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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE RUTH McCOLL AO SC
COMMISSIONER

PUBLIC HEARING

OPERATION KEPPEL

Reference: Operation E17/0144

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 29 OCTOBER, 2021

AT 2.00PM

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

Sensitive

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Ms Berejiklian, in relation to the Riverina Conservatorium of Music matter that we were discussing before lunch, you ultimately participated in decisions of the Expenditure Review Committee in relation to that matter, is that right?---Yes, that's my understanding.

10

And you in fact participated and didn't declare any interested pertaining to Mr Maguire, is that right?---Correct.

Why not?---Again, for the reasons I gave beforehand. This was a matter about the electorate, about the community. It was not a, a matter that would bring me any personal, financial or other benefit and it was simply a community matter.

20

Was a factor in deciding not to make any disclosure or declare any interest in relation to the RCM matter the fact that, as I think you said this morning, at least as you saw it, the relationship was not one of sufficient status?---Or in my mind sufficient status and insignificance, yes.

But was that a factor exercising your mind as to whether or not to participate in the decisions concerning the Riverina Conservatorium?---Can you repeat the question, please?

30

I understood your evidence this morning, perhaps wrongly, that one of the factors that was relevant to your consideration as to whether or not to declare any interest concerning projects advanced by Mr Maguire, was that you did not consider your relationship with him to have sufficient status. Have I got that right?---Ah hmm.

40

Was that a consideration that you took into account in deciding whether or not to make a declaration or disclosure in connection with the Riverina Conservatorium matter when it was before the Expenditure Review Committee?---Yeah, but the overwhelming consideration was that this was a matter relating to the electorate, to public office, to the community. It had nothing to do with what was happening in my private life.

So does that mean it was factor or not a factor?---About the significance of the relationship?

Correct.---I, I don't think I would have taken that into account because it wasn't something that I thought I needed to declare.

So it was at least a factor in relation to the ACTA proposal, is that right? ---No, no.

Sensitive

No.

THE COMMISSIONER: So, Ms Berejiklian, do I get the impression from these answers you're giving to Mr Robertson in relation to whether or not you declared the relationship in relation to the decisions concerning the conservatorium that you did turn your mind to whether you should disclose it at the time?---I don't think I did, Commissioner, because - - -

10 It never crossed your mind?---No. Because I didn't think it was something that I needed to disclose because it was something in my personal life and we didn't share anything in common apart from that close personal relationship. We led separate lives. I didn't feel it was at a state at which – the threshold for me was would I introduce him to my parents, would I introduce him to my sisters, was I confident it was going to be something to last a distance of time and I didn't feel that.

20 Well, that sounds like you undertook a fairly intense process of analysis of the issue, Ms Berejiklian.---Well, I can, I would have – well, perhaps not at those specific times though.

30 But isn't that the sort of thing that when you're making decisions in relation to projects which Mr Maguire was a vociferous advocate for that would at least cross your mind?---But, Commissioner, those, respectfully, those projects were about the community, they weren't about a person – because I would have similar feelings or biases with other colleagues for different reasons, you might want to persuade them to support you or you might want to their seat or, there's lots of interests that exist. But for me the threshold question was this is, for me, a question of how I conduct my public decision-making and it had, in my view, nothing to do with my personal life because it was on the merits of providing something positive for the community. It was, had nothing to do with what was happening in my personal life.

40 Just confining this issue to the period when the decisions about the Clay Target Association and the conservatorium was made, so 2016 to 2018. You were not in a relationship with any other person, as I understand your evidence, of the nature of that with which you were involved with Mr Maguire?---That's correct.

So none of your colleagues were in the same relationship with you as he was?---That's correct.

So there's no comparison, really, between what you do in relation to declaring a conflict of interest in relation to him as in relation to any other colleagues, wouldn't you agree?---Except, well, the benefit was only for the electorate, it wasn't for, for him and it wasn't for me. It was for the community and the public interest. It had nothing to do with what I might

Sensitive

29/10/2021
E17/0144

G. BEREJIKLIAN
(ROBERTSON)

2698T

feel for him. It was actually a decision based on what is in the public interest and I think this is the key issue. In my mind, in my mind, there wasn't any, any conflict on my part because this was a proposal to be determined through the proper processes on its merits for the public interest. It was not for any other interest but for, does the community deserve this project, should the government fund this project and is it a decision that is going to benefit the community or the government. It was not a consideration of what was going in my personal life. And the very difficult thing is, Commissioner, if I can make this point, that many colleagues lobby us for many different things and you have a different level of affection or friendship or perhaps reasons for why you want to support a proposal and it's very difficult in public life to draw the, to make those, to draw that line. And for me the threshold question was did I think this was a relationship which was serious enough or of significant status to share with my family. I would not have wanted to expose anybody to them unless I was confident the other person felt the same or that it was something of that significant a nature. For example, if there was anything formal or anything that in my mind provided a level of commitment or level of any conjunction or any – you know, our lives were very separate. As I said, he used to come to Sydney and not even tell me sometimes. So it wasn't, in my mind, whilst I may have had, and I did, I definitely did have aspirations, in my mind I was never sure if those aspirations would materialise.

MR ROBERTSON: But as at the time that you were making decisions concerning the Riverina Conservatorium project, or at least as at the time you were participating in ERC decisions, you regarded Mr Maguire as family. Correct?---Well, I've answered those questions and I don't have anything further to add.

30 THE COMMISSIONER: I think the answer to that is to answer Mr Robertson's question, Ms Berejikian.---Not in, not in any legal sense but as someone - - -

MR ROBERTSON: I'm not asking about any legal sense. Let me do it this way. Can we go to the decision itself. Volume 31.1, page 27. I'll just remind you of the decision itself. This forms part, Commissioner, of Exhibit 466, the redacted version. So do you see there decisions concerning the 1 Simmons Street site?---Mmm.

40 You participated in those decisions. Correct?---Yes, if it was in ERC, ERC, definitely.

Well, I'll show you this, then. Page 13 of volume 31.1, part of the same exhibit. Do you see there your name identified as attendee for the particular meeting?---Yes, I do.

And I'll show you on page 24, the first page of the decision. Do you see there it was 12 April, 2018?---Mmm.

Sensitive

29/10/2021
E17/0144

G. BEREJIKLIAN
(ROBERTSON)

2699T

If we now go back, please, to Exhibit 521, so the telephone intercepts I showed you this morning, just keep that date in your mind, 12 April, 2018, Exhibit 521. And if we go, please, to the last page of that exhibit, last page of that exhibit, please. On the very same day, you're saying to Mr Maguire, "But you're my family." Do you see that there?---I do.

10 How can you possibly say that the relationship was not of sufficient status to consider making a disclosure with respect to it when on the very same day you're telling Mr Maguire that he's your family?---Well, that's a turn of phrase but it, I did not mean it in the context that I regarded him as family, especially not in relation to the code. The code is very clear - - -

20 So just pausing there. When you say, "You are my family," what, you didn't mean you are my family. Is that what you're saying?---Well, yeah. It was a turn of phrase but I certainly did not regard that as literal. It was my way of expressing what I felt at the time about him. It wasn't a, a definition that I, that I, that I was wedding myself to. It was a, it was simply a turn of phrase to convey to him what I felt, the close connection I felt to him. But I've often regarded other colleagues or friends as family or brothers and, in fact, I, I regard my closest friends as family. So, of course, this was a different, a different nature of feeling but I wouldn't take that one occasion, that one word as a demonstration of what I attributed to the status of the relationship.

30 THE COMMISSIONER: It was demonstrative of the deep emotional attachment you had to him, was it not, Ms Berejiklian?---Absolutely, but I had no assurance it was reciprocated or that it was going to lead anywhere, and that is the, the threshold question, with due respect, Commissioner, that I - - -

I think we'll decide the threshold questions, Ms Berejiklian.---Okay. I'm sorry. Yeah.

40 MR ROBERTSON: Was one factor that you took into account in deciding whether or not you should make a disclosure the position that at least as you understood it, Mr Maguire didn't stand to obtain any benefit from the decision. Is that one of the answers that you gave or part of an answer you gave to the Commissioner a little while ago?---I, it did not cross my mind because for me, this was a black and white issue of a community issue and electorate issue. It had nothing to do with what I may or may not have felt about anybody. This had everything to do with was it a worthwhile project, was it of community benefit and was it something the government should support? It had nothing to do with my personal feelings. And I want to make very clear that in all of my decisions, I always separated what I felt personally or, or what I may have felt with somebody as opposed to what I did in public life. And I want to make that very clear. I, I worked my, I worked my guts out in the roles that I had. I always put the public interest

Sensitive

29/10/2021
E17/0144

G. BEREJIKLIAN
(ROBERTSON)

2700T

first. I did not think there was any conflict because this was an issue about an electorate, about thousands of people who may have benefitted from a government decision, and on its merits, I made the decision on the merits of the proposal.

Could you answer my question, please?---Can you repeat the question?

10 What I'm trying to understand is I thought you said in answer to one of the Commissioner's questions, and I may have this wrong, but a factor that was relevant to your consideration as to whether or not to make any disclosures to your colleagues within the Expenditure Review Committee was that, at least so far as you understood the position, the decision wouldn't confer any benefit on either you or Mr Maguire, is that right?---I can't, yeah, I can't say that I even considered disclosing. That would be too strong a statement. I don't think it crossed my mind at that occasion.

Well, what - - -?---It wouldn't have crossed my mind at that occasion to disclose it.

20 What I'm trying to understand is the distinction that you sought to draw this morning between appointments – you remember I referred to, for example, the fact that you made a disclosure in respect to an appointment to a government board in relation to a person who you'd been to a couple of functions with respect to. You remember me asking you some questions regarding that?---Ah hmm.

You remember that?---I, yes, I do.

30 I'm just trying to understand why you draw the distinction between appointments of that kind and decisions such as the decision I'm now referring you to in relation to the Riverina Conservatorium.---Well, appointment is a personal benefit to somebody because they gain status or whatever from that position. But this was a community project for the community. It was not something from which I would gain anything personally. And, frankly, the only benefit to the local member would be a rise in his popularity, which is what every single member of parliament seeks to do. The job of a member of parliament is to respond to community needs, to respond to what their community wants, to fight for those things, and to make sure they, they push every door to make that possible, and I
40 didn't consider that I needed to make any disclosure at the time.

So is this right, in the case – at least as you see it – in the case of appointments, appointment to, for example, a government board that could confer a benefit on the individual, in which case you would make a disclosure as to whether you have a relationship in the sense that you've gone to functions with them or they're your cousin or something along those lines, is that what you're drawing attention to?---Well, I don't think they're, they're, they're not exactly comparable. But in terms of, I think we

Sensitive

29/10/2021
E17/0144

G. BEREJKLIAN
(ROBERTSON)

2701T

overcompensate in terms of the declarations we make as to whether or not we know somebody in the appointment context. But certainly it would be fair for me to say that I did not consider that I needed to disclose, at that time, any private or personal relationship, given that we were looking at matters pertaining to the electorate.

10 I'm not asking about that at the moment. I'm going back to the distinction that you were drawing this morning, where you said to me, in effect, don't worry about the fact that I made a disclosure in relation to the person I'd been to functions with before or my cousin, because that's something different, that's about appointments rather than the kinds of projects that you and I have been discussing during the course of today. Is that a fair summary of your evidence?---That's correct. And my – well, yeah, it's part, it's a part explanation in that this, for me, this was my public duty, making a decision in the interests of the community, making a decision in the interests of the government, and making sure that we had positive stops in regional New South Wales.

20 So is this right, at least as you see it, where there's some appointment to some office, which may or may not carry with it a particular fee, you would then want to make disclosures about they're my cousin, they're someone I've been to functions with, et cetera?---I wouldn't keep it that narrow. I think there is also an issue of circumstance and category, so I wouldn't, I wouldn't be so narrow in that definition. I would, I would say that at all times one needs to consider when one should do, or make those disclosures or those declarations, and in these instances, because there were community projects for the community, I didn't feel I needed to make any disclosure.

30 I'm not worried about the community projects at the moment. I'm trying to understand the distinction that you sought to draw this morning, which I don't presently understand, between projects and appointments. I think you're saying, tell me if I've got it wrong, that you – at least in your mind – took a different approach to appointments over projects. Do I have that right?---Well, for me the distinction is, is there a personal benefit where the person is going to get a benefit, which is not necessarily a community benefit. And that's, that's the issue.

40 And the possible benefit in the case of an appointment is that they may get the status of being - - -?---Or, or a fee.

Or possibly a fee.---Or a fee or, or perhaps other opportunities. And it's also what is the normal course, I think it's fair to say my colleagues and I overcompensate as well to make sure that there is no perception in that instance of any bias.

So do I take it from that that you made some disclosures before appointing Mr Maguire as a parliamentary secretary, which of course is an office that carries with it an additional fee over a backbencher?---He was already

Sensitive

29/10/2021
E17/0144

G. BEREJKLIAN
(ROBERTSON)

2702T

appointed one. Premier Baird had appointed him. I didn't appoint him. I reappointed him.

Yes, so when you reappointed him, did you make any disclosures? Because that was an appointment which might have a benefit in the way that you've just described.---Well, that was a position of public authority. No, I did not make any disclosures.

10 Well, I still don't understand then why is there no disclosure in relation to that appointment yet a disclosure in relation to someone that you've been to functions with from time to time?---Well, I did not regard the relationship as sufficiently significant, of sufficient status and, again, I separated what I, what I felt personally from executing my public duties. He was already appointed a parliamentary secretary by Premier Baird and he was always regarded as someone who carried much kudos in relation to rural and regional issues. So I would not have changed that position.

20 But Mr Baird presumably wasn't in any particular close personal relationship or otherwise with Mr Maguire.---No, but he would have been appointed to that position based on his merit.

But you got to choose your own ministry and the appointment of parliamentary secretaries, correct?---Yes, but I didn't change what I inherited in that regard.

30 What I am putting forward to you for your comment is really the fact that Mr Maguire may have been appointed in the past by Premier Baird has really got nothing to do with the question of whether you should have made any disclosure before making appointment of Mr Maguire as parliamentary secretary. Do you agree?---No, I don't agree. I don't agree. Because he was, he was chosen based on his merit and his experience.

Now, you participated in two decisions of the Expenditure Review Committee regarding the Riverina Conservatorium of Music, is that right? ---You'll have to refresh my memory on the two of them.

40 I've shown you the first one, I'll show you the second one. Can we go, please, to page 180 of volume 31.1. This was a decision of 24 April, 2018, using the redacted version, please. So you can see the start of that particular text - - -?---Sorry, what's the date for this one?

24 April, 2018. So a couple of weeks after the last one of 12 April, 2018. If we then just go, please, to page 180, which I think is the preceding page. Do you see there a reference to \$10 million to Property NSW for the Riverina Conservatorium of Music?---Yes, I do.

You participated in that decision of the Expenditure Review Committee, correct?---Yes.

Sensitive

29/10/2021
E17/0144

G. BEREJKLIAN
(ROBERTSON)

2703T

You didn't make any disclosure or disqualify yourself in relation to that decision, is that right?---No, I did not.

Can we now please play telephone intercept 8400, extract number 1, please.

THE COMMISSIONER: Is that ERC decision already an exhibit, Mr Robertson?

10 MR ROBERTSON: Yes, it is, Commissioner. It's Exhibit 468.

THE COMMISSIONER: Thank you.

AUDIO RECORDING PLAYED [2.28pm]

MR ROBERTSON: I'm sorry, that may be the wrong excerpt. Just pardon me for a moment.

20

THE COMMISSIONER: Ms Berejiklian, you know there's some water there and hopefully a glass.---Thank you.

MR ROBERTSON: I'm sorry about that, Ms Berejiklian. Extract 3 is what I intended to play.---Ah hmm.

AUDIO RECORDING PLAYED [2.28pm]

30

MR ROBERTSON: Ms Berejiklian, was it your usual practice to advise parliamentary secretaries or backbenchers as to what had or had not been ticked off by Expenditure Review Committee?---Sometimes. Sometimes they would ask me. It's, it is not appropriate to always disclose what's on the agenda but often members would find out and often they would want to know the result. And sometimes they'd go to the minister or sometimes it would be conveyed in different ways, but it's not uncommon for members of parliament or backbenchers or, or anybody to be advised of something which may have gained approval.

40

Usual practice to ring up the parliamentary secretary or backbencher to tell them what has or has not been ticked off?---It depends on the circumstances. Sometimes.

Well, do you at least agree Mr Maguire got, in effect, an advanced run or direct run in being able to find out the status of consideration within government of proposals that he was advancing?---No. No more or less than anybody else.

Sensitive

29/10/2021
E17/0144

G. BEREJIKLIAN
(ROBERTSON)

2704T

Earlier in that telephone intercept, there was a reference to the phrase “money projects”. Do you remember hearing that?---Mmm.

And you said something along the lines of “That helps me, too.” Do you remember that?---Mmm.

10 Why did it help you, too?---Obviously, when a local member gets community kudos, as the leader of the government, it enhances my standing, so for, from a community and political perspective, that obviously is good, especially in rural and regional communities.

But why did you particularly care in relation to the electorate of Wagga Wagga in circumstances where, as you accepted before, that wasn’t, at least at that point in time, regarded as a key seat or marginal seat?---Well, I think the loss of the seat of Orange shook the government substantially. That was a safe seat. That was a swing, if I recollect, in excess of 20 per cent. So that shook the government. And there was enormous concern about all of our rural and regional seats. And, in fact, at the last election, we lost another
20 two seats to the Shooters and we lost the seat of Wagga to an Independent. So our concerns were well-founded that rural and regional New South Wales had turned away from the Coalition and, obviously, we were doing everything we can as a government in all of our regional communities. And I think that’s the context that needs to be considered here, Mr Robertson, that if you look at all the grants, all the schools, all the hospitals, all the projects built across rural and regional New South Wales, it was a concerted aim of the government to enhance our position because rightly so, at that time, not now, but at that time, our regional communities felt ignored, they felt we were too Sydney-centric. And, clearly, clearly, our local members in
30 all of our rural and regional seats – and if you had asked me the same question of all the other colleagues, my answer would be the same. They were all keen to make sure that we neutralised or at least won back that support that was perceived to have lost. So, obviously, if a local member looks like they’ve had wins - - -

THE COMMISSIONER: Ms Berejiklian, I think you did answer Mr - - -? ---Okay. Thank you.

40 - - - Maguire’s question – sorry, Mr Robertson, Mr Robertson’s question some time ago.

MR ROBERTSON: Was it at least a factor as to why at that point in time you considered Mr Maguire’s money projects to help you a desire to increase the standing of the Coalition in the seat of Wagga Wagga with a view to making it easier for Mr Maguire to be in a position to retire at the next election?---That is absolutely not the case. I reject it outright and I find it offensive.

Sensitive

29/10/2021
E17/0144

G. BEREJIKLIAN
(ROBERTSON)

2705T

At least one matter that was being considered by you and Mr Maguire during or about 2018 was the possibility of Mr Maguire retiring from parliament at the next election and the two of you going public with respect to your relationship. Is that right?---Yeah, but I wasn't, I was not convinced that he was going to retire. In my mind, he was still indecisive.

Well, what's the answer to my question then? Was that at least one matter that was being considered and discussed?---No. No.

10 No.---Sorry. The, the, in terms of what could happen in the future about a possible strengthening of the relationship, yes. But did it impact at all on any decision I made? Absolutely not.

No impact at all - - -?---No. No.

- - - even as a subsidiary factor?---No, and I'm quite offended by the question if I can say that, really offended, because every decision I make is in the public interest - - -

20 THE COMMISSIONER: Ms Berejikian, you have said that a number of times.---Okay, I'm sorry.

Could you please just listen to the questions and answer the questions?
---Yes, I will, mmm.

MR ROBERTSON: Now, Ms Berejikian, you recall that Mr Maguire was summoned to give evidence before this Commission in a separate inquiry called Operation Dasha?---Yes, I'm aware.

30 He gave that evidence, to assist you with your bearings, on 13 July, 2018.
---Yes.

How did it first come to your notice that Mr Maguire had been summoned to appear before this Commission?---From recollection, a staff member advised me and then subsequently Mr Maguire advised me as well.

So is this right, you had a discussion with Mr Maguire where Mr Maguire advised you that he'd been summoned to appear before this Commission?
---That was after – do you mean in the public hearing? That was after.

40

That's right.---Yeah, that was after my staff member told me.

So your best recollection is a staff member tells you that Mr Maguire has been summoned to appear in Operation Dasha in 2018?---That was, that's my best recollection. And I, and I apologise if that's not the case, but my best recollection is a staff member advised me and then Mr Maguire subsequently told me as well.

Sensitive

29/10/2021
E17/0144

G. BEREJIKLIAN
(ROBERTSON)

2706T

And you had a discussion with Mr Maguire in advance of his appearance, is that right?---Yes, yes.

Can we please play the first extract of telephone intercept 10853.

AUDIO RECORDING PLAYED

[2.36pm]

10 MR ROBERTSON: Can we go back to page 3 of that transcript, please? I take it you accept one of the voices on that recording is yours and one was Mr Maguire's?---Yes, I do.

Can you have a look at about the middle of that page? Do you see you say, "I don't, I don't want to know any of that stuff." Do you see that there?
---Yep.

Why did you say, "I don't, I don't want to know any of that stuff"?---Well, I probably would have felt uncomfortable if he was providing evidence to this
20 body.

Well, were you concerned that Mr Maguire may have had information that may require you to take some steps in the exercise of your public functions?---Not at all, because I trusted him. He just told me he'd done nothing wrong.

Was part of it attempting to draw the line that you said earlier that you drew between the public and the private?---No. He had told me he'd done nothing wrong so therefore I didn't need to go any further.
30

Then as we saw you ultimately asked a number of questions of him. For example, if we go, please, to page 4 as an example of at least some information being given to you by Mr Maguire. Do you see there Mr Maguire refers to making introductions towards the top of the page?
---Sorry?

Just towards the top of the page Mr Maguire says, "I merely made some introductions." Do you see that there?---Right, yep, yep.

40 So you were at least aware as at 5 July, 2018, that Mr Maguire made some introductions in relation to property developers, do you agree?---I don't know if I absorbed that information or that's what I took out of it. All I took out of it was he was having to provide evidence. He told me he did nothing wrong and that was that.

Well, it was a bit more than just that was that, wasn't it, because during the course of that intercept you were asking a number of questions of Mr Maguire as to the matters that he thought might be of interest to this body,

Sensitive

29/10/2021
E17/0144

G. BEREJKLIAN
(ROBERTSON)

2707T

do you agree?---Well, only to satisfy myself that, that he, he assured me there was nothing wrong.

Well, let me give you an example. If we go to page 7 of the transcript, do you see there, about halfway down the page you say, “But why, why did you feel like you needed to do that for Country Garden?” See that there?
---Yes.

10 Now, why were you asking questions of Mr Maguire regarding this matter, noting that I’ve played you some recordings this morning where Mr Maguire was telling you about attempting to do deals and the like and you didn’t ask questions?---I can’t, I have no recollection, I can’t remember. This conversation was how many years ago? It’s very difficult to remember exactly what you thought some years ago. But I can assure you of this, Mr Robertson, I obviously made sure that he told me if he was concerned, if he had done anything wrong, and he said no. So on that basis, I wouldn’t, wouldn’t have been concerned.

20 Well, as at the time of this conversation, did you suspect that Mr Maguire may have been engaged in corrupt conduct?---No, I did not. And if I had, I would have reported it.

If we go to page 8, do you see there Mr Maguire says, about halfway down the page or so, “I’ve got no deals with anybody. I’ve never accepted a dollar, and if I had a deal with someone I would bloody, I, I would want a bloody solicitor to sign it, you know?” See that there?---Yes.

30 Do you agree that that at least wasn’t the full story as you knew it at that point in time, as at 5 July, 2018, because as you and I discussed this morning, Mr Maguire was, to your knowledge, attempting to do deals, including a deal in relation to the \$1.5 million that you and I discussed this morning?---Yes, but I would have no knowledge or information as to whether any of that materialised. Just because he says something, doesn’t mean it’s happened or it’s materialised and, and I believed him when he said he’d done nothing wrong.

40 But didn’t it at least put you on notice of the possibility, not necessarily the knowledge of but at least the possibility, that Mr Maguire had engaged in inappropriate conduct of some kind?---No, I trusted him and I believed him when he said he hadn’t done anything wrong.

If we then go to page 10, please. Page 10. Just have a look, again about halfway down the page. You say to Mr Maguire, “I would say what’s it to you, why do you care, why did you go out of your way to make these?” et cetera. Do you see that there?---Yes, I do.

Can you explain why you were asking questions of that kind, “What’s it to you, why do you care?” on 5 July, 2018, but not asking similar questions

Sensitive

when Mr Maguire was giving you other information in the past, for example, in relation to the UWE issue that you and I discussed this morning?---It was of no interest to me.

Well, why did it become interest of you as at 5 July, 2018? Is this right, you were only asking questions, what, because this body was starting to be interested, is that - - -?---No, it just wasn't of interest of me, because when you trust somebody and they tell you they're not doing anything wrong, and that everything they're doing is by the book and everything they're doing is
10 by the rules that are in place, I, I wouldn't have questioned anything beyond that. I trusted him. I mean, that's the issue. I trusted him at that time and I didn't have any reason to consider that he wasn't telling me the truth, and therefore that's why that transpired.

Do you agree that as at 5 July, 2018, it at least struck you as unusual or as a matter worthy of comment the fact that Mr Maguire seemed to be interested in attempting to do deals of the kind that are being referred to on this page of the transcript?---I think we've covered this ground last year and this year. I had no reason to believe that anything he was doing was untoward.

20 What I'm trying to understand is why are you asking questions like this as at 5 July, 2018? You were posing for his consideration, "Well, I would say to you, what is it to you, why do you care?" yet not making similar inquiries in relation to, for example, the UWE issue and the \$1.5 million deal issue that you and I have discussed this morning?---I'd only be speculating if I answered that question.

Well, at least at this point in time you have a level of concern, don't you, from the fact that this Commission has issued a summons requiring Mr
30 Maguire to attend?---It was more an interest as to why this had occurred.

It was an interest and a concern, do you agree?---I wouldn't put that word in my mouth because I, I, he, he said he'd done nothing wrong.

What, you were just interested, and not a concern of any kind, is that what you're saying?---Well, what I'm saying is when he told me he had done nothing wrong, I was not concerned because this body, as is the case, is able to call a number of witnesses who've done nothing wrong, but they're there to assist a matter. And I assumed he was in that category of witness, where
40 somebody is asked to come and provide evidence which has nothing necessarily to do with your actions but it's to help this body in some investigation. So I, again, on speculation, I would have assumed that he was in that category of witness to assist an investigation but not part of the actual investigation himself.

Well, let's go to page 11 of this document. Have a look at what Mr Maguire says in the last main paragraph, about seven-tenths of the way down the page on the screen.---Mmm.

Sensitive

29/10/2021
E17/0144

G. BEREJKLIAN
(ROBERTSON)

2709T

He says, "Yeah, that's fine, but I, I never accepted a dollar, I never asked for a dollar, um, you know, nothing's happened that I know of." Do you see that there?---Yes, I do.

At 5 July, 2018, you at least knew that that statement to you was untrue, didn't you? You knew in particular that Mr Maguire had not just asked for a dollar in relation to property deals, he had asked for something like \$1.5 million?---But I, but why would you assume this is the same matter? In
10 relation to this matter he said he's done nothing wrong. I, I don't know how you're making that connection between the two things.

The word "never".---But that could be in the context of this conversation of this matter. I, I mean, I don't know how I'd be expected to make any joining of the dots which don't exist in this case. Again, I can only speculate that it's in relation to this matter that he's been asked to come and provide information on.

What I'm just a little puzzled by, and perhaps you can assist me, is why in
20 the context of this communication you're asking a series of questions of Mr Maguire, things like, "Well, who's Tim?" and "Why were you interested in these matters, what's it to you?" things of that kind. Surely, that must have displayed at least a level of concern on your part - - -?---I wouldn't say - - -

- - - having regard to, for example, information that Mr Maguire had previously given about his attempted deals?---No, I wouldn't say concern. It was of interest to me because he was asked to come before this body at a public hearing and, and that was of, of interest to me, which is why I wanted to make sure that he was not concerned and had done nothing wrong. And
30 he gave me that assurance, as you heard, that he hadn't done anything wrong.

And so are you saying that when Mr Maguire said to you, "I never asked for a dollar," you understood that to mean I never asked for a dollar in respect of the particular matter that this Commission might be considering albeit he may have asked for \$1.5 million in relation to a separate property deal?
---Well, look, again, I'm only speculating. I can't recollect what I thought at that time, but suffice to say I was not concerned because he told me there was nothing to be concerned about and I trusted him.
40

Can we play the second extract of that call, please?

AUDIO RECORDING PLAYED

[2.56pm]

MR ROBERTSON: And then if we can play the third extract, please, and then I'll ask some questions after that.

Sensitive

29/10/2021
E17/0144

G. BEREJKLIAN
(ROBERTSON)

2710T

MR ROBERTSON: Can we go, please, to page 3 of that extract, of extract 3. Do you see there towards the middle of the page, you say to Mr Maguire, “But are they trying to suggest that you had something to do with making money?” Do you see that there?---Not at the moment.

10

We might zoom in a little bit closer for Ms Berejiklian if we can, please? Do you see that there? “But are they trying to suggest that you had something to do with making money?”---Right. Yeah. Yeah. Yeah.

See that there?---Yeah.

Why were you asking that of Mr Maguire?---I was going, I was trying to ascertain, get a sense of what the, what the matter was that was about to become public.

20

Were you concerned that if it was suggested in public that Mr Maguire had something to do with making money in connection with property developments that that might become a matter of political controversy? ---Well, it could. I mean, he, I was convinced, I didn't have any concern. He told me he did nothing wrong. And, obviously, I was interested to know what the nature of his being present at this body would be about.

30

Were you asking because you were concerned that Mr Maguire may have been engaged in wrongdoing in connection with what I'll call property deals?---No, because I trusted him. He said, he, he told me he did nothing wrong and I believed him.

He might have told you that he did nothing wrong but he also was telling you quite a bit of information about his relationship with property developers. Do you agree?---Well, he was sharing information about a variety of things.

40

Including his relationships with property developers. Correct?---Some, but, including other information.

Including the fact that he had made representations on behalf of property developers. Correct?---Yeah, but I didn't know that in any level of detail.

Well, you might not have known it in any level of detail but Mr Maguire was at least telling you information about that subject matter. Do you agree?---Well, he's presented me with information that's here in this transcript.

Sensitive

Are you saying despite that information, you had no concern at all that Mr Maguire may have been engaged in wrongdoing in connection with what I'll call property deals?---Well, I trusted him. He told me he'd done nothing wrong. And, and people know people in that industry. It's, it's, people in that industry are, are known to, to members of parliament and others.

Well, you knew before this telephone call that Mr Maguire had relationships with at least a number of property developers. Correct?---In, on a friend capacity, yes, definitely.

10

Well, not just on a friend capacity. You also knew, as we discussed this morning, that at least in relation to one potential property deal, Mr Maguire thought he might be able to make about one and a half million dollars. Correct?---Yes, but I didn't take that seriously, no.

Didn't the information that you had previously, coupled with the information that we've so far heard from the 5 July, 2018 call, at least lead you to be concerned that Mr Maguire may have been engaged in some wrongdoing?---No.

20

Can we play excerpt 4, please, of the same recording?

AUDIO RECORDING PLAYED

[3.15pm]

MR ROBERTSON: And can we play extract 5, please? Then I'll ask some questions.

30

AUDIO RECORDING PLAYED

[3.24pm]

MR ROBERTSON: Can we go, please, back to the transcript of the fourth excerpt, please, and can we go to page 3 of that excerpt. Extract 4, page 3, please. The preceding page, please, page 3. Do you see there, Ms Berejikian, towards the middle of the page, there's some discussion about Big Brother and telephone intercepts and the like?---Ah hmm.

40

And you ask Mr Maguire, "Is that gonna be a problem?" Do you see that there?---Ah hmm.

Does that reflect a concern on your part that Mr Maguire may have been engaged in some kind of misconduct?---No. I was just asking, again, I'm only speculating, it was some years ago, but I guess I was just making sure he was convinced he'd done nothing wrong, which is what assurance he gave me and I took his, took him on his word.

Sensitive

29/10/2021
E17/0144

G. BEREJIKLIAN
(ROBERTSON)

2712T

But what's your explanation for asking that question? Surely, underlying that question is a concern that there might be a problem, do you agree? ---Well, I've said, "Is that going to be a problem?" to make sure that he repeated to me that he'd done nothing wrong, and that's what he confirmed.

10 So is this right, you at least were concerned based on the information that Mr Maguire gave you, but he had assured you he'd done nothing wrong and you believed that explanation?---Well, yeah, I guess having to appear before this body was a concern for him and for me, because this is a serious issue to be asked to provide public information, and he'd assured me he'd done nothing wrong.

But do I have that right? You were at least concerned enough about the information that Mr Maguire was providing you that you wanted to ask the question "Is this going to be a problem?" But you were satisfied with and believed Mr Maguire's response that he had done anything wrong, is that right?---Yeah.

20 If we can turn to page 5 of the same extract, please. If we zoom into the bottom half of the page, do you see you ask the question of Mr Maguire, "Why is this member of parliament who lives, who doesn't represent the Inner West so interested in the Inner West?" Do you see that there?---Ah hmm.

30 So do you agree that that's at least an aspect that jumped out at you as something that called for some explanation or at least was a cause of some concern to be dealt with by Mr Maguire, the fact that he seemed to be so interested in something that was not in his electorate at all?---Yeah. I mean, I wasn't concerned that he'd done anything wrong because I believed him that he hadn't done anything wrong. I guess I was just curious as to how he was connected to all of this.

40 Why didn't you ask the same kinds of questions in relation to the matters you and I discussed this morning, such as the Badgerys Creek stuff, which is nowhere near Mr Maguire's then electorate and the UWE matter, which was also not in Mr Maguire's electorate?---Oh, I can only speculate, but the previous matter didn't, didn't involve this body and I had no interest in what he was doing in a private capacity, and in this instance I obviously was curious as to why he'd been asked to provide evidence to this body.

So your interest was associated with the fact that this body had some interest in a particular subject matter?---Correct.

But why wouldn't you as the head of government have an interest in those other matters, noting, for example, your duty or at least your power to enforce the requirements of the Ministerial Code of Conduct?---Because I didn't assume he had done anything wrong. I trusted him as a person and I

Sensitive

assumed that if he was, as was allowed, to, to have any private financial interests, that were disclosed at the appropriate time in the appropriate way.

But in relation to those other matters, for example, the Badgerys Creek stuff, and the UWE issue, did it not at least pique your interest the fact that, for example, a member of parliament who doesn't represent the particular electorate seems to be so interested in property in areas outside of his electorate?---Well, I trusted him, so I didn't really give it much thought. It was not something I was interested in, not something I cared about and because I trusted him and assumed that he was always doing everything right at all times, I didn't think to, to bother.

So you trusted him and therefore those kinds of matters didn't pique your interest in relation to the UWE and the Badgerys Creek stuff. Is that right? ---That's correct.

At least in relation to the matter that Mr Maguire is speaking to you about on 5 July, 2018 - - -?---Is that relating to this transcript?

20 Yes, that's the date of this transcript.---Yeah, yeah.

You were aware that Mr Maguire had made representations in relation to that issue. Agree?---I wouldn't take that assumption from what - - -

Well, let me try and ask it this way, then. Can we go back to - - -?---I didn't know what the nature of anything was. I didn't have any information.

Well, you at least had information that Mr Maguire had made representations in relation to the issue that Mr Maguire thought was of interest to this Commission. Correct?---Well, I had no information apart from what I was just told and, in any event, this body, this integrity agency, was looking at all those issues. So he told me he'd done nothing wrong and, and I would have assumed that's the case and I would have assumed that this body would have, would have made sure that that was the case, as well.

So is this right? There were some aspects of what Mr Maguire raised with you during this telephone call that piqued your interest but you were satisfied with Mr Maguire's response and you believed him when he said that he'd done nothing wrong?---That's correct.

40

Commissioner, I tender the five extracts of telephone intercept 10853.

THE COMMISSIONER: Exhibit 528.

**#EXH-528 – EXTRACTS OF TELEPHONE INTERCEPT 10853
BETWEEN MAGUIRE AND BEREJIKLIAN DATED 5 JULY 2018
AT 7.15PM**

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29/10/2021
E17/0144

G. BEREJIKLIAN
(ROBERTSON)

2714T

MR ROBERTSON: Commissioner, I'm about to move on to another topic which, in my submission, should be dealt with as a single block, as it were, but it will take longer than about half an hour. In light of the time, my submission is to adjourn for today now. My submission is that we start at 9.30 on Monday. At the moment, I'm on track to finish by lunchtime on Monday. I may bleed into the afternoon, but at least at the moment, I anticipate being done by lunchtime, as long as we start at, well, for abundant caution, I'm suggesting a 9.30 start.

MS CALLAN: Commissioner, could I be heard on that? I understand that Counsel Assisting is making every endeavour to stick to a time frame which sees us finished by Monday, but I am quite concerned, the risk of that not transpiring. We do have another half an hour in the day, and I recognise that Counsel Assisting needs to take the approach that he thinks is most appropriate, but if there's any way that matters can be dealt with to make good use of the remaining time this afternoon, that would be of considerable assistance.

THE COMMISSIONER: Thank you, Ms Callan. Is there no way we can sit on today, Mr Robertson?

MR ROBERTSON: I just don't want to deal with half of the next topic. I anticipate that the next topic is an hour or so, and I'm mindful that it's Friday in week 2 of a hearing and it's certainly my preference to do, in effect, that half an hour, the half an hour I would have otherwise tried to complete today, during the course of the morning. So, in effect, I'm not suggesting losing any hearing time at all. Start at 9.30am on Monday, and so the half an hour that's otherwise not spent this afternoon would be spent on Monday morning.

THE COMMISSIONER: What about we start at 9 o'clock on Monday, seeing as you said it's going to take an hour?

MR ROBERTSON: May it please the Commission.

THE WITNESS: Thank you.

THE COMMISSIONER: We'll sit at 9.00am on Monday, Ms Callan.

MS CALLAN: Thank you, Commissioner.

THE COMMISSIONER: We'll now adjourn.

THE WITNESS STOOD DOWN

[3.34pm]

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29/10/2021
E17/0144

G. BEREJKLIAN
(ROBERTSON)

2715T

AT 3.34PM THE MATTER WAS ADJOURNED ACCORDINGLY
[3.34pm]

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29/10/2021
E17/0144

G. BEREJKLIAN
(ROBERTSON)

2716T