that right?---I don't think that's right.

Well, it is right, Ms Bakis, because I can show you, if you like the precise document that Mr Petroulias sent again, which is page 40 of the brief. And you can see even the errors that Mr Petroulias has made in this letter are picked up, copied across and sent along. For example, there's a reference in Mr Petroulias's letter, you can see, to Kempsey Local Aboriginal Land Council.---Yes.

20 And that was in the other letter, was it not?---Yeah.

If you go down a bit, to page 41, you can see that instead of the Awabakal Land Council in the third paragraph, it's “Awabal”. Do you see that?---Yes.

This is just a straight cut-and-paste by Mr Jackson of Mr Petroulias's advice, isn't that right?---Well, it appears that way.

Yes.---That doesn't mean he hasn't checked it or read it. He's just made the same mistakes. He's just been lazy. I can't, I can't speak for Mr Jackson.

30 Well, we've got his file note in the public brief, Ms Bakis.---Yeah, well, there's 4 million documents there. By the time, I can't get through them all.

And it says, “I was asked, I had a telephone conversation with Nick and I asked him why Knightsbridge did not send the letter themselves. He told me there was politics involved and they would prefer we sent and instructed us to do so.”---Okay.

40 On what you say before, there were no politics involved, Ms Bakis.---I don't recall politics. That doesn't mean there were politics.

Well, why would Mr Petroulias know? He's got no connection to this Land Council at all.---Oh, God here we go again. Oh, God. It's exhausting. He's putting together the deal for Solstice at this time, and Advantage, and Sunshine. So he, he has an involvement.

He's working with you on these deals.---He's not working, no, he's not working with me.

Well, you're letting this occur, Ms Bakis. You know that this is something Mr Petroulias had arranged with Mr Jackson, isn't that right?---I knew, I knew that Jackson was giving advice and I was happy with that because I know Peter Jackson and I know he would be independent. Now, the fact that he's cut and pasted that word for word, that's an issue for him. I, I, I don't know why he's done that.

You know that Mr Petroulias was liaising with Mr Jackson, don't you, Ms Bakis?---I said that before. I'm not denying that.

10

And also, let me take you back to the file note, what Mr Jackson says, Ms Bakis. "I haven't seen any documents and don't know anything about the facts. Nick said that the facts are set out in the letter. He went through the letter and described the transaction and the board's rejection. Nick confirmed that the Knightsbridge draft," of which it's not, "was correct." Now, what do you have to say about all of that, Ms Bakis, that Mr Petroulias is in fact putting his complexion on the facts, sending it off to this lawyer. He knows nothing of them, it comes back, and you just send the advice off, do you?---I probably did.

20

Knowing, Ms Bakis, that a person who was in the mix of all these deals involving Sunshine and Gows and had a real interest in the way the advice was drafted was right behind it. Isn't that right?---Well, I've said about fifty times, I don't know why this was done and I honestly do not recall why, if -
- -

THE COMMISSIONER: That's not the point.

THE WITNESS: When I work it out, when I work it out it may be relevant to what you're asking me.

30

THE COMMISSIONER: That's not the question.

MR CHEN: You see, Ms Bakis, this advice has been sent by you to Mr Fisk and to Mutton & Holm who represented Mr Zong.---Yes.

So you do know the purpose of this advice. It's to be used as a means to respond to any claims and demands that they had against the Land Council. Isn't that right?---I don't know. I don't know.

40

And it was impossible for you to write an independent disinterested advice because you yourself were involved in all of these transactions such as Gows, Sunshine and Gows receiving money. Isn't that right, Ms Bakis? ---I don't, I don't know why, no. The answer to your question is no.

For you to write an independent advice to the Land Council, Ms Bakis, you would need to include matters such as this, I documented and drafted the

Gows Heat heads of agreement. Would you agree?---What's the point of that question?

Well, Ms Bakis, we're trying to work out - - -

THE COMMISSIONER: Don't you worry about the point of the question, you just answer the question.---No, well, it's just so hypothetical.

10 It's not hypothetical, I can assure you.---It's completely hypothetical.

Madam, you answer the question.

THE WITNESS: Okay, let's pretend. Okay. Let's go.

MR CHEN: So to write an independent honest and transparent letter to the Land Council about this transaction you would have to disclose that you drafted the Gows Heat heads of agreement, would you not?---Which they knew I did, yes.

20 Please?---Yes.

Would you just focus on my question.---Yes.

Do you agree with that proposition that I put to you?---Well, I'm not sure why it's relevant to this but yeah.

THE COMMISSIONER: Don't you worry about the relevance, madam, you just answer the questions - - -?---All right, I'll just - - -

30 - - - and stop your comments and answer the question.

MR CHEN: Do you agree with the proposition I put to you, Ms Bakis? ---That I should have disclosed that - I don't agree with that.

THE COMMISSIONER: Would you listen to the question? Just stop and listen to the question and I don't know how many times I've asked you to attend to the point of the question, otherwise it just has to be repeated - - - ?---Okay.

40 - - - and we'll be here till 4.30 if you wish, but let's see if we can get through it before then.

MR CHEN: Ms Bakis, to write an independent transparent advice to your client about the Sunshine transaction you would have to disclose, would you not, first that there was a Gows Heat heads of agreement?---No.

Why is that, Ms Bakis?---I don't know. Because I do not remember the circumstances of this letter so I'm not going to agree with what you're putting to me.

10 You're not willing to agree with me, Ms Bakis, because you know that at the point in time that this advice was solicited from Jackson & Co that you were in a hopelessly conflicted position and unable to provide that advice. Isn't that right?---But I was providing advice. Oh, in relation to Sunshine. Um, ah, I – that, that's not why Jackson was engaged to do this, that's not why.

THE COMMISSIONER: But it was the fact, wasn't it, that you were in a position of conflict?---A conflict that had been declared and dealt with.

How, how?---Oh, here we go again.

How?---Well, I had declared to them who Gows was.

20 How did you do that?---Speaking, file notes, board minutes, I don't know. We're going back to '14 again.

Did you advise them on the significance of an actual conflict of interest existing?---Yes.

And how did you do that?---(No Audible Reply)

In writing or oral?---I'm sure it was in writing. I'm sure I've written to them and they've agreed.

30 And who was that advice addressed to?---I don't think it was advice, I think it was, I think it was a – I don't remember how I did that.

You don't remember - - -?---No, I don't remember.

How you gave the advice?---I don't know how.

40 Don't know whether it was in writing or oral?---They – I don't think I wrote a letter to them but I'm sure I've done a memo and explained the issues to them back in '14.

What did you say?---What did I say in my file note? I don't remember. I don't remember. Without my file note, I can't remember. I could make a mistake.

MR CHEN: Ms Bakis, what also this shows, can I suggest to you, is that this is another instance of you and Mr Petroulias working together as you've always done as part of these transactions to suit your own interests and not

those of the Land Council.---I, by asking Peter Jackson to write a letter?
No, I disagree with that.

Now, Ms Bakis, is these proceedings that were in the Land and
Environment Court, not only was Mr Jackson retained but also barristers
were retained, weren't they?---Yes.

And Mr Petroulias, with your knowledge, was regularly attending the
conferences with the barrister, wasn't he?---Yes.

10

He was providing instructions to the barrister, wasn't he?---Yes.

He was dealing with requests made by him, made of him by the barrister?
---Yes.

He was liaising with the barrister by way of email and drafting documents,
wasn't he?---Oh, I don't recall that but that - - -

20 Providing instructions to the barrister, wasn't he, in relation to drafting and
matters of that kind?---I'm not sure of you'd call them instructions or
guidance because Peter Jackson was instructing the barristers.

Well, Mr Petroulias, for example was, on 1 August, 2016, for example,
working with a barrister on the points of claims on other causes of action
raised by Nick with Nick and drafting further submissions, as an example.
---Yes.

30 Now, Ms Bakis, he's not a lawyer, as you know, isn't that right?---Mr Chen,
you missed the point about, about the fact that I had no time to run this
litigation and I outsourced it to Jackson. Now, what's going on there,
perhaps Peter Jackson felt that he could, he could get facts from Nick.

Well, these fees that are being charged by, for example, the barrister, are
coming back to your office for approval, aren't they?---Yes.

And presumably, you in proper discharge of your professional obligations
would look through the bills?---Yes.

40 And you'd see on them that of course, Mr Petroulias is working hand in
hand with the barrister with your knowledge.---Yes.

And he would have surely spoken to you about that, Ms Bakis?---I think he
mentioned it.

Yes. And you agreed to it, didn't you?---Agreed to what?

Permit him to liaise as he saw fit on matters concerning Land Council
business?---I was not the solicitor on the record.

Please.---How – no.

No. Ms Bakis - - -?---No, I did not permit him to do anything.

You did not, at any time, instruct him not to attend, did you, Ms Bakis?
---that was not my role in those proceedings.

10 And you were quite happy then that the Land Council should have bills
where Mr Petroulias is participating with the barrister in the claims that it
had against the minister and the registrar, are you?---Well, if he's able to
provide assistance, that's probably a good thing, keep the costs down.

But he was also attending regularly upon Mr Jackson, wasn't he?---I believe
so.

He was attending telephone conferences and conferenced with Mr Jackson
and the barrister, wasn't he?---Yes.

20 All with your knowledge, isn't that right?---Well, I knew that Peter Jackson
was calling him in to help him out, yes.

And, Ms Bakis, so it's clear your firm was the solicitor on the record for the
Land Council.---Was I at this point?

At all points until at least 14 September, 2016 when you filed the notice of
ceasing to act.---But I think they were my, I think they were my agents.
There was, there was some sort of agreement with Jackson. I just couldn't
do the litigation and I just don't recall what that arrangement was right now.

30 Well, here's another example - - -?---Well, I haven't finished but anyway.

No, I apologise, Ms Bakis.---No, that's okay.

I didn't realise. You did pause.---No, no, please go ahead. Please go ahead.

No, no, please. I want you to, if you think there's something to say please
add it.---There was another set of litigation and I think I'm confused
because I think Peter Jackson was actually on the record for that. I just
40 don't remember what's happened with the Minister litigation in terms of his
- - -

THE COMMISSIONER: Why was Mr Petroulias so involved in the
litigation against the Minister and the Registrar?---He was helping out.

What was his interest? He was obviously very attentive and wanting to
assist. Why was he wanting to assist?---He had - - -

What as his interest?---He had a personal, personally believed that there was wrongdoing here in terms of - - -

It was all to do with pursuing his commercial interest wasn't it?---Well, they're your words, Commissioner.

What's that?---They're your words they're not his.

10 No, I'm putting it to you for your acceptance or rejection. It was known to you that he saw that this would be proceedings that could work to his advantage in dealing with the Awabakal Land Council rather than through an administrator for example. If an administrator was appointed it would be hopeless.---No, no, no.

He wouldn't be able to carry on with these transactions.---No.

20 That's what I'm putting to you. Do you agree or not?---I don't agree with that. I totally don't agree with that. I, I told you that I did not want this litigation to go ahead. I advised against it. They were very passionate against it, okay.

Just wondering why he was so enthusiastic attending meetings with council, drafting documents and giving advice and so on.---Because he was - - -

What was in it for him?---Some people are passionate about some issues and he was very passionate about this.

30 Yes, but why. Passionate why?---He just, some people have passions without having an interest.

It was because of his commercial interest wasn't it?---No. That's completely wrong.

Just doing it for the love of the Aboriginal cause?---No. He had, he's, he had regular contact with them and they were personally, personally did not want the administrator to go in and look, let's face it, he's still there two years later. They, they knew how diabolical it would be for an administrator to go in.

40 MR CHEN: I'll just give, I'm sorry Commissioner.

THE COMMISSIONER: No, that's all right.

MR CHEN: Ms Bakis, have you finished answering?---Yes, I have, Mr Chen.

I just want to take you to a couple of other examples, Ms Bakis, from Exhibit 42, folder 1 at page 197. This is from Mr Jackson's bill. 7 August,

2016, telephone to Nick about court on Monday. Why would Mr Jackson be ringing Nick about court on Monday?---What date was that?

7 August, 2016.---How the hell would I know.

MS NOLAN: Commissioner, these questions actually, could I subject, these questions call for so much speculation. I mean I can see the point to this cross-examination, I understand it, but that question is just calling for a ridiculous amount of speculation. I'd ask my friend to withdraw it.

10

THE COMMISSIONER: No, no. Ms Nolan, it's not speculation. It's examining an actual event that occurred. It was by any assessment extraordinary litigation that was being embarked upon against the Minister and the Registrar - - -

MS NOLAN: Administrative law.

THE COMMISSIONER: Well, may I finish?

20 MS NOLAN: May, you may, yes.

THE COMMISSIONER: That's very gracious of you.

MS NOLAN: You may. You asked may I finish and I answered yes, you may.

THE COMMISSIONER: Ms Nolan, I haven't reprimanded you or pulled you up before but you do tend to talk over - - -

30 MS NOLAN: No, I apologise. I - - -

THE COMMISSIONER: - - - both counsel and myself when we raise issues. It's really not what counsel is meant to do.

MS NOLAN: It's what a lot of people are doing in this forum. A lot of people are doing it.

THE COMMISSIONER: Sorry?

40 MS NOLAN: A lot of people talk over - - -

THE COMMISSIONER: But that doesn't mean a barrister just follows suit and talks over the Counsel Assisting or the presiding Commissioner. That I thought would have been more than apparent to you.

MS NOLAN: No, and I apologised.

THE COMMISSIONER: I'm not going to dialogue further about this. It is clearly relevant. It's a permissible question. It is not speculation. I allow it.

MR CHEN: Ms Bakis, do you recall it?---Do I recall why Peter Jackson - -

No, the question, I'm sorry, so it's clear.---Please ask it again.

10 Why is Nick being the recipient of a telephone call from Peter Jackson at all about court?---I don't know. Wasn't he my agent. I'm sure he was my agent. Peter was my agent.

Who are you talking about? Mr Petroulias or Mr Jackson?---Peter. Peter Jackson. So I, if he felt that he should talk to Nick about this, then that was his prerogative. And I, I can't really get into his mind as to why I was calling him.

20 Well, let me put it another way. On 11 August there's a telephone call from Nick about the notice to produce and his request that I draft a letter. So what's Mr Petroulias, assuming the narrative in Mr Jackson's bill is right, what's Mr Petroulias doing asking for that kind of advice from Mr Jackson? Why is he in this position where he's doing this, Ms Bakis?---Well, he was helping me out.

So he was working with you, was he?---No, he was not. He was not working with me. He was helping out if I needed help. But – this is just - - -

30 Now, Ms Bakis, you drafted, did you not, the Gows Heat heads of agreement dated 15 December, 2014. I can bring this up on the screen, if you like.---I know what it is, yes, yeah.

All right. It's at volume 3, page 123.---Yes.

I'll just – would you like to see it or you know what - - -?---No, I think I've seen it enough now.

You agree you drafted it?---Yes.

40 And during the course of this transaction, you were acting for Gows, were you not?---Yes.

And you were also acting for the Land Council, is that the position?---Yes, I was. Yes, I was.

And who, if anyone, from the Land Council were you dealing with to get the instructions to prepare this agreement, Ms Bakis?---There was Debbie and Richard.

THE COMMISSIONER: Sorry, I couldn't hear you.---Debbie and Richard.

MR CHEN: And who, if anyone, from the Land Council did you get instructions from to prepare the document in the form that it was prepared? ---Can you bring the document up? Sorry.

Yes, of course. It's volume 3, page 123. See it on the screen now, Ms Bakis?---Yeah.

10 Now, do you want to see the execution clause?---Okay. So who, who did I get instructions from? There were discussions with Debbie and Richard at the time.

And so far as the person from, or representing Gows Heat was concerned, that was Mr Petroulias, wasn't it?---Yes, it was.

And I take it that during the course of you preparing this document, Mr Green was a willing participant in providing you with instructions and completing it, is that so?---Yes, absolutely.

20

And so to, obviously, Mr Petroulias, is that right?---Yes.

And I take it that because you were acting for both of them it was clear to you that they were both saying the same thing, namely that we've got this agreement, we want you to document it. Is that the position?---Oh, in broad terms, yes.

Well, there's obvious consensus, is there not? It's been signed by both parties.---Yes.

30

And transactions have proceeded accordingly. There's no doubt in your mind, is there?---No.

They were saying the same thing, Mr Petroulias on the one hand, Mr Green on the other. Is that the case?---Yes.

And was Ms Dates involved in that as well?---There were discussions with her at the time.

40

Was she involved in the detail of the drafting of the agreement or not?---It, I'm trying to remember. We certainly discussed it. Yes, she was, she was. She was.

On your evidence she was familiar, I take it, with the subject matter of what was to be contained within this agreement. Is that the position?---Yes.

And is there any doubt in your mind that Mr Green signed this heads of agreement, Ms Bakis?---No doubt.

Is there any doubt in your mind that in doing so he understood what he was signing, that is it was an agreement involving the five lots of land for sale at an agreed or a valuer's price?---No doubt, he knew.

Did he have a good, poor or no understanding of what was going on, Ms Bakis?---He had a good understanding of what was going on.

10 Was he a willing or an unwilling signatory to this agreement?---Willing.

Was he a willing or unwilling participant in this transaction, Ms Bakis?
---Willing.

And so too Mr Petroulias. Correct?---Yes.

Now, Ms Bakis, would you have a look, please, at – or before I move on, you accept though don't you, Ms Bakis, that this agreement is in your words, void?---Yes.

20 And so it's clear, Ms Bakis, you accept, do you not, that this agreement is essentially worthless, isn't it?---Yes.

And it's worthless for a number of reasons, isn't it, Ms Bakis, one of which is that it does not comply with the provisions of the Aboriginal Land Rights Act dealing with land dealings. Isn't that so?---That's right.

30 And so it's a perhaps commonly-coined phrase but it's not really worth the paper it's written on, is it?---Yeah, just like the Advantage documents, that's right.

And it follows surely, Ms Bakis, as well that no legal interest is created by this document at all. Isn't that right?---Yes.

And there's no equitable interest at all, is there?---No.

It's nothing.---Yeah.

There's no interest at all.---Yeah.

40 So it's a worthless and valueless document. Correct?---Until approved, yes, that's right.

Well, it takes a bit more than that, but at any stage by your comment do you mean unless and until approved by the members and by the New South Wales Aboriginal Land Council, it's, in your own language, void?---Yes.

Now, you also know, don't you, that there's another Gows Heat heads of agreement. Correct?---I know there is another one somewhere.

Well, I'll show it to you, Ms Bakis, so that you're at no disadvantage. It's volume 8, page 59. Now, do you see that's a second Gows Heat heads of agreement, is it not, dated 15 December, 2014?---Ah hmm. Yes.

And if you have a look at the execution clause, you can see that appears to have been signed by Ms Dates and Mr Green. Do you see that?---Yes, I do.

10 Now, again in relation to this agreement you were acting for Gows Heat, were you not?---I was.

And the person from the Land Council who you dealt with to get these instructions to prepare that document was who?---Debbie and Richard.

No doubt about that?---That's my recollection.

And of course the person you were dealing with from Gows Heat was Mr Petroulias. Is that right?---That's right.

20 Was Mr Green a willing or an unwilling participant in this transaction?
---Willing.

Was Ms Dates a willing or an unwilling participant in this transaction?
---Willing.

And Mr Petroulias was probably not only willing but an enthusiastic participant in this transaction. Is that right?---Well, he was willing.

30 Again, like the other Gows Heat heads of agreement, there was on the one hand Mr Green and Ms Dates and on the other Mr Petroulias all saying the same thing, that we've come to an understanding in relation to this particular, these particular lots. Is that right?---Yes.

They were saying, the three of them, the same things to you. Is that the position?---Who, who are the, oh, um, yes.

40 And is there any doubt in your mind that Mr Green signed – I should show you the next page which might have the date on it. No, it doesn't, it's on the front page. So, again, on – you can see the date of the document at volume 8, page 60 is 15 December, 2014?---Yes.

And did Mr Green sign that document?---Yes.

Did he sign it in your presence?---I, well, I think he did.

And what about Ms Dates, did she sign the document?---I think she did.

And did she sign it in your presence?---I think so.

Is there any doubt in your mind that in signing this document, Mr Green knew what he signing?---He knew what he was signing.

And what about Ms Dates? Is there any doubt in your mind that Ms Dates knew what she was signing?---She knew, she knew what she signing.

10 Did Mr Green, on your dealings with him in relation to this, have a good, poor or some other type of understanding about what was going on?---He had a good understanding.

He seemed pretty switched on to you, did he?---Well, he – once it was explained to him, he knew what was going on.

And what about Ms Dates, did she have a clear understanding of what was going on or what was the position?---She knew.

20 And like the other agreement, Ms Bakis, you'd accept would you not, that this document again – I withdraw that. This document differs in a couple of respects from the other heads of agreement, doesn't it?---I wouldn't know.

I'm sorry?---I don't know.

Well, what was – do you know what this agreement was purporting to do in contrast to the other heads of agreement?---No, no.

Well, this was creating an option, wasn't it?---(No Audible Reply)

30 Just read - - -?---I, I'm not doubting that's what it's doing, I'm just trying to remember what this is relevant to the other one. I, is it different land?

Well, you can see from the recital C, that it's only dealing with two lots as opposed to in broad terms, the other was dealing with five.---Right.

Well, um, you obviously knew that?---Well, you've just reminded me. Okay. Do these two overlap with the other five? I don't know. I don't know.

40 Well, Ms Bakis, does an option need to comply with the provisions of the Aboriginal Land Rights Act or not?---I don't, I don't think this document went anywhere.

Okay, Ms Bakis, please - - -?---Sorry. Does an option need to comply with the, the – yes.

And why is that?---Well, it's a land dealing.

And it creates an equitable interest, does it?---Yes.

Are you sure of that?---Yes.

Now, Ms Bakis, again, this document, absent approval by members, an absent approval by the NSW Aboriginal Land Council is in your words, void, isn't it?---Yes.

It's unenforceable, isn't it?---Yes.

10 And you obviously knew that at the time you drafted this, correct?---Yes.

And so, too, the earlier agreement that I drew your attention to that dealt with the five lots. That too, you knew at the time was void and unenforceable, isn't that right?---Yes.

Now, Ms Bakis, how is it that on 15 December, Mr Petroulias came to be in the potentially fortunate position of becoming the party who was the potential beneficiary of an agreement with the Land Council? How did that happen?---Sorry? What are you asking me?

20

Well, I'll withdraw the question and I'll put it more precisely. You know as at 15 December, 2014 Mr Petroulias was bankrupt, wasn't he?---Was he? Yep.

You're agreeing with me, aren't you?---Well, I assume you're right.

Well, I thought you'd accepted that October '14 was the date.---Dates, me and dates, okay, October '14, okay.

30 And you do know that Gows was at that stage a \$2 company?---Yes.

And it had, at least so far as you knew, even though you were the authorised user of the account, only about \$115 in the bank.---Yes.

But somehow it had managed to find its way in a position where it's being involved in potential transactions with the Land Council over a number of lots of property. Do you see that?---Yes.

40 Now, Mr Petroulias must have said something to you at some point to explain how it is that he came to be in that potentially very fortunate position of becoming a party to these transactions, isn't that right?---Yes.

What did he say to you as to how the circumstances arose that he somehow found himself in the fortunate position of potentially being involved in these transactions, Ms Bakis? What did he say to you?---That requires a long explanation. He, he'd known Richard for a while and Mr Petroulias had investors that were willing to invest through Gows. I thought it was a stupid deal for Mr Petroulias because he was buying these properties at market

value, whatever valuations Awabakal put on them. So I didn't think he was that fortunate. I thought it was a bit, a bit uncommercial. So he'd had a relationship with Richard. Richard was, had the role of selling the land and, yeah, investors' land, yeah.

Were you proposing to sit till 4.30, Commissioner, or - - -

THE COMMISSIONER: No, I think we'll stick to the standard times unless there's good reason to press on.

10

MR CHEN: No, I mean, now is as convenient a time as any time.

THE COMMISSIONER: Then we'll adjourn and reconvene at 10 o'clock on Monday.

20

MR CHEN: Could I just announce, Commissioner, that I think there is, for the benefit of those in the hearing room, a revised hearing list. The witness is unavailable, or two potential witnesses are going to be unavailable on the Wednesday, and so the proposed hearing list for next week has been adjusted. I'll just draw that to the attention of those in the room.

30

THE COMMISSIONER: Yes, very well. I also should raise the question that if any other party represented here wishes to – or who's not represented – wishes to cross-examine Ms Bakis, two issues arise. One is the order in which that cross-examination takes place and the second is that there is a need, a particular need to comply with the standard directions in terms of the particular person or party being able to identify what their interest is in cross-examining the witness. (not transcribable) not already familiar to those who might wish to make application to cross-examine, carefully take on board what the standard directions require and prepare a document which will indicate how, for example, the cross-examination is intended to be relevant to the interests of the party or person represented, or in Mr Petroulias's case him appearing in his own right. But I urge close attention to the standard directions as to what's required because the application for leave to cross-examine is dependent upon there being identified a sound basis. It would seem to me so far as the present witness is concerned that if there's to be any cross-examination permitted to, for example, Ms Dates – I think, Mr O'Brien, you appear on your behalf

40

MR O'BRIEN: Yes, Your Honour.

THE COMMISSIONER: She might be the first in order of cross-examination. Mr Lonergan perhaps might follow, and then Mr Petroulias would make applications and he could follow. Now, as to Mr Petroulias, by reason of his present circumstances, I've indicated that I will consider what is appropriate in terms of the timing and calling upon him to cross-examine, if he's permitted to cross-examine.

MR PETROULIAS: Commissioner, can I - - -

THE COMMISSIONER: So I just make it plain now so that all parties are well and truly on notice as to what's going to be required if any applications for leave to cross-examination is sought, and those matters concerning the standard directions and the order of cross-examination.

10 MR PETROULIAS: Commissioner, can I ask a simple - - -

THE COMMISSIONER: Yes, you go ahead.

MR PETROULIAS: Just a simple question because I'm really not in a position where I can type documents. I still don't have a laptop as was promised or suggested. Given, if we did a, you know, a word count on the transcript you'll probably find that Petroulias is the most common spoken word above and or a, so is there any serious doubt that any part of this examination wouldn't be covered by my interest?

20 THE COMMISSIONER: Well, there would be, Mr Petroulias, in respect of certain issues, taking your particular position it would need to be demonstrated that there is a requirement or a need for you to cross-examine Ms Bakis on a particular matter that does affect your interest. In other words, it might be all very well that your name has been mentioned in certain contexts - - -

MR PETROULIAS: (not transcribable)

30 THE COMMISSIONER: If you just let me finish. A particular context doesn't mean because your name's been raised that you can then go and cross-examine on that particular segment, but you'd need to demonstrate, as I'm trying to convey to everyone here - - -

MR PETROULIAS: Yeah.

40 THE COMMISSIONER: - - - how it would be contended that cross-examination on a particular topic goes to affect that person's interest. So in other words you've got to mentally do that exercise, why would leave be granted to cross-examine a witness on a particular topic, if it doesn't advance your position or operate to protect your interest then there would be no point in you cross-examining on that particular topic or segment. But you will need to craft not just a long list of topics, you'd have to demonstrate how a particular topic would affect your interest. I'll consider your submissions about it, as I will with anyone else, to evaluate whether it does indeed go to affect your interest.

MR PETROULIAS: Am I missing something here? But are not - - -

THE COMMISSIONER: I don't know.

MR PETROULIAS: Are not both barrels pointed squarely at my head and I'm not, not number 1 most wanted on this list? Am I missing something or am I in some other proceedings in a parallel universe?

10 THE COMMISSIONER: Well, Mr Petroulias, your perception is yours and you're entitled to draw whatever, form whatever perception you wish. Plainly you and Ms Bakis have matters that concern you and therefore you would be regarded as a person entitled to appear in the inquiry for that reason and you've been granted leave. You wouldn't be here if I didn't grant leave. I understood that the matters that would be dealt with in this investigation will affect you in some way or another, just how it affects you remains to be seen. So I don't know whether that helps.

MR PETROULIAS: Thank you.

THE COMMISSIONER: All right. Mr Lonergan?

20 MR LONERGAN: Yes, Commissioner. In advance I can notify the Commission I will be seeking leave for cross-examination of Ms Dates.

THE COMMISSIONER: All right.

MR LONERGAN: In relation to the extent of submissions, I don't which to quiver on it too much, but just the extent of the submissions, my learned friend in relation to cross-examining Mr Green was permitted to essentially just outline the areas in which she sought to traverse that.

30 THE COMMISSIONER: Yes.

MR LONERGAN: Is that sufficient for the purpose of the Commission?

THE COMMISSIONER: That will be necessary. Mr Petroulias will need to go through that exercise in accordance with the standard directions. So what I'm emphasising is, I just don't want a shopping list of topics. It's got to be demonstrated as to how the topic is relevant to the person's interest, and I'm sure you'll, if you wish to let me have in advance a document that might neatly set it out, so much the better and it's open to you to do that.

40 MR LONERGAN: Please the Commission.

THE COMMISSIONER: Thank you. All right. Mr O'Brien, nothing else from you?

MR O'BRIEN: No, no thanks, Your Honour.

THE COMMISSIONER: Nothing. Okay. Thank you.

MR O'BRIEN: Commissioner.

THE COMMISSIONER: And I'll adjourn until Monday at 10 o'clock.

THE WITNESS STOOD DOWN **[4.09pm]**

10 **AT 4.09PM THE MATTER WAS ADJOURNED ACCORDINGLY**
[4.09pm]