

CMC PUBLIC INQUIRY – GOLD COAST CITY

OF GRAND

SUBMISSIONS ON BEHALF OF MR TONY I

EXHIBIT No. 345
[Signature] CLERK

1. LIONEL BARDEN RETURN

- 1.1 Counsel Assisting submit that a report be made under Section 49 of the *Crime and Misconduct Act* 2001 with a view to the appropriate prosecuting authority considering whether prosecution proceedings are warranted against Mr Hickey on the basis that he gave Mr Barden information to which the return related that was, to Mr Hickey's knowledge, false or misleading in a material particular under Section 436(3) of the *Local Government Act* 1993.
- 1.2 Mr Barden was given a form 3 return under cover of letter from Hickey Lawyers dated 10 June 2004.

There is nothing in the information given to Mr Barden which is false or misleading.

The return sets out that the person furnishing the return is Mr Barden. That, of course, is true.

Whilst the details of gifts received shown in the body of the return date from 23 December 2003 (before Mr Barden assumed responsibility for the funds in the trust account), the letter accompanying the return addressed to Mr Barden specifically states:

“We have incorporated details of the funds received into our trust account”.
(emphasis added).

This again, of course, is true.

It follows that the “*information to which the return relates*” given to Mr Barden could never be considered by an appropriate prosecuting authority to be false. The information given to Mr Barden is all true.

- 1.3 Even without the advice to Mr Barden in the covering letter that details of the funds received into Hickey Lawyers' trust account have been incorporated, Mr Barden well knew that his responsibilities in relation to the funds in the trust account did not commence until 4 March 2004.

It follows that Mr Barden was not given "*information to which the return relates*" which was in any way misleading to him.

- 1.4 Whilst Counsel Assisting's submissions against Mr Hickey in relation to the Lionel Barden return fail for the reasons advanced above, I point out some fundamental matters to dispel any suggestion of an attempt at secrecy in the preparation of the return.
- 1.5 Mr Hickey made it plain repeatedly in evidence that he was not giving legal advice to anyone connected to the election, including Mr Barden, Mr Power and Mrs Robbins. In response to a telephone call from Mr Barden requesting from Mr Hickey details of all donations so that Mr Barden could arrange to put in a return, Mr Hickey had a return in proper form prepared with all donations included (T2143). Mr Barden's evidence clearly shows that he was not receiving advice in respect of the return from Mr Hickey, but from many others (T1131-1143). Mr Hickey did not assume the responsibility of filling in all parts of the return, nor giving advice in respect of it. As referred to above, the covering letter to Mr Barden specifically stated:

"We have incorporated details of the funds received into our trust account".

Further, consistent with Mr Hickey's lack of responsibility for the return, the letter asked Mr Barden to check that the document was correct.

- 1.6 As Mr Hickey stated in evidence (T670), his concern was to ensure that a return related "*to all transactions in the trust account*".
- 1.7 The involvement of Mr Power and Ms Robbins with the trust account became a major consideration for the CMC. However, it is very wrong to assume that at any relevant time it was a matter of significance for Mr Hickey.
- 1.8 The very purpose of returns is to fully disclose the donations of gifts in relation to candidates in elections. That is what is of significance always and was to Mr Hickey in June 2004.
- 1.9 Since the purpose of returns is to fully disclose donations in relation to an election, the legislation imposes an obligation on specified persons to fulfil that purpose. However, that is the means to an end. As Mr Hickey stated in response to questions as to why he did not tell Power and Robbins to put in a return, he simply did not turn his mind to it (T672). To Mr Hickey the concern was to fully disclose all donations through the trust account.

It is only in retrospect, in light of the focus of the Inquiry, that the person authorising the disbursement of funds and therefore the person making the full disclosure of donations in the return has gained such prominence.

- 1.10 That the focus and purpose of returns is to fully disclose the donations and the donors is clear from the form and a commonsense understanding of these matters.

However, the handbook published by the Department of Local Government and Planning, underscores the obvious:

“2.5.15 Gifts via Solicitors’ or Accountants’ Trust Accounts

Where a gift is made by a client through a solicitor’s/ accountant’s trust account, the return must include the name and address of the client who made the donation. The relationship between solicitor/accountant and client is that of agent and principal. For the purposes of the Act’s disclosure provisions, a gift paid by an agent at the direction of his/her principal is a gift made by the principal and not the agent.” (emphasis added).

Further, the “*Election Funding and Financial Disclosure Handbook*” published by the Electoral Commission of Queensland states relevantly:

“Identification of Real Donor

Care needs to be taken when you receive gifts to establish who is the real donor especially upon receipt of a gift from a firm of solicitors or accountants. ... (emphasis added).

The ‘person who made the gift’, and thus the person whose name and address is required to be disclosed in your return, is the client. In this context, a gift by way of cheque drawn on a trust account is prima facie a gift from an undisclosed principal and not the drawer of the cheque. ...”

It is unsurprising that Mr Hickey’s mind-set at the time was the importance of disclosure of all donations, rather than anything else.

- 1.11 Counsel Assisting refer to the written advice by Ms Anne Cunningham and state in the submissions that Mr Hickey’s evidence was that he did not see Ms Cunningham’s advice until he read through the Hickey Lawyers file prior to his appearance at the CMC. In fact,

Mr Hickey's evidence is that he did not see Ms Cunningham's advice until 23 October, that is, after his first appearance at the CMC. At no stage did Ms Cunningham discuss the matter with Mr Hickey. Further, and importantly, no-one gives evidence to suggest that Mr Hickey did see or know of that advice until the time that he said he did.

It should also be noted that the Cunningham advice was provided to the CMC at Mr Hickey's instruction upon his discovering it and, at the same time, at Mr Hickey's instruction, the Hickey Lawyers file was offered to the CMC. The file was taken by the CMC in response to this offer.

Mr Hickey's evidence is consistent with all other relevant evidence, oral and documentary. Mrs Wild gave evidence that Mr Hickey did not access the file. Most significantly, it is noted that in June 2004 Mr Hickey sought advice from "Shelley" as to when a return has to be submitted and the correct form to fill out. Shelley's memo dated 9 June 2004 in response to Mr Hickey's request forms part of Hickey Lawyers file. They are matters addressed in Ms Cunningham's advice in April. If Mr Hickey had been aware of the existence of Ms Cunningham's advice, he would have had no need to approach Shelley.

1.12 Counsel Assisting refer to a draft letter by Mr Barden addressed to Mr Hickey dated 28 June 2004. Counsel Assisting refer to Mr Barden stating that he was not sure that the letter was sent. However, at T1139 Mr Barden stated that the letter did not go. Further, Counsel Assisting failed to point out that the evidence otherwise shows that it was not received by Mr Hickey. The report from the facsimile machine at Hickey Lawyers disclosed that the document was not received (T2148).

2. **DOCUMENT PRODUCED BY HICKEY LAWYERS TO THE CMC IN APRIL 2005**

2.1 Counsel Assisting submit that a report under Section 49 of the *Crime and Misconduct Act* should be made with a view to an appropriate prosecuting authority considering whether prosecution proceedings are warranted against Mr Hickey on the basis that he gave the Commission a document containing information that he knew was false or misleading in a material particular contrary to Section 218(1) of the *Crime and Misconduct Act 2001*. Further, Counsel Assisting submit that a report go forward to the Legal Services Commission.

2.2 The reasoning of Counsel Assisting to justify their submissions ignores relevant exculpatory evidence, incorporates evidence not in any way admissible against Mr Hickey and attributes to conversations and correspondence a meaning that does not exist.

2.3 Telephone Conversation between Mr Docwra and Mr Hickey on 11 April 2005

2.3.1 The starting point in a consideration of whether it could be reasonably argued that Mr Hickey might have given to the CMC information that he knew was false or misleading, would be, logically, the request made of Mr Hickey for information. What was the focus? What did the CMC state was their interest or concern in respect of which the information was required? What was genuinely being sought by the CMC?

2.3.2 The request was made to Mr Hickey by Mr Docwra on behalf of the CMC in a telephone call with Mr Hickey on 11 April 2005. I attach Mr Docwra's file note of that conversation.

2.3.3 Mr Docwra's notes disclose the following salient features of the conversation:

- The CMC was currently assessing complaints made in relation to the disclosure of donations made in relation to the Gold Coast City Council election of March 2004.
- The CMC understood that Mr Hickey had administered the trust and Mr Hickey confirmed this.
- The CMC would like the co-operation of the trustee to obtain:
 - a copy of trust records indicating the terms of the trust, and
 - those disbursements made out of the trust in relation to the election. (emphasis added).
- Tony Hickey advised that he was not the trustee and only administered the trust in accordance with written instructions.
- Tony Hickey requested the CMC put its request in writing and suggested it be explained how the CMC could access the information.

Mr Hickey's uncontradicted evidence was that in the conversation of 11 April 2005 with Mr Docwra, the following exchange took place:

"... I think what she – well, my instruction to her was – and it's been summarised like this so I can refer to it – was to provide a list of money that has come in and money that's gone out, and that was it, and that to me seemed very important information after the conversation with Mr Docwra that – because I mentioned to him – I said, 'Well, I understood there was a return put in. That Barden put in a

return giving all donations'. Mr Docwra said, 'No, no, we want to know where the money went to', and I can understand that and I focussed on that issue immediately".
(T2144).

2.3.4 There can be only one fair and sensible understanding of the conversation. Having outlined that the CMC was considering complaints made in relation to disclosure of donations in the Gold Coast City Council election, the CMC requested:

- *"copy of trust records indicating the terms of the trust", and*
- *"those disbursements made out of the trust in relation to the election".*

Obviously, Mr Docwra needed the record of disbursements because the return put in by Mr Barden showed all the money received into the trust account but did not show where the money went.

2.3.5 To understand the CMC's request as anything other than a request for the terms of the trust and (especially since the complaints were said to be in respect of disclosure of donations and Mr Docwra stated that he wanted to know where the money went) all disbursements made from Hickey Lawyers trust account in relation to the election, could be only by lack of rational thought. Mr Docwra did not specify nor even mention the Lionel Barden trust in that conversation. The context of the conversation clearly shows that the CMC wanted to know the terms of any trust (and there were none) and all disbursements through the trust account in relation to the Gold Coast City Council election.

2.4 **Mr Hickey's Contemporaneous Note of 11 April 2005**

2.4.1 Mr Hickey's understanding of what was sought by the CMC is evidenced by Mr Hickey's contemporaneous note of the 11 April 2005 telephone conversation with Mr Docwra which forms part of Hickey Lawyers file:

"T/C to from Mark Docwra 3360 6374

Declaration

*"Disbursements →
Terms of →
Trust".*

The note picks up the exact words used by Mr Docwra to Mr Hickey and shows what the relevant request was.

The contemporaneous note to file is headed "*Lionel Barden*" and dated "11/4/2005" "*Lionel Barden*" was the file to which it had to go. That was the only existing relevant file.

2.5 The Letter from Mr Docwra to Mr Hickey dated 11 April 2005

2.5.1 In accordance with Mr Hickey's request, Mr Docwra forwarded a letter by facsimile transmission later on 11 April 2005.

The letter refers to the Lionel Barden trust. That in no way could be understood as somehow superseding the telephone conversation or altering the obvious intent of Mr Docwra's request earlier that day. Mr Docwra's request on behalf of the CMC was put in writing only at the request of Mr Hickey.

Counsel Assisting produced the letter of 11 April 2005 and have relied upon it as if it is the founding request by the CMC for information from Mr Hickey. It is not. The founding request for the provision of information is the telephone call earlier that day on 11 April 2005. The letter dated 11 April 2005 and the telephone conversation between Mr Docwra and Mr Hickey on 12 April 2005 must be understood in the context of the primary conversation which took place on 11 April 2005.

2.6 The Telephone Conversation between Mr Docwra and Mr Hickey on 12 April 2005

2.6.1 This phone call was a "*hurry up*" call following on from the telephone conversation and letter the day before. Mr Docwra was placing Mr Hickey under pressure to respond as quickly as possible.

2.6.2 This telephone conversation again evidences Mr Hickey's understanding of the CMC request. Importantly, Mr Hickey's understanding of the request is raised with Mr Docwra who agrees with him.

2.6.3 Mr Docwra's note states relevantly:

"...TH said he did not expect any difficulty in obtaining the authority and expected the CMC merely wanted to access the records in order to compare with candidate returns. MGD agreed."

2.6.4 In the context of what was spoken about in the telephone conversation the day before, the two men could be speaking about nothing other than that the CMC merely wanted to compare the disbursements from the trust account at Hickey Lawyers with candidate returns.

The disbursements would obviously show where the money went. In Mr Hickey's words, "*who received the funds*" (T696) or the campaign assistance? (see letter below).

2.7 The Letter from Mr Hickey to Mr Barden dated 13 April 2005

2.7.1 This letter again clearly evidences Mr Hickey's understanding of the CMC request for information:

"I would suggest that there should be no difficulty in producing the documentation, which is simply a record of our trust account transactions showing the parties to whom campaign assistance was provided.

As far as their request for a copy of the terms of the trust, the answer is that there is no trust document ...". (emphasis added).

2.8 The Covering Letter to Mr Docwra dated 13 April 2005

2.8.1 This letter picks up the formalities of Mr Docwra's letter of 11 April 2005. The only existing file was/is the Lionel Barden file. That file absorbed most of the material from the superseded Power/Robbins file.

2.8.2 Given what was, and what Mr Hickey understood was, the information required, it was of no moment that the information was provided under reference to the existing file.

2.8.3 There was no attempt to give an erroneous impression. Mr Hickey stated in evidence that he focussed on the issue of where the money went to. His contemporaneous note of 11 April 2005 and letter to Mr Barden of 13 April 2005 confirm that that is entirely true. It is absolutely ridiculous to suggest that he was somehow incorrect in doing so. That was precisely what Mr Docwra made clear was the interest of the CMC and was the gravamen of the request for information.

2.9 The Preparation of the Document for the CMC

2.9.1 Counsel Assisting submit:

"The end result of the actions taken by Wild at Hickey's request was that the trust statement provided to the CMC gave no indication at all that Power and Robbins had ever had any control over the funds held in Hickey's trust account."

Lest there be any confusion, Counsel Assisting's submission cannot be understood as suggesting that the manner in which the document was created by Mrs Wild was directed by Mr Hickey.

Counsel Assisting have not in any way suggested a lack of truthfulness by Mrs Wild. Nor could any such suggestion be reasonably made.

The evidence as to the mechanisms involved in the preparation of the document and the fact that it had a reference number missing, is in no way evidence against Mr Hickey.

2.9.2 Consistent with what the contemporaneous material shows was Mr Hickey's understanding of what the CMC was interested in and what was required, Mr Hickey asked Mrs Wild to the effect "*do a report and show everything that we received in and out of this file*" or "*everything in and out of our trust account*".

2.9.3 Importantly, there was absolutely no suggestion by Mr Hickey to Mrs Wild that in the preparation of the document she was to avoid any reference to Power and Robbins (T2122).

Mrs Wild was left to her own devices. In truth, the document could have come into existence in a form which showed the names Power and Robbins. It so happened that it did not. However, that was not by Mr Hickey's design nor involvement.

2.9.4 Clearly, Mr Hickey did not pay close attention to the document produced by Mrs Wild. Mr Hickey did not notice the date of June 2004 on the document. Indeed Mr Hickey did not appreciate that date until speaking to his solicitor, after his first appearance at the Inquiry. With respect, there was no reason why he ought pay close attention to the document. Whilst it was a document to go to the CMC, the task assigned seemed perfectly straightforward and assigned to a staff member who has worked competently for him for years. Mr Hickey is/was a busy practitioner and Mr Docwra had placed pressure on him to get the information to him as soon as possible. Clearly, given the context of the conversations with Mr Docwra, Mr Hickey believed that he was providing the information sought and had no need to turn his mind to whether or not the information could be somehow subsequently misconstrued.

2.9.5 Mr Hickey was examined about this topic at the Inquiry without any notice to him that he would be. The Attendance Notice to Mr Hickey clearly misled him as to what evidence he was to give at the Inquiry. The Notice called upon him to give evidence in respect of the terms of reference. Counsel Assisting had prepared the examination of Mr Hickey on this topic well before Mr Hickey appeared. His spontaneous responses on that occasion disclose

what little involvement in and knowledge of the creation of the document he had. Mr Hickey was under the impression that the bookkeepers had consolidated the entries to create the document and that his secretary would have asked the office manager to produce the statement. Clearly, Mr Hickey did not involve himself in any way and knew nothing about how it came into existence.

2.10 The CMC Notice to Discover to Mr Hickey dated 12 August 2005

2.10.1 In this notice the CMC requested for the first time of Mr Hickey information about Power and Robbins.

Mr Hickey unhesitatingly gave all relevant information.

Mr Hickey's response to the notice is inconsistent with any attitude of or attempt at secrecy in respect of Power and Robbins and their connection with the Hickey Lawyers trust account.

2.11 The File at Hickey Lawyers

2.11.1 The Lionel Barden file remained unaltered at Hickey Lawyers at all times. When Lionel Barden became the client, a new file opened, but most of the material from the superseded Power/Robbins file was transferred to it.

2.11.2 The file is and has always been peppered with documents making clear reference to Power and Robbins and their connection with Hickey Lawyers trust account. Without dwelling on the matter, the documents include, of course, Power and Robbins written authorities.

2.11.3 The existence of the file and its contents is clear evidence that Mr Hickey had no intention to mislead the CMC.

The file remained available at all times. The CMC could have asked for the file at any time. Mr Hickey at all relevant times was aware of this. Mr Docwra had even made reference to the CMC's coercive powers in the conversation of 12 April 2005.

To maintain their argument, Counsel Assisting must be suggesting that this reputable solicitor deliberately misled the CMC, knowingly accepting the extraordinary risk that the CMC would not ask for the file or material from it.

Mr Hickey had been informed by Mr Docwra to the effect that the investigation was in its early days. There was, of course, no suggestion to Mr Hickey that he would never be further

approached by the CMC for material from the file or the file itself. Indeed, by the 12 August 2005 notice, material from the file was sought by the CMC.

Indeed, even the superseded Power/Robbins file has remained in existence at Hickey Lawyers at all times.

2.12 Counsel Assisting's submission fails to refer to evidence favourable to Mr Hickey

2.12.1 Counsel Assisting's submission has made no reference to:

(a) **The conversation between Mr Docwra and Mr Hickey on 11 April 2005.** This conversation is the crucial, primary conversation in relation to the CMC's request for information from Mr Hickey. The letter of 11 April 2005 and the conversation between Mr Docwra and Mr Hickey on 12 April 2005 can be only sensibly considered in the context of what was said between Mr Docwra and Mr Hickey on 11 April 2005.

(b) **The notes of Mr Docwra's conversation with Mr Hickey on 11 April 2005.** These notes were not put into evidence and not referred to in Counsel Assisting's submission.

(c) **The contemporaneous note made by Mr Hickey on 11 April 2005 disclosing his understanding of the request.**

(d) **The letter from Mr Hickey to Mr Barden dated 13 April 2005 disclosing Mr Hickey's contemporaneous understanding of what was requested of him.**

2.12.2 All of this evidence is consistent with Mr Hickey's innocence and I respectfully ask that the Commission include a consideration of this material when reviewing Counsel Assisting's submission.

3. ANY REASON TO MISLEAD THE CMC

3.1 There remains no reason or motive why Mr Hickey would deliberately mislead the CMC as to Power/Robbins connection with the trust account. There is no, and could never be, any suggestion of wrong-doing by Hickey Lawyers in permitting the trust account to be used as it was.

3.2 Whilst Mr Hickey knew Mr Power, there is no suggestion of a friendship between them, close or otherwise. Similarly, there is no suggestion of any friendship with Mrs Robbins who passed away well before the request from the CMC in 2005.

4. OBVIOUS FUTILITY

4.1 I invite the Commission to also look at this matter from the point of view of the absolute futility of an attempt to mislead the CMC in the manner suggested, and such futility being so very obvious to Mr Hickey.

4.2 The suggested evidence of secrecy by others is not evidence against Mr Hickey.

4.2.1 Mr Hickey did not conduct the activities of the file in secrecy at all. As submitted earlier, the file is full of references to the involvement of Power and Robbins. Further, all of Mr Hickey's dealings and discussions with potential donors and donors were anything but secret as to the involvement of Power and Robbins with the Hickey Lawyers trust account. There is a very substantial body of evidence which clearly shows that Mr Hickey at all times knew that many people were aware of the connection of Power and Robbins with the trust account.

Notwithstanding these incontrovertible circumstances, Counsel Assisting submit that Mr Hickey nonetheless took the enormous risk to himself and his career to mislead the CMC about a matter which could in no way benefit him or anyone close to him.

With respect, Counsel Assisting's argument against Mr Hickey is entirely without merit.

4.2.2 Mr Hickey had to have been aware that at the very least the following groups of persons and companies knew or ought to have known of the connection between Power and Robbins and Hickey Lawyers trust account:

(a) **Any number of staff members at Hickey Lawyers**, not only Mrs Wild would have been aware of the file and the involvement of Power and Robbins;

(b) **Potential donors approached by Mr Hickey**. Mr Hickey approached potential donors and his evidence is, and it is supported by the evidence of some of the donors, that his approaches included informing them of the involvement Powers and Robbins (T627). That is, it was not only donors who knew of the connection, but people who, for whatever reason, refused to donate.

(c) **Potential donors approached by Mr Power**. Mr Hickey was at all times aware that Mr Power was approaching potential donors and consequently it could be expected that those persons would be aware of Mr Power's involvement with the trust account and campaign.

- (d) **Potential donors approached by Mr Ray.** Mr Hickey was at all times aware that Mr Ray was approaching potential donors.

Mr Hickey had sent an email to Mr Ray in December 2003 which included the following:

“All donations should be made by way of a cheque to our trust account, that should be accompanied by an instruction from the appropriate donating party, that it is a contribution to the Councillor David Power and Councillor Sue Robbins, Gold Coast City Council, Election Campaign Fund”. (T625)

Mr Hickey would have had an expectation that Mr Ray was informing potential donors of the involvement of Power and Robbins with the trust account.

- (e) **The actual donors.** During the period that the file was in the name of Power and Robbins, the donors who did give funds were provided with a Hickey Lawyers receipt showing:

*“Sue Robbins Councillor and David Power Councillor\
Gold Coast City Council Election Campaign Fund”.*

The following is a list of these donors:

- Great Southern Land
- Ray Group
- Gregory Phillips
- Sunland Group
- Phil Sullivan
- Fish Developments
- Devine Ltd.
- Rapcivic Contractors
- Roche Group.

- (f) **The candidates and/or those working for their campaigns** during the period that the file was in the name of Power and Robbins. Rowe, Betts, Pforr and Scott all received donations from the trust account. The disbursements were accompanied by a letter or email stating as follows:

“As directed by Councillor Robbins and Councillor Power, please find enclosed our trust account cheque made payable to you in the sum of ...”.

(g) Quadrant, including staff members.

4.2.3 If one looks at this matter from Mr Hickey's perspective, it is clear that Mr Hickey must have known that many people knew of the connection between Power and Robbins and the Hickey Lawyers campaign fund. Further, Mr Hickey knew that the CMC were investigating candidate returns. If Mr Hickey were deliberately misleading the CMC, he must have done so knowing that his offence could and should be discovered almost immediately.

For example, if the CMC interviewed any of the candidates or any of the donors, the information could easily be given, or, if the CMC asked the candidates and donors for their receipts and correspondence relating to the donations, the involvement of Power and Robbins must be immediately discovered. Mr Hickey must have known that if the CMC had approached him, it was inevitable that the CMC would be approaching others for information and/or documents.

4.2.4 .Counsel Assisting have made the submission that having received the information from Hickey Lawyers in April 2005, if the CMC's preliminary investigation had not been taken further, the CMC would not have known that Power and Robbins had ever had any control over the funds in Hickey Lawyers trust account (p. 59).

This submission, with respect, is a complete nonsense.

4.2.5 The "*preliminary investigation*", whatever that means, at least had to mean an investigation of which candidates received the benefit of funds through the trust account. One knows that this is so because Mr Docwra said that that was why the information was required.

4.2.6 Consequently, when Mr Docwra, or anyone else in the CMC, see in the document from Hickey Lawyers disbursements of \$75,300.00 to Quadrant for "*campaign assistance*", the very next step in the investigation must be to obtain from Quadrant the invoices which relate to those services. Obviously, the invoices will immediately disclose on whose behalf campaign assistance has been provided by Quadrant.

4.2.7 As was inevitable, immediately upon receiving the information from Hickey Lawyers that Quadrant had been paid funds for campaign assistance, the CMC requested tax invoices from Quadrant in respect of those funds. Mr Docwra emailed Quadrant on 15 April 2005 with the request.

On 19 April 2005 Quadrant furnished to the CMC (received 20 April 2005) all of the tax invoices and statements.

The very first 6 documents in the bundle furnished to the CMC disclosed the information which Counsel Assisting submit only came to light because preliminary investigations were taken “*further*”. In truth, Mr Docwra and the CMC were given the information as early as 20 April 2005 consequent upon a fundamental and inevitable request.

4.2.8 The suggestion by Counsel Assisting that but for Mr Morgan being overseas the relevant invoices may not have been produced, is entirely irrelevant to Mr Hickey’s position. Mr Hickey could have had no expectation other than that the relevant invoices would be produced.

4.2.9 Mr Hickey had to have been aware that the Quadrant invoices would show Power and Robbins were connected with Hickey Lawyers trust account. Mr Hickey had received the invoices. They had been directed to Mr Hickey for payment through the trust account. The superseded file still holds copies of those invoices and other statements referencing Power and Robbins.

4.2.10 Mr Hickey’s evidence at T2154 is as follows:

“Q. Given that and given it’s the CMC who’s making the request and you send the response on the 13th April did you do anything to contact any persons whom you’ve been dealing with, for example the donors to whom you’ve spoken to or the persons to whom you’ve sent funds, any of the candidates, to speak to them and say, ‘Whatever you do don’t mention Power and Robbins’ or anything like that?”

A. Not at all, not at all.

Q. Or anyone at Quadrant?”

A. Not at all. I mean, all the records are there, you can’t hide it.”

4.2.11 To give any weight to Counsel Assisting’s submission against Mr Hickey, one must believe that Mr Hickey deliberately misled the CMC knowing that discovery of his offence, and the potential ruination of his career, was virtually assured.

5. RE SOME SPECIFIC SUBMISSIONS BY COUNSEL ASSISTING

5.1 Counsel Assisting seem to try to get some traction for their argument by referring to Mr Hickey not contacting Power and Robbins about the terms of the trust. Given that it was Mr Barden who had taken over responsibility of the trust account from Power and Robbins, it would be extraordinary that Mr Barden would not know if any existed. Mr Hickey, who administered the file, knew of none.

5.2 At page 60 the submission of Counsel Assisting seem to suggest that Mr Docwra had made a request “*generally*” about the trust. If that is the submission of Counsel Assisting, it is entirely inaccurate and attributes to conversations and correspondence a meaning that does not exist. That Mr Docwra was seeking a copy of the terms of the trust or advice about the terms of the trust, and not advice generally about the trust, is overwhelmingly obvious from the relevant conversations between he and Mr Hickey and their correspondence. That Mr Hickey understood what Mr Docwra wanted is equally overwhelmingly obvious from the relevant conversations and correspondence, including the correspondence with Mr Barden.

Mr Docwra clearly thought that Mr Hickey had been responsive to the request for advice about the terms of the trust. Mr Docwra did not write back to Mr Hickey asking for any further information, general or particular, about any trust or the trust account.

It is noted that the request to Quadrant for information on 15 April 2005 contained the type of detailed request that Counsel Assisting are wrongly attributing to the request given to Mr Hickey.

5.3 Counsel Assisting have overlooked evidence fundamentally destructive of their argument. The evidence discloses that Mr Docwra did not have any interest in knowing “*the duration and details of the Lionel Barden account*”. Clearly, it was not a matter material to him at the time of the request. If it were, he would have asked for such information in any of the three contacts which he had with Mr Hickey, or at any other time. As at the phone conversation on 11 April 2005, Mr Docwra knew that Mr Hickey administered the trust “*in accordance with written instructions*”. Mr Docwra showed no interest in knowing who gave written instructions. In this regard, one can compare the request made of Quadrant.

Mr Docwra and the CMC had displayed to Mr Hickey no interest in knowing when and how the trust was set up, who contacted Mr Hickey to set it up, the duration of the trust, who had authority to provide instructions or any other details about the instigation and control of the trust.

Having been informed that there were no trust terms, not one further question was asked by Mr Docwra, obviously satisfied that Mr Hickey had provided the information required, including all disbursements to enable him to see where the campaign funds went.

It is noted that even after receipt of the material from Quadrant on 20 April 2005, Mr Docwra did not seek any additional information from Mr Hickey.

5.4 Counsel Assisting submit (p. 62):

“Hickey was aware of the Commission’s purpose being to compare the information provided by him with candidate returns. In these circumstances, it is a reasonable inference that he knew the information contained in the document was likely to mislead the Commission on significant matters, namely, the duration and details of the Lionel Barden account”.

Mr Hickey was aware that the Commission’s purpose was to compare the disbursements through the trust account with candidate returns. The submission that from that knowledge Mr Hickey knew that the information contained in the document was likely to mislead the Commission as to the duration and details of the Lionel Barden account reflects a stunning leap in logic and is a submission totally without merit.

5.5 The submission by Counsel Assisting must include the extraordinary proposition that, notwithstanding what Mr Docwra did specifically request of him and what Mr Docwra stated was the purpose of the investigation, Mr Hickey ought to have been aware that sometime in the future the CMC may decide to investigate such additional matters including the part played by Power and Robbins in connection with the trust account. With respect, Counsel Assisting’s submission is bad in logic and law.

6. CONCLUSION

6.1 In this matter, the submission of Counsel Assisting included “... *It is difficult to accept that any reasonable person, let alone a solicitor of Hickey’s experience, could genuinely believe that his communications with the Commission indicated it wanted a statement that presented an erroneous impression of the Barden account”.*

Mr Hickey’s unequivocal evidence is to the effect that he did not know that he did present an erroneous impression to the CMC. In the context of what was discussed with Mr Docwra, the focus was the disclosure of all disbursements. Mr Hickey did not turn his mind to the idea that showing all ins and outs of the trust account under the reference to Lionel

Barden trust, in the context of what Mr Docwra wanted and Mr Docwra's stated purpose for which the disbursements were required, could possibly mislead Mr Docwra or the CMC.

It is submitted that upon a review of the whole of the evidence and the context in which the information was given, the evidence does not establish in any way that the CMC could have been misled in a material particular. However, whether it could have been or not, it is submitted that a review of the whole of the evidence, not only fails to show that Mr Hickey deliberately misled Mr Docwra or the CMC, but shows that he did not. If the CMC was or could have been misled by the form in which the information was given, it was nonetheless given in good faith and without an intent to mislead.

6.2 No doubt the Commission's investigations otherwise would have revealed that Mr Hickey enjoys an excellent reputation as a person of good character. I invite the Commission to take this into account in the assessment of the evidence, impacting, as character evidence does, on the unlikelihood of Mr Hickey setting out to mislead the CMC.

6.3 In this matter, the tenor of Counsel Assisting's submissions is to the effect that any reasonable person, let alone an experienced lawyer, could not fail to turn the mind to the possibility that the information could mislead.

Counsel Assisting is looking at this matter with the benefit of hindsight and then putting forward what they submit must have occurred to Mr Hickey's mind at the time.

With respect, even if it were to be concluded that Mr Hickey ought to have turned his mind to the possibility that the form in which the information was given, could mislead (and this is not accepted), it does not follow that he did turn his mind to it.

Human nature is such that innocent oversights are made. When incidents are looked at by others subsequently, especially by persons scrutinizing them with a suspicious eye, there is a tendency to think the worst. For example, interested observers may think the worst of the failure of the CMC to produce to the Inquiry Mr Docwra's notes of 11 April 2005 – which notes are clearly relevant to Mr Hickey and the Inquiry, but such failure was undoubtedly an innocent oversight, Counsel Assisting not turning their minds sufficiently to a matter when they ought to have.

6.4 For the reasons set out above, it is respectfully submitted that it would be unwarranted and grossly unfair to Mr Hickey for the Commission to report adversely against him.

- 6.5 If I have failed to address any pertinent matter, it is by oversight, and I would be pleased to provide additional submissions as required.
- 6.6 I apologise for the delay in providing these submissions.

T.D. MARTIN SC

6 February 2006

ACTIVITY REGISTER REPORT
(MI-04-1118)

MGD 34

Date	Type	Contactee Type	Person Contacted	Officer	Comment
11-APR-05	Telephone	Other	Anthony Hickey of Hickey Lawyers (Gold Coast) Not Unit Of Pa	Mark DOCWRA	At about 1.30pm, MGD telephoned Mr Hickey (5574 1000) and advised he was a legal officer with Receipts and Assessments Unit currently assessing complaints made in relation to disclosure of donations made in relation to GCCC election of March 2004. CMC undertook Mr Hickey had administered the trust. Mr Hickey (TH) confirmed, MGD advised CMC would like co-operation of the trustee to obtain a copy of trust records indicating the terms of the trust and those disbursements made out of the trust in relation to the election. TH advised he was not the trustee and only administered the trust in accordance with written instructions. TH requested the CMC put its request in writing and suggested it be explained how the CMC could access this information. MGD noted.