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## Transcript of Proceedings

CRIME AND MISCONDUCT COMMISSION

MR R NEEDHAN, Chairman

No 5 of 2005

PUBLIC HEARING INTO GOLD COAST  
CITY COUNCIL

BRISBANE

..24/11/2005

..DAY 23

**WARNING:** The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

THE HEARING RESUMED AT 2.35 P.M.

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MR MULHOLLAND: I call Steven Kenneth Hodgson.

STEVEN KENNETH HODGSON, SWORN AND EXAMINED:

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MR MULHOLLAND: Is your full name Steven Kenneth Hodgson?--  
Yes.

And what is your occupation, Mr Hodgson?-- I'm the general  
manager of Hickey Lawyers.

Now, were you served with an attendance notice in relation to  
today's proceedings?-- Yes.

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Would you have a look at this document please. Is that the  
attendance notice?-- Yes.

I tender that, Mr Chairman?-- It's not today's but - it's  
yesterday's.

Yes.

CHAIRMAN: That will be Exhibit 292.

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ADMITTED AND MARKED "EXHIBIT 292"

MR MULHOLLAND: Now, Mr Hodgson, did you undergo an interview  
with Commission officers on the 27th of October 2005?-- I did.

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That was tape-recorded?-- Yes.

Did you see later a transcript of that tape-recorded  
interview?-- Yes.

Would you have a look at this document please. Is that the  
transcript that you perused?-- Yes.

Was it an accurate record of that interview so far as you  
could tell?-- No, there is one error. On page 8.

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Is this an error in transcription?-- I believe so, yes.

Yes?-- The-----

What line is it?-- Sorry, I assumed it was page 8, I'm just  
trying to find it. They've incorrectly put the name - here it  
is, sorry, page 7 - it's line 241.

Yes?-- It says, "I think it was probably Brian Rowe."

Yes?-- It should be Brian Ray.

Right.

CHAIRMAN: Sorry, it should be?

MR MULHOLLAND: Brian Ray?-- Brian Ray, R-A-Y.

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CHAIRMAN: R-A-Y, thank you.

MR MULHOLLAND: Yes, is that the only one?-- Yes, there's an error in my address but I don't think we'll worry about that.

All right. I tender that, Mr Chairman.

CHAIRMAN: That's Exhibit 293.

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ADMITTED AND MARKED "EXHIBIT 293"

MR MULHOLLAND: Are the contents of that document in so far as your answers are concerned, are they all true and correct?-- Yes.

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Your best recollection?-- Best recollection, yes.

Nothing to add to what you said in that document?-- No.

Do you have a copy of the transcript?-- No.

I'll show you a copy of the transcript. Can I ask you to go please to page 14 and starting on line 517 you there are speaking with what - speaking about what Sandy Wild, Mr Hickey's PA has done; is that correct?-- correct.

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And you say, "What Sandy has done, she's amalgamated two trust statements into one which is a common practice in our firm where we have what I'd probably call tandem matters where one matter has been changed into another matter and we want to see a clear audit trail of what has happened over the whole period. Without actually putting it into two we put it into one so it's very clear what the transactions were, what the audit trail was. That's how we would do it. If we have a situation where a matter for some reason has changed in the middle because the client's rung up and changed the name of the matter or the client or whatever we would for simplicity too. So that the client would understand what was going on we would create one trust account statement with a clear flowing audit trail. That's normal practice"?-- That practice-----

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And then you go on - just hold on for a moment - then you go on, on the next page to repeat essentially what you've said on

that page saying that you're trying to show a clear audit trail. Now, what I wanted to ask you is, Mr Hodgson, do you first of all adhere to what you said there?-- I do.

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You know that we are speaking of the composite trust statement that was sent to the Commission, don't you?-- Yes.

And you know that the Commission had been asking about a Lionel Barden trust document?-- Yes.

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So you say that in your experience what happened here had happened on other occasions?-- Yes.

Where following a request and where you had two final trust statements - that is to say in relation to the Power and Robbins control of the account through to the 3rd - 4th of March 2004 - there was a statement which included all of the transactions whilst it was named Power and Robbins account; you're aware of that?-- Yes.

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That statement was dated the 8th of June, that was on the file, and there was a document immediately after it which was a trust statement for Lionel Barden and included all of the entries from that date, the 4th of March, and all of the entries which occurred in relation to the account up until the 8th of June. Now, you were aware of that, were you?-- I was aware of that, yes.

And so that when Sandra Wild went to the file and located those two trust statements she used the information from them and by scanning one of those two statements produced a composite document. You're aware of that?-- I'm aware of that.

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And you say that to do that and then supply that information to some other third party was standard practice?-- In that - in a situation where we have those tandem files it would be standard practice.

Standard practice?-- We don't have - it doesn't happen very often but that's how I would produce this if I was doing or one of the other girls was doing it, came - went to accounts, that's how they'd do it, they would - yes.

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So if the Commission had come to you and not to Mr Hickey and asked for documentation in relation to Lionel Barden account you'd produce a document which also included entries from the Power and Robbins account. Is that what you'd do?-- If I was given a letter asking for exactly that I would probably - yeah, no, the letter you've just described to me, if it just related to Lionel Barden, yeah, I would give both, I would give both, yes.

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On the one composite statement?-- Yes, yes.

Rather than providing to the Commission the two trust statements, one for Power and Robbins and one for Lionel Barden, so that the Commission was accurately informed of the

entries that related to the Power and Robbins account?-- Yes. I'd still do - I'll still do that, yes.

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I see. Can you not see that by doing that you are providing - you are representing to the Commission something which is false? Can you not see that, Mr Hodgson?-- No, no, I - are you giving me a scenario?

Look, you - look, you know very well the situation that I'm putting to you. You've had all the time in the world, and no doubt you've perused the files and you know precisely what occurred and you've been questioned fully. You know what - the question that I'm putting. I'm putting to you that by doing that you would provide a false representation to the Commission of that account because Lionel Barden had nothing to do with the account at the time that the entries in relation to Power and Robbins occurred?-- If I knew all of the detail, you're saying I know all the detail, fine, I would then have the letter that requested that information, and it simply asked for the expenditure. That's all I could see.

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It was a reference to Lionel Barden. Did you really think that the Commission was interested in receiving inaccurate information in relation to the operation of the Lionel Barden account? Did you really think that?-- I wasn't - I wasn't involved in preparing the document.

Well, I'm asking you these questions only because of what you have said in this interview?-- Yeah.

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And that's why I'm asking you. You're portraying what occurred here as something that was, as it were, standard practice within the firm. That's what you're trying to portray in those answers?-- I was talking about how-----

Hold on, wait until I finish?-- I'm sorry.

That is what you were trying to portray in those answers to Commission investigators, isn't it?-- All I was trying to - what I told the investigators, Sandy prepared a statement. They asked me would I prepare it that way and I said yes, I would. I wasn't asked about the scenario in relation to the CMC.

40

You weren't asked. But you knew what had occurred on this occasion? You see, what I'm suggesting-----?-- No. What I'm saying is that if we were preparing a statement in relation to a situation with two files we would prepare a statement as we've done it in the composite form.

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How about what - so where you had - you know, the trouble that Sandra Wild went to in order to prepare this composite document, don't you?-- Yep.

You had two trust statements sitting on the file which together contained all of the entries and accurately what had occurred in relation to each account sitting there on the file?-- Yeah.

Why, if you were not confronted with the situation where the Commission was asking for this information you would not have simply provided copies of those two statements?-- That wasn't what was asked for.

All right. And by the way, Sandra Wild says that this - what happened on this occasion had never occurred previously in her experience?-- Never occurred to Sandy.

Well, you give me an instance where you have had done what you did on this occasion in some other matter?-- I've - I've been in this law firm for over 20 years and we - I probably haven't done one for 12 months. I don't prepare statements, quite frankly, that's no longer my role, but 10 years ago I would have done-----

Ten-----?-- We don't have this situation occurring all the time. It may happen once a year where a file - where two files have been created and we could simply a description of what happened on the file, we have combined those statements.

Did you not - did it not - you were aware that this information was going out to the Commission in this form, were you?-- No, I wasn't.

You weren't?-- No.

You see, this document did not contain the debit entry in relation to the last entry in relation to Power and Robbins?-- Yep.

Or the credit first entry in relation to Barden. They were manually excised?-- Yes.

Were you aware of that?-- That's - I'm aware of it now, but if I was doing a composite statement, that's how I would have done it.

And it had - if you were doing a composite statement, I'm asking you to tell us of any other comparable case where this had occurred so that we can assess your claim that this was standard practice. Give us an instance?-- Where - where the matter name may have changed during the process of a conveyance, whatever, a commercial transaction, to simplify the exact trust - to give it a clear trust account about what happened on that matter - because the matter only changed because there was a detailed change in the matter or the client, we would send out one statement to make it as simple and as clear as possible as to what transactions occurred over the whole matters.

CHAIRMAN: Mr Hodgson, I can understand that, but in a case like that, say if it was in the Ray Group, all under the control of Mr Ray, if there's a name change of the company or something on the way through I can understand exactly what you're saying-----?-- Yep.

-----as being the normal practice, but are you - and I don't think you are - attempting to say that it is normal practice if you are asked by a law enforcement authority to provide details of a trust account for the client, Lionel Barden, for you to include then in the one trust document that is - trust ledger document that is sent back to include also entries that do not relate to Mr Barden at all, that relate to different clients, namely Power and Robbins. Now, you wouldn't suggest that would be normal practice for you to send off in those circumstances such a document to a law enforcement agency?-- I - I am talking about practice within our practice, when we prepare a composite statement; that's how we would do it.

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As I said, I can understand that, if it's safer to-----?-- I'm not talking about the CMC-----

No?-- No, all right.

All right. So you're not trying to say that what occurred in this case is normal practice, you're talking about a different practice?-- I've never seen that scenario before. No.

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No, okay. Thank you.

MR MULHOLLAND: Thank you.

CHAIRMAN: Have you any questions?

MR NYST: No, thank you.

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MR MARTIN: When you say you've never seen that scenario before, are you saying that you've never been requested by the CMC to produce a report or a record of expenditure?-- Correct.

You of course prior to your interview were never shown the letter wherein the CMC's request was made; is that correct?-- That's correct.

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But the CMC requested to be provided with any records of expenditures made from the trust, and the trust being referred to is the Lionel Barden Trust; would you include - well, tell us, what would you include in the document that you forwarded?-- Just the - what money was expended.

Well, what moneys was expended - because they only asked for expenditures, yes - but would you include the moneys expended whilst it was the Power Robbins Trust and then the Lionel Barden Trust or only the one?-- I would put both in there because it all relates to the election campaign funds, I assume.

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Thank you.

CHAIRMAN: Why would you put both in there? You asked for the Lionel Barden funds. Why would you put records in there when

Mr Lionel Barden had absolutely no connection with them? You would have had no authority to order any disbursements of money from it over the period when Power and Robbins were there. Why would you include the records for a time when he was totally disconnected from it?-- No, I understood the request was for anything related to funds collected for the election campaign.

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No, no. No, the funds - it was exactly as Mr Martin told you. It was in relation to the Lionel Barden Trust, to provide the details of the expenditure of money from the Lionel Barden Trust?-- To be spot on, yeah, I guess that would be probably a way you would progress it.

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I could understand that you might say, well, the Lionel Barden Trust existed but not - the trust existed but not as Lionel Barden at an earlier time and therefore we - to enable the CMC to know precisely what was happening we'll provide them with details of the whole lot-----?-- Correct.

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-----but to do that, to provide proper details so that the CMC knew exactly what was going on and were not misled, I would suggest the appropriate way would have been to provide details exactly as it was in your records and perhaps a covering letter to say that it started off this way and changed on this date to be administered by Mr Barden?-- It would appear that we've given too much information.

Well, I would - I would think it was too much for Mr Barden and not enough for the totality of the account?-- I think we were asked to give all of the information in relation to expenditure on the election; that's what we did.

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Anyway, yes, but it is somewhat speculative with this witness because he was never asked-----?-- I was not involved.

-----so - but I'm not stopping you asking more questions.

MR MARTIN: Well - no. No, no, what was your last response there?-- I've forgotten what my last response was.

40

You were saying that you understood from the request that they were after the expenditure relating to the trust, relating to the campaign or the-----?-- Yes. What I assumed from the letter was that they were looking for all of the transactions, all of the expenditure relating to the election and that's why we gave all that information.

CHAIRMAN: Of course, because your firm never - in the return, the election gifts return that was put in never disclosed Power and Robbins so the CMC would have not known to have asked for Power and Robbins?-- I know nothing.

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And by providing the information you did you maintain that factual situation.

MR MARTIN: Well, you and I will just get into an argument. It's no use bombarding him with this.

CHAIRMAN: I agree entirely, Mr Martin. This witness wasn't involved, it's nothing to do with you, is it?-- No.

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You're excused, Mr Martin?-- Thank you.

WITNESS EXCUSED

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MR MULHOLLAND: I call Anne Cunningham.

CHAIRMAN: Is there some exhibit that relates to this witness, Mr Mulholland?

MR MULHOLLAND: Yes, 288.

CHAIRMAN: 288. Yes.

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ANNE CUNNINGHAM, SWORN AND EXAMINED:

MR MULHOLLAND: Is your full name Anne Cunningham?-- Yes, it is.

And have you been served with an attendance notice in relation to today's hearing?-- Yes, I have.

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Would you have a look at this document, please?-- Thank you.

Is that the attendance notice?-- Yes, it is.

Thank you. I tender that, Mr Chairman.

CHAIRMAN: That's Exhibit 294.

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ADMITTED AND MARKED "EXHIBIT 294"

MR MULHOLLAND: Now were you interviewed by Commission staff in relation to this matter?-- I was.

And that was on the 3rd November 2005?-- Yes.

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Did you subsequently see a transcript of the tape recorded interview?-- Yes.

It was a telephone conversation, is that correct?-- No, they actually attended-----

And so you've checked the transcript. Is there any error in the transcript?-- None other than typos and things, no.

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All right. Well, have a look at this document, please?-- Thank you.

Is that the transcript?-- Yes, it is.

I tender that.

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CHAIRMAN: Exhibit 295.

ADMITTED AND MARKED "EXHIBIT 295"

MR MULHOLLAND: Thank you. Now, I'd ask you to have a look, please, at Exhibit 288, which is the file - this is the Lionel Barden file - and if you go to the section of that file which contains your advices of the 16th and the 20th April 2004?-- Yes.

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It's at the front in a separate-----Yes, I've found them both.

You've got it there?-- Yes.

And if you go through the documentation at that point you will see that there is an email at the back of that section. Have you found them?-- No, not yet.

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It's a-----?-- 15th April?

That's the one?-- Right.

Yes. Emails of the 15th April. Now, I just have some questions in relation to this and you'll need to refer to the file. I take it you don't have any copies?-- No, not with me.

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Now, did you receive an email from Mr Monaghan of the 15th April - this is at 2.29 p.m. requesting you to examine section 400 and - it said section 460 - it said section 460 of the Local Government Act. Do you see that?-- Yes.

And you found out in fact it was 430 that you were intended to look at?-- That's correct, yes.

You were being asked to examine section 430 to see whether the firm needed to make a disclosure about payments out of its trust account?-- That's right. Yes.

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And did you become aware of the email that had started that inquiry from Mr Monaghan, or that request from Mr Monaghan, namely an email received at 9.15 a.m. or sent at 9.15 a.m. the same day from Mr Welch through his PA to Steven Hodgson, Mr Hickey - that's Anthony Hickey and Bradley Scale, and with copies to two other members of the firm?-- I don't actually

recall seeing it, but it must have been there on the bottom of my email that I received, yes.

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Well, if you look at that email, which as I say had commenced the inquiry, it states "I received a call from David Montgomery, Council Solicitor at about 4.45 p.m. on the 14th April 2004." David Montgomery, that's the Council's solicitor. "He advised that the conversation could be off the record or on the record, he didn't really care, he was actually looking to speak to Brad but I took the call anyway." Now that was clearly a reference to Mr Welch?-- I don't know. I mean, I really don't recall reading that.

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Well, just - even if you weren't aware-----?-- All right.

-----of the email, I'm interested in the content of the email?-- Right, okay.

And the email goes on, "He said that it was more a courtesy call to let us know that he has recently given some advice to the Mayor and the CEO about third parties providing gifts to candidates at a recent local government elections. He said that we may have already considered this, but if we haven't perhaps we should turn our mind to section 430 of the Local Government Act and the obligation on third parties to file a return. He didn't express an opinion as to whether it applied to Hickey Lawyers and our involvement, he just wanted to let us know that he had looked at it and that it may be prudent for us to have a look at it. I have no idea what he was getting at" says Mr Welch. And then he asked, "Tony and Steve, you might want to have a look at this more closely, perhaps you can let us know at the next partners' meeting if there are any issues we need to look at." Did you become aware, even if you weren't aware of the actual email, of the content of that email, that there had been any inquiry or there had been a discussion with someone from the council?-- I can't recall being aware of it, no. I obviously could have read down at the time, but I don't remember.

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All right. You say in your interview with the Commission that you assume that you went into Mr Monaghan's office and got files and probably sat down and had a talk. This is at pages 5 to 7?-- Yes, that's correct.

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All right. That's your recollection of what happened. Now, the advices that you have turned to were dated the 16th and the 20th of April, that is the day following the afternoon when you were asked to look at this question. Is that right?-- Yes.

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Can you go first of all to the advice of the 16th. Now as I understand what you say in the interview is that this first advice was a draft or you believe that it was a draft. Is that correct?-- That's correct.

And why do you say that?-- Well, both documents have got the same ID number on them and therefore the one on the 16th must have been upgraded to become one on the 20th.

Right?-- And I was surprised that there was even a draft that existed. I usually just sort of draft them up and throw them away.

Well, let's go to - when I have said that they are advices, in fact the one of the 16th of April is headed Memorandum To File, with the date, Re Lodgment of a Return for Making a Gift under the Local Government Act Section 430, and you say, "The question is whether a donor to a local government - a local council candidate's campaign must lodge a form under section 430 of the Local Government Act? The short answer is yes. It is the Local Government election gifts form, it's known as a return." And so on. Now, you - in your - in this first - or in this draft, under Return, under the heading Return, it says, "It was a difficult form to locate and I finally got one from the council. It must be completed and signed by Lionel Barden as trustee of his trust. If more than one trustee then all of them." And so on. Correct?-- Yes.

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Then under Solicitors Trust Accounts as a heading, you say, "Gifts from solicitors' trust accounts must include the name and address of the client who made the donation. Solicitors are deemed to be an agent and fortunately not important enough to be compelled to put our name on the firm."?-- Form.

"On the form." That was a joke, was it?-- I think so.

Right. Well, any rate, your researches had revealed to you that the solicitor in this situation is the agent. Is that right?-- Yes.

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And you were satisfied of that. You go on to say, "Interestingly," I'm not reading all of it, I'm just picking bits of it, "Interestingly there is no provision in the return to provide the name of the candidates who receive the money although the candidates themselves must file returns disclosing all donations made to them." And then you say that you have a handbook. Did you secure that from the council?-- I believe so, I'm not sure, yes.

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And then you say, "When the return is completed it is to be sent to the GCCC CEO," and so on. Now, did you make notes of the researches that you conducted?-- I usually do, yes.

Well, are they there? Can you get the notes?-- I believe I was shown three pages of handwritten notes, that would be when I was interviewed.

Right?-- I'm not sure where they are on the file.

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Well, just keep going backwards towards the e-mails, see if you can locate the-----?-- Yes, they're blue. There's one dated the 16th of April.

16th of April?-- Mmm-hmm.

Yes, and is there anything that you can say from that as to what you did?-- It's just-----

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Is that all your handwriting?-- Yes, it is.

Yes, so you - did you speak to someone from the council?-- Yes, I did.

Who did you speak to?-- Well, from my advice I think it was Mr Davis.

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All right. Any rate, you set out there what you - what you did and is there also an entry you made in a file note for the 15th. Is that yours?-- I don't know, it's got 3, 6 - yes, I've got it 15.

As I say it - of course, chronologically it starts at the back of the file?-- Mmm-hmm.

Do you see that?-- Yes.

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And you ask the question there, "Who must lodge - client or Hickeys?" and you have noted, "Lionel Barden Trust Account 'Common Sense Campaign Fund' Sue Robbins and David Power, GCCC election campaign"?-- Yes.

Now you've got that from the files, have you?-- Yes, I did.

So when you - you had obtained that file and the other one relating to Power and Robbins from Mr Monaghan?-- Yes, I did.

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Now, in this what you have described as a draft advice, under the heading, "Whether to disclose that the name of the trust has changed," you say this. "I noticed that the name of the trust changed from the Gold Coast City Council Campaign Fund to its present name. While it was GCCC Campaign Fund we paid out funds to councillors," incorrectly spelt. Anyway they're the city councillors that you're speaking about?-- Yes.

"Therefore they have to be disclosed in the return." So, that's a reference to Power and Robbins?-- Yes, that's right.

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We'll note in both of these advices that their names are not mentioned. Is there any reason for that?-- I don't know. I don't remember, I don't think there was any reason not to.

Mr Barden's name was mentioned. Any rate, you say there's no reason for it. It goes on, "Should we disclose the different name on the return." What's the different name that you're referring to?-- Well, I - it was probably the name of the first trust - two trustees, Power and Robbins.

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Yes. "At the moment I have shown the donations but included them in the new name." What are you referring to there?-- Well, I assume the new name would have been the name that the file was changed into, which was Lionel Barden.

Now, we know that Lionel Barden completed a return which was dated the 16th of June 2004 and it was lodged with the council on or about the 6th of July 2004. Were you at this point preparing a draft return?-- I'm not sure at what point I did it but at some point over those few days I did hand write - start hand writing one out to assist whoever was going to fill it in.

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Well, it doesn't seem to be on the file. Would you - would that have been discarded at some stage?-- I - I really don't know.

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Could the witness see Exhibit 4, Mr Barden's return? I'll show you a copy?-- Thank you.

If you'd just have a look at that and the details included and tell me if that is essentially what you hand wrote?-- I really don't have a great recollection of what my - what I hand wrote but I know I went to the files and found the names of all the donors and listed them out similar - in a similar manner to this, yes.

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To that. Well, just-----?-- But as to whether they're the same I really don't know.

Just look at the last date. No, the last date of the-----?-- Oh, all right.

Thank you?-- 8th of April.

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8th of April. So, the last gift which is shown on the return is the 8th of April. Did you include - even if you can't specifically say that all of those were there did you include all of the gifts in this handwritten draft that you prepared?-- I don't really remember. I know I just made a list and I'm not sure at what stage that I ended it and-----

All right. Well, at any rate you're saying that this is what you did. Did you do it on a form that you had or was it just on a piece of paper?-- I vaguely remember doing it on a form but I wouldn't be surprised if I was wrong, but I would have hopefully printed a form out and started scruffing around with a pen, yes.

40

Right. Then you go on - so, I'll just read that - "Should we" - I'll read the paragraph. "Should we disclose the different name on the return?" - that's a reference to Power and Robbins?-- Yes.

"At the moment I've shown the donations but included them in the new name." That's Lionel Barden?-- Yes.

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"Should we take the risk of a \$1500 fine?" The "we" is a reference to Hickey Lawyers?-- I doubt it, it would be a reference to whoever did not file a return.

Well, all right. So, is that a reference to Power and Robbins?-- I think so, yes.

What, on the basis that you were acting for Power and Robbins?-- Well, I - I don't know. I just assumed - I wasn't told that we were acting for the trustees of the file.

So, that you're acting for both, is that what you mean?-- Well, at that stage I thought that we were no longer acting for the first trustees.

Well, that's why I'm wondering who the "we" is, but you say that-----?-- I don't - I really don't-----

Do you still think the "we" is a reference to Power and Robbins?-- Well, I can't see that it could relate to Hickeys.

All right. Because you concluded that Hickeys didn't have to file a return?-- We had no obligation, yes.

The next sentence, "The reason I am hesitant is because the two councillors" - this is a reference to Power and Robbins?-- Yes.

Correct. "Were the trustees and they would have to disclose the names of the donors. There was no buffer between the councillors and the donors until we changed the structure." Now, when you say this is a reason why you were hesitant are you - what are you hesitant about?-- I just wasn't sure how to fill the form in, I think.

But you're hesitant - "Should we take a risk? The reason I am hesitant is because the two councillors," Power and Robbins, "were the trustees and they would have to disclose the names of the donors." Didn't you think that you would want to disclose the donors?-- I really don't know.

What about Power and Robbins being sitting councillors at the time that this fund operated prior to the election; did that concern you?-- Well, not really because I thought it was their responsibility to - and they would have known it. I think in the later advice I said - actually said that, that they would know that they had to lodge a return in any event.

All right. So, you seem to have, as at that date, concluded that two returns would need to be - this is me summarising now; you tell me if you disagree with this. You seem to have concluded by this time that there would have to be returns lodged by Power and Robbins and by Barden, is that correct?-- Yes.

But not by the firm Hickey Lawyers?-- That's right.

Now, can I ask you to go to the 16th of - the 20th of April 2004. Now, this second advice - again a memorandum for file from yourself re lodgement of a return for making a gift under the Local Government Act section 430. You deal with the question of whether a donor to a local government candidate's campaign must lodge a form as you have done in the other and that seems to be - you came to the same answer?-- Yes.

Right. You hadn't changed that. Does Hickeys have to lodge a return and you concluded no because they were agents for two trust funds as you put it?-- Yes.

You make the statement here which hadn't been referred to in the draft that Quadrant is also excluded. They incurred expenditure for a political purpose but didn't receive any gifts?-- Mmm.

Just make sure you give me an answer which is recorded please?-- Oh, yes. Yes.

Then in relation to Lionel Barden Commonsense Campaign Fund you refer to that fund complying with section 430 and you say, similarly as you had said, "Therefore, the trustee of this fund must lodge a return disclosing the name of its donors," correct?-- That's right.

Now, in relation to Gold Coast City Council you have a heading here in relation to this, Gold Coast City Council Election Campaign Fund, and you say here, under that heading, "This fund is under the same obligations as the Lionel Barden Fund, its trustees are required to prepare a return naming its donors." So that seems to be clear cut. That was your view?-- That's right, yes.

You mention the disclosure period. You return to the question of the form which you say must be completed and signed by the trustees of each trust. By the way, in relation to the trust, did you have any details of there being any trust apart from the fact that there was a trust account within Hickeys operating?-- You mean like trust statements on the file?

A trust - no, no. I mean in the way of a trust instrument?-- No, I - I don't know, I don't recall if there was one on the file.

Now, you say this, which had not been in the draft advice, third paragraph under Return, "It may be wise to inform the Councillors of this obligation." Now, the Councillors there are a reference to Power and Robbins?-- Correct.

"Although they should be aware of it," you say?-- That's right.

The return must be lodged within three months and so on. And you say, "Interestingly, there's no provision in the return" - this is the same point you made in the earlier draft - "to provide the name of the candidates who receive the money," this is concerning the third party return, is that right?-- That's right.

Then you refer to being informed by Mr Cormack who you say was one of the people who drafted the Local Government Act that various Councillors had lodged returns naming Hickeys as the donor. "I told me that the only written evidence of the true

intention of section 430 was contained in committee notes which were unavailable to the public." Correct?-- Yes.

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Now, what you haven't included in this final advice to file is what you had said in the last paragraph of the draft. You had asked the question, "Should we disclose the different name on the return? Should we take the risk of a \$1500 fine?" But by the time that you came to the final advice you had concluded or you had reaffirmed the fact that they were required to lodge a return?-- That's correct.

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Is that correct?-- Yes, it is.

But what, had you decided to leave it to them to do that?-- Well, I - I left it to the person that asked me to do the advice in the first place, David Monaghan.

Right. So did you then go back with this to Mr Monaghan?-- Yes.

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Yes. Did you have any conversation with Mr Hickey in relation to the matter?-- No.

This advice that you provided to file, is that what you would usually do where you had been asked to advise in relation to some question such as this one?-- Yes, it is. I mean, if I - I'm either telephoned and asked or emailed or someone wanders into my office and asks me and I'll either send - send them a return email or in this case I had a file so I put a note on the file.

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And then you would expect that with your advices on the file that anyone within the firm who had an interest in the subject matter of the advices would be able to refer to what you had said?-- Yes, but I don't know that I actually pegged it on the file and put it on top of my research and handed it to David.

Right?-- And put a - probably an elastic band around if it was thick.

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Well, presumably it remained with the file, it wouldn't have gone anywhere else?-- It obviously - it obviously has, yes.

Yes, thank you.

MR MARTIN: No, thank you.

CHAIRMAN: Yes, Mr Nyst.

MR NYST: Miss Cunningham, you didn't communicate any of your views or conclusions to Councillor Power is that so?-- That's correct.

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Did you - you didn't have any - any contact with him at all I gather?-- Absolutely not.

Thank you. Nothing further, thank you, Mr Chairman. May the witness be excused?

HIS HONOUR: You're excused. Thank you very much?-- Thank you. Thank you.

WITNESS EXCUSED

MR MULHOLLAND: I recall Mr Hickey.

HIS HONOUR: Well it's a fair while ago. I think it'd be better for the witness to be resworn.

ANTHONY WILLIAM HICKEY, RECALLED AND RESWORN:

MR MULHOLLAND: Mr Hickey, I won't get you to restate your - your name. Now, you are aware that since you gave evidence on the 18th and 19th of October that the solicitors - you have engaged solicitors?-- Correct.

And that they provided information to the Commission which included the files - the Power and Robbins file and also the Lionel Barden file?-- Correct.

And you have had the opportunity of perusing those files?-- Yes, I have.

All right. Including the emails?-- I - I perused everything on the file.

Everything on the file. Now, when you gave your evidence on the last occasion had you referred to the files?-- Not carefully. No.

Not carefully?-- No.

Is there anything that you want to add to the evidence that you have given after perusing carefully the file since the last occasion when you gave evidence?-- There are matters I've considered after looking at the file that I hadn't considered before I gave evidence last time. Correct.

Well, if you wish to say anything in relation to the matter, I'm giving you-----?-- Well, for example-----

-----the invitation?-- -----the - the - the information that Anne Cunningham - her research - when I looked at the file carefully on the Sunday morning the 23rd of October, it's the first time I noticed or even looked at that document, there was a letter from myself to Lionel Barden of the 10th of June enclosing the return document which I hadn't recalled. I

can't the - you know, there are general matters but I can't specifically-----

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May I see Exhibit 161 please, Mr Chairman? Can I ask you to have a look at this document please? It's a - a letter of the 20 - dated the 28th of June 2004, Lionel Barden addressed to - to - to you?-- Yes. Yeah. Yep.

Well, did you receive that letter?-- No. I don't believe so. The first time I saw that letter was when I read the - the statements of Mr Barden. I saw it as an attachment there.

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So, you - you - you would - what, you don't believe so?-- I don't - I - no, I didn't recall the letter at all.

Yes. Could I now have that please? In June and I don't want to go back over evidence that you've given but in June we know that there was a return prepared dated the 16th of June - this is Mr Barden's return - containing all of the entries in relation to the fund from the 23rd of December right through to - to the last entry in April, that is covering the period of the Power and Robbins period. You're aware of that?-- Correct.

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Yes?-- I didn't know the date. That's his date I think.

Now, we have seen that the clear advice, having been asked to look at the question of section 430 of Anne Cunningham, was that Power and Robbins should put in a return?-- Correct. Yes.

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So you would've been aware of that?-- I don't recall ever reading or getting Anne's advices. I had a conversation, I recall, with David Monaghan, whom I asked to identify whether Hickey Lawyers had to lodge a return or not, following on with the evidence I've led before. I recall a discussion with David in which David advised that we didn't. He also said, I think, that he thought that well even though we didn't, maybe we should. I had a disagreement with him on that because I thought it-----

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Well I think you've told us about that previously?-- Oh, I can't - I didn't think so. I didn't think so. I did have-----

HIS HONOUR: I don't - I don't recall.

MR MULHOLLAND: Righto?-- No. No I - I did raise this in my evidence but I did have a disagreement with David because I thought it was a black and white issue that we hadn't - Hickey Lawyers was simply an agent or conduit and we hadn't incurred any expenditure. So I made the decision that we didn't have to lodge any return. I don't-----

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I may be incorrect but I thought that you hadn't referred in your evidence you may not have mentioned Mr Monaghan by name?-- I don't think I did.

But you said that there had been some-----?-- That - that's correct.

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-----disagreement within the firm?-- No, I think I said there was some doubt but that we didn't have to lodge a return.

Right?-- And-----

All right?-- And, you know, as I say, I took the opportunity to consider it much more carefully after the evidence that I gave. I can't recall specifically a detailed discussion about the obligations of Power, Barden or Robbins or Power and Robbins and Barden because I wasn't advising them; I wasn't asked to advise them and I didn't want to have to give them any advice on those matters at all.

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So is the upshot of all of that that you were unaware at the time of the preparation of the Lionel Barden return of those advices?-- I believe I didn't see Anne's advices until 23rd of October. However, as I said, I did have a conversation with David. I can't recall specifically whether he dealt with those matters; that is the obligations of Power and Robbins and the obligations of Barden but I know the only concern I had then; did Hickey Lawyers have to lodge a return because I hadn't turned my mind to the thought that we had any obligation at all in that regard until Mr Montgomery had passed a message through one of my lawyers and certainly, at that stage - at all times, I had no relationship or no one was suggesting to me that I needed to give them advice or to assist them with any returns whatsoever.

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Yes. What about the emails? You've become aware of those emails. Were you aware of those emails?-- Sorry, Mr Mulholland, which emails?

The emails which appear on the file which commenced or started off this advice being given by Anne Cunningham? The first email from Mr Welsh or from Mr Welsh's PA to yourself, Steven Hodgson and Mr Scale? You've seen that on the file?-- Yes, yes, yes, I have.

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Right. So-----?-- And that's consistent with what I said before in my previous evidence that a message was passed from David Montgomery to one of my lawyers.

So you were aware of that but you didn't follow through on it?-- I did. I followed through to see what Hickey Lawyers obligation was and that was my only focus; my only concern. This whole matter - my role was limited to helping raise some money in administering a trust account. I have no other attention to the file at all.

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Did you not know that Ms Cunningham was being asked to give some advice?-- I can't recall. I asked David to get me some advice. Whether he got Anne's assistance or someone else - I can't recall if he specifically mentioned Anne has said this; I can't recall.

It might be surprising to some that, having regard to you being involved in the receipt of that first email-----?-- Mmm.

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-----that you didn't, at least, follow up to see what the position was and certainly, so far as any advice that had been provided and certainly by the time that Lionel Barden put in a return?-- No but I did. Monaghan came - I asked Monaghan to research it. He came back to me and we had the discussion that I've just referred to and as I say, my complete focus was, does Hickey Lawyers have an obligation here because I was very surprised with the suggestion and a little bit irritated with the suggestion that we had a responsibility there. I couldn't see it.

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Yes. Finally, can I put this to you that there is considerable similarity in the approach that you took, I suggest, to the details included in Lionel Barden's return and the manner in which you presented information to the CMC this year - in April of this year in relation to that composite trust statement. That is to say there is no reference in either of them to Power and Robbins and the Lionel Barden return contains all of the entries. Now what I suggest to you may be drawn from that is that you have deliberately sought to leave out Power and Robbins in relation to the gifts that were received in this campaign fund?-- No, I reject that. That's the coincidence that you - that the Chairman referred to me at the end of my last evidence which I considered very carefully. The return - the return that was given or the draft return that was given to Barden came as a result of him giving me a telephone call and asking me for details of all donations so that he could arrange to put a return in and I simply responded to that. That was some - some weeks after I determined - if not months after I determined that Hickey Lawyers had no responsibility and I didn't have to go any further in respect of that matter. I gave him what he wanted in that respect and I also say, in respect of the inquiry by the CMC, I responded sincerely and genuinely to what I believed I was clearly asked for and provided that information.

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Yes. Well, we've heard some detail there, but it's now in relation to how the composite statement is prepared, and the difficulty that that process required, whereas what could easily have been done, and I might say that was done at your instigation - what could easily have been done is to simply copy the two trust statements in relation to Power and Robbins and Lionel Barden sitting side by side on the file send that - send those statements to the Commission?-- If I was asked for that, I would have given that. The information remained on the file at all times. When you say I instigated it, that's not actually correct. After I received a call from the CMC and then I requested - that was on the 11th - I was very clear what was wanted, where did the money go to, where did the expenditure go to. I believe I asked for a letter because probably for - the main reason is I didn't - I needed to identify to the person who identified himself from the CMC was, in fact, from the CMC. I responded to that letter, you know, on that basis. Now, I instructed Sandy to prepare for

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me a list or a report of what funds we've received right throughout the file and what funds had been paid out. I didn't instruct her to do composite reports or trust statements or scanning and things like that. I just left that with her to provide that, and it's only until I've read her record of interview that I've understood the process she's gone through. Yes, I agree with you it seems quite complicated.

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Well, she understood that she was doing what she did at your request?-- 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 Docwa 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 Docwa said, "No, no, we want to know where the money went to", and I could understand that and I focussed on that issue immediately.

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Mr Hickey, did you believe when you provided to the Commission the composite trust statement that the Commission was interested in receiving inaccurate information concerning the operation of the Lionel Barden trust?-- No, I believed the Commission was interested in receiving details of - well, actually just simply details of expenditure; where the money went to, who got it.

It asked the question - it asked a question in relation to the Lionel Barden trust because it was clear and would have been clear to you, I suggest, that it understood that that was the name of the account?-- Yeah.

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Now, you gave the Commission entries relating to the Power and Robbins account, not Lionel Barden account?-- Mmm-hmm.

And that's why I ask you, did you really think that the Commission wanted to receive a document which falsely represented that the Lionel Barden account operated in relation to those entries up to the 4th of March 2004?-- I didn't understand that the Commission was interested in or had asked me anything about who operated or who authorised the accounts. I understood the Commission was clearly interested in where money went to, and I believed, as I said previously in my evidence, that I had given a very full disclosure on that matter.

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CHAIRMAN: Yes, Mr Martin?

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MR MARTIN: Well, Mr Hickey, I suppose you could have, applying the request-----

CHAIRMAN: Are you going to cross-examine your own witness, Mr Martin, or lead evidence from him in-chief?

MR MARTIN: I thought that I'd be inclined to ask in any fashion I like. There are no rules of evidence of here, I take it.

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CHAIRMAN: No, no, it's up to me. That's why I'm asking you.

MR MARTIN: Well, perhaps if I ask the question, your Honour can - Mr Chairman, you can rule if it's inappropriate.

CHAIRMAN: Well, you can tell me whether you propose to approach it in a way of, in effect, adopting a cross-examination methodology; namely asking leading questions that your witness can give answers yes or no to.

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MR MARTIN: No, I'm not necessary asking for yes or no. If I ask a question, he can give a yes or no. I'm not going to direct him which way to answer, but there's been a series of questions by you, Mr Chairman, by Mr Mulholland suggesting that, you know, fancy giving the extra information. It calls for a query if he hadn't given the extra information relating to the donations that have come through the trust account in any of its form - if he'd only confined it to the strict detail being requested, there'd be huge criticism, no doubt, that he hasn't provided that extra information.

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CHAIRMAN: Oh, no, Mr Martin, we would have been - the Commission would have been appraised with the true situation with respect to the Lionel Barden trust fund, and then it - you might expect it would have gone back and said, well, can you explain how the donations that occurred earlier that Mr Barden has disclosed in his election return, how they were dealt with, and we might have then found out the true situation in a potior if the true information had been provided by Mr Hickey.

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MR MARTIN: Mr Chairman, you're not suggesting that you didn't know as of April this year about Power and Robbins involved in the trust account.

CHAIRMAN: Are you suggesting we did?

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MR MARTIN: Well-----

CHAIRMAN: Are you suggesting Mr Docwa did? If you are you're wrong.

MR MARTIN: Well, an enquiry as to any of the candidates who were referred to - any of the donors - any of the candidates who received cheques from Hickey Lawyers, a request - a query of them - must reveal how the cheques got to them.

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CHAIRMAN: The error in your assumption, Mr Martin, is that you assume queries had been made at that stage of any of the candidates who'd received the money.

MR MARTIN: All right. Okay. Well-----

CHAIRMAN: Now - anyway, we'll go back to your former questioning. I'll allow you to continue but I will indicate of course that the value of any questions - answers that you obtain from totally leading questions will be affected by the form of the question.

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MR MARTIN: I understand that.

CHAIRMAN: And that's up to you, you're an experienced counsel, of course.

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MR MARTIN: Mr Chairman, I think I've probably made the point without asking that question. The point that I make is criticism can be levelled at this man for not providing the additional material, whichever way one looks at it he seems to be being criticised. Mr Hickey, as part of the request in the letter of the 11th of April did you note and was it consistent with your conversation with Mr Docwa that the complaint being outlined to you and being investigated by the CMC was expressed in these terms, "The CMC is currently considering a complaint with respect to the disclosure of election gifts received by or on behalf of various candidates contesting the Local Government elections for the Gold Coast City Council in March 2004"-- Yes, he said to me in a telephone call on the morning of the 11th that he wanted to know where the money went to.

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And then at the bottom of page 1 of that letter goes on to specify the request stating, "It's requested the CMC be provided with advice about and/or a copy of the terms of the trust and/or any records of expenditure made from the trust for a political purpose about an election or elections relating to the Gold Coast City Council in or about March 2004 or January 2005 if any." Is that correct?-- Yes, that was consistent and it was the clear understanding I had from our telephone call that morning.

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It's been suggested to you or at least asked of you whether or not you had seen Anne Cunningham's advices contained in those two memoranda dated the 16th of April and the 20th of April 2004. From your review of the file is there some indication which would suggest that you clearly did not see those memoranda - and I refer in particular to what took place in June 2004 in relation to Mr Barden's return?-- Yes. I basically had little contact - physical contact - with the file. It was an administrative file, moneys coming in, moneys being distributed. I wasn't giving advices to anyone - I was, you know, assisting in a service in that respect - and at the time Barden called me and he asked me that he wanted details of all donations I understood he clearly wanted - and he clearly understood - that there were donations before he took over in March or whenever it was 2004-----

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Well, could I just hold you there?-- Yes.

Did he say that or is that an assumption made by you?-- I can't recall him exactly saying that but I'd always clearly understood from the time he was involved that he - he was

aware of that. I mean, I think it'd be ridiculous to suggest he didn't - he wasn't - and I then requested that we get all of the details of the - all of the donations - as he'd asked me. I also then asked a clerk to advise me or to find the appropriate form that should be used because I provided that as an assistance to him and-----

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Just on that, just as you're going through your evidence, there is reference on the file - on the current file - there are file notes to Tony from Shelley, dated the 9th of June 2004, is that correct?-- Yes, that's correct. Yes. That's the article clerk who provided the form and also told me when the return had to be lodged by.

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Well, it seems to be that she lists in the memorandum to you, dated the 9th of June, responses to questions asked by you. It goes, one, when does the return have to be submitted by, question mark, and she seems to reply a response?-- Yes.

Are they responses made to questions asked by you of her?-- Yes, yes.

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Well, one notes in the advices given by Ms Cunningham that were on the file that - one of the things she addresses is the time in which the return is to be made?-- Well, all the answers were there in Anne's memos. Now, I don't know whether Anne's memos and bulldog clip was actually back on the file then or on the file, I didn't look at the file and that's why I asked Shelley to investigate for me.

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In any event you sought the answer to when the return has to be in by?-- Yes, yes.

Okay, and she also dug up the correct form, is that so?-- Yes.

Now, Mr Barden asked you for a list of all of the donations and that's what you provided?-- Correct.

The form that you sent out to Mr Barden, is that on the file in the same form as it was when you sent it to Mr Barden?-- Yes, I believe so, yes.

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It has the name of the person furnishing the return, Lionel Barden?-- Yes.

But the name of organisation on whose behalf the return is completed is blank. Is that how it went out?-- Yes, correct, yeah.

Can you say whether you specifically turned your mind at that time to whether or not, you know, that should be left blank so that Mr Barden can fill in whatever organisation or-----?-- I only filled in what I knew and that was that he said he was lodging the return and he needed all the details and then I sent the form to him and it was for him to complete and check and lodge, and I - I don't - didn't have any contact about that matter after then. I don't know when it was lodged or if it was lodged.

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CHAIRMAN: Are you honestly saying that you never turned your mind to whether you should mention to Mr Barden whether he should put in a return covering the entire set of donations or whether his return should be limited to the donations that came in during the time that he was in control of the fund?-- No, I made it - I believe he made it clear to me that he wanted the entire list of donations and he was putting that in, yeah.

Yes, which - so you understood-----?-- Yeah, to give him it all.

-----that he wanted it to put in the entire list?-- Yes, yes.

And are you saying that you never turned your mind to the point whether you should, not as his lawyer, because clearly you weren't acting as his lawyer, I understand that, that you should mention to him that whether or not it was wise for him to put in a return which contained possibly false information?-- No, I didn't. I didn't.

Yes, thank you.

MR MARTIN: The idea of the return, as you understood it, was what, that no return-----?-- To advise who made donations, who contributed money.

Mr Mulholland raised with you the letter dated the 28th of June 2004 found on Mr Barden's - or found by Mr Barden on his computer, I think the evidence was. You said that you've got no recollection of ever seeing that letter?-- That's correct.

Have you caused a search to be made of the - said to be sent by facsimile, did you cause an office search to be made to see whether or not - and in case there was a wrong date, before the 28th of May and beyond the 28th of June a search to be made whether or not a facsimile came in?-- Yes, at the request of my lawyer I did that, yes.

From Mr Barden?-- Yes.

Mr Chairman, do you mind if lead this evidence? Mr Hodgson, I think, conducted the search.

CHAIRMAN: That's all right.

MR MARTIN: The report that came out was negative, that no such facsimile was sent during that period?-- Yes.

From Mr Barden?-- I'm told by my lawyer-----

Received, I mean?-- -----because he spoke to Mr Hodgson direct and Mr Hodgson spoke to him direct. I didn't take part in the process.

Mr Hickey, you were one of the persons who sought donations from companies, is that correct, speaking to individuals?-- Yes, yes, yes.

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Mr Fish recently gave evidence and there were others?-- Yes.

When asking for a donation what did you say to those people?-- I said Brian Ray was helping David Power and Sue Robbins to raise money to try and fund some common - decent candidates or good candidates to run for positions in the Gold Coast City Council. "Do you want to assist and contribute \$10,000?".

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Was there any attempt by you to conceal the names Power and Robbins and their involvement?-- No, not at all, not at all. I mean, it was important to mention their names because I didn't know any of the candidates. I didn't talk about this one, that one, and I believe that if somebody wanted to contribute then they were doing so because they, you know, believed that Power and Robbins would make, you know, sensible choices.

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One of the issues being examined by the Inquiry was in relation to the invoice from Quadrant to Sunland. What was the conversation that you had with Tony Scott?-- I didn't have a conversation with Tony Scott about the Sunland invoice. I spoke to Craig Treasure from Sunland.

I beg your pardon, yes?-- Yes.

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You spoke to - did you speak to Tony Scott at all?-- I spoke to him at the time that the developers of The Wave, Framelgate and Ninaford, had agreed to contribute \$10,000 towards his other fees that were owed to him, which was some time in August.

And what was your conversation with him about that?-- I simply said that the developers were prepared to contribute \$10,000 towards his outstanding consultancy fees and they wanted an invoice.

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Mr Scott gave evidence last week that to the best of his recollection you actually said 10,000 plus GST, I think was the effect of his evidence?-- No, I didn't. I didn't; I didn't.

Did you mention GST at all?-- No, not at all.

CHAIRMAN: Can I ask a question at that stage?

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MR MARTIN: Yes.

CHAIRMAN: It's probably easier than to come back to the topic later. What sort of an invoice did you envisage would be produced to satisfy the clients, your clients?-- Simply an invoiced contribution towards consultancy services or

something like that - or to consultancy services. A client-----

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An invoice addressed to-----?-- Yeah. Yes, they were assuming a liability for outstanding moneys to this consultant. The context at that time was, you know, it's five months after the election, there's no money going to anybody and these guys were out of pocket. They were putting a lot of pressure on Brian Ray who felt that he personally had to pay it and it was a matter of seeing whether anyone else would contribute to that. But it was always treated by them as a donation. I mean, I can look back now and say, "Oh, okay, should have paid more attention to the wording of that," but nobody treated it as a false document, it was treated as a donation and-----

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But you can see now that it was-----?-- Oh, I can see now but-----

-----on its face a false document?-- Yes, I can see now that you can take it - but certainly at the time it was not regarded - I didn't regard it as a false document. It was simply a contribution treated as a donation and, you know, somebody picking up somebody else's bill as an assistance.

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And as an experienced lawyer you didn't see any risk in doing that?-- Not at the time. I mean, as an experience lawyer when I looked at it again recently I should have taken more care with it, yes. I should have made it more specific. I accept that.

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MR MARTIN: Just on the - can we deal with this briefly - there's been some examination of Mrs Chan and Mr Cheung-----?-- Yes.

-----about the timing of all this, the request by you for a contribution to the outstanding debt to Quadrant?-- Mmm.

And it's been raised of course that, you know, at about this time The Wave development is getting its approval and-----?-- Sure.

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-----but it came - the approval came with the condition - could you just explain briefly, please, about the condition that came with The Wave approval?-- Well - well, this was all happening in 2004. Now, in January - in or around January 2004, a new infrastructure policy was put in place by the Council. I really wasn't aware of it at that time. I only became aware of it a couple of months later when my town planner advised me on this project, that the Council were considering whether the new infrastructure policy would require a condition and a - and a charge under the new policy to go into the conditions for The Wave. So we were advised in - we were advised probably in April of 2004 by the Council Town Planner - because there's a collaboration the whole way through. We'd been working on this project, our consultants with the Council's consultants and officers for over a year, and we were advised, yes, the condition would be going in. Draft conditions were prepared by the Council to be

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recommended - sorry, prepared by the Council officers to be recommended for approval by the councillors and given to us at the end of May 2004, and those conditions apart from its typographical errors were fine. The only condition which was offensive was this large charge of \$1.5 million. However, we'd already been advised by my Town Planner that the Council officers have said, "Gentlemen, that's not something we can talk about; that's a new policy; it's sacrosanct and the Council will not back down on that." We'd already been to see - I'd already been and briefed a QC - SC, sorry-----

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That was in May?-- -----in May, in May, and the strategy decided upon was there's no good trying to talk to Council about a negotiated decision on that sort of point, which is, you know, a normal local Government procedure, that we would have to appeal it and that rather than raise it as an issue that we were not happy with, let's just get our approval and then we go to the Planning and Environment Court and appeal the condition. I mean, our position was that we believed that the policy was unlawful and that an appeal if it went the right way and our arguments were accepted could reduce the \$1.5 million to zero.

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Right. So that the whole condition would be abolished?-- Yes, but other than that, the project was a fully compliant project, full backing of Council officers. It was a code assessable project which means it didn't have to be advertised and to allow for public objections. It was always going to be approved.

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We'll go to the other side of things though?-- Mmm.

After the approval with this condition-----?-- Mmm.

-----it's been pointed out that then in late July, I think, the Council gave the approval and then the cheque from The Wave developers comes through in early August, you see?-- Yes, correct.

Was there any room for negotiation with the Council by that time or was it already set in stone as to what the program was going to be?-- Oh, absolutely set in stone. We'd already again briefed our counsel once we got the conditions which issued the - the Council approval's actually - the Planning Committee approval was the 20th of July, which it was approved by a majority being deferred a couple of time, but it was approved by majority - no, not by a majority - it was approved unanimously by the Planning Committee on the 20th of July, therefore the full Council approval which was just a ratification of the 23rd of July was a mere formality, and then they issued the formal conditions, which we were already aware of in the formal decision notice to our town planner - planner. I think they were dated the 28th of July but he might have got them on the 2nd, 3rd or 4th of August, something like that. But we'd already then briefed counsel to settle the notice of appeal which we filed as soon as it was ready. It was the 25th of August, a day close to that, and then-----

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But Mr Hickey, was there anything to be done - you see, one of the things of scrutiny might be, oh, well you've - The Wave developers have paid a donation or a contribution to Quadrant in respect of the election, after that would any negotiations with council be able to be used, you know, use the donation with a view to getting them on side to perhaps reduce the 1.5 million infrastructure charges?-- No. Not at all. Not at all. I mean there was - the only meetings that were had with council were meetings that council requested under the Local Government procedure for, you know, the directions hearing - directions listed meetings that we had to have. But they made it clear that this case had to go to Court to validate their policy and we were committed to a trial in February the next year, I think.

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Just by the way, to your understanding or to your knowledge do you - do you know whether any of the councillors - anyone knew that the way they'd made a donation to Quadrant or a contribution to Quadrant?-- I don't directly know but because David Power was in a lot of communication with Brian Ray about trying to settle the outstanding fees to - to Quadrant, I would assume David was aware but I didn't talk to him about it.

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Okay. There were then - just to finalise this, Mr Chairman. I'm sorry it's taken a little longer than I expected. There were then some reductions in the 1.5 million. Could you tell us firstly how that came about?-- Well, fundamentally, to cut a long story short, we lost the case.

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You lost the case. The Court ruled-----?-- They upheld the policy.

-----the policy was solid. Yes?-- But the - his Honour, Judge Robin, ordered that the calculation of the charges under the policy be worked out between the parties because there is a provision for credits there when the - the site that has been developed previously had improvements on it and this - this had shops and some restaurants and things like that. So that process after the hearing took months and that was done simply between the lawyers, not between me but between a lawyer and my office, our town planner and the council's lawyers and their town planner and that resulted in - and they - our - they had to get measurements of what's commercial areas. I don't understand the science of it all. But the bottom line is, according to their policy which was upheld, the applicable total charge to us was roughly \$922,000.

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But this was purely a matter of calculation-----?-- Absolutely.

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-----within their policy?-- Absolutely. We'd already filed for an appeal to the Full Court or the Court of Appeal-----

Yep?-- -----which date was set down in November this year. Once we finally determined that that was the amount I - I instructed our firm to approach Corrs Chambers, I think it is, who were acting for the council, to - to institute some

"without prejudice" negotiations on the basis - normal basis that we're coming up for a trial and you may lose you may win, there's costs involved and we offered - and there was a Deed of Confidentiality signed but I understand, pursuant to that, that it says that if required by law, this can be discussed. So I'm assuming that, without trying to offend anybody-----

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CHAIRMAN: I think it's already-----?-- -----and it's already in evidence-----

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-----been given in evidence?-- -----I think.

MR WEBB: No, it hasn't, Mr Chair.

CHAIRMAN: Hasn't it, oh?

MR WEBB: It was deleted.

CHAIRMAN: I don't require the figure.

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MR WEBB: No. That's-----?--

WITNESS: Okay.

MR WEBB: I was going to ask that-----

CHAIRMAN: If the council wants it kept confidential I don't require the figure.

MR WEBB: Yes. I'm instructed we do.

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WITNESS: Okay. Well, there was a reduction made as a result of "without prejudice" negotiations and part of the-----

MR MARTIN: I don't think you can go further, Mr Hickey?-- I shouldn't go any further. Yes. Okay.

There seems to be an objection to discussing it?-- But that was only completed in - on or about the 7th of October this year.

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Thank you. And did I understand from evidence the other day that the CMC was notified of this as well?-- We were told that by council lawyers. Yes.

I see?-- That there was some delay in finalising the negotiation. Would you excuse me for one moment, please Mr-----

Mr Hickey, there's been a lot of reference to the file in your office. The current file, the one under the name of Lionel Barden, did that nonetheless have many - many references and does have many many references to the existence of Power and Robbins being the original trustees?-- Absolutely the - when the file was - the old file was closed because there was a new file opened, the correspondence clip and everything was just transferred over, so it was continued as - as one file, so to speak.

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And you might have heard the exchange between the Chairman and me earlier, but on the file there are documents, both e-mails and letters, showing that when Power and Robbins were the trustees of the fund that any payments you made out of the trust fund and at the direction of Robbins and Power were sent with an accompanying letter to those receiving the funds stating precisely that, that they were being sent-----?-- Yes, every time - every time funds-----

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-----at the direction-----?-- -----were dispersed from our trust account there was a letter beginning - I can't remember exactly - "As directed by Power and Robbins" his cheque for whatever and then one case, I think in the case of Brian Rowe, where moneys were - where moneys were direct deposited to his Heritage bank account, there was an e-mail sent as directed by Power and Robbins.

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Mr Chairman, 28th of January, 28th of January, 29th of January-----

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CHAIRMAN: I'm familiar with those letters.

MR MARTIN: -----2nd of February.

CHAIRMAN: I've seen those letters.

MR MARTIN: Just for the record. Thank you. Are at least some of the examples. Mr Hickey, after you got the request from Mr Docwa on the 11th of April 2004 and asked Sandra Wild to put together the report of ins and outs-----?-- Sorry, 2005?

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2005, I beg your pardon, and asked Sandra Wild to put together the ins and outs of the trust fund it's being suggested to you, I don't think you've missed it from Mr Mulholland or the Chairman, it's being suggested to you that you have deliberately concealed the reference to Power and Robbins as being originally associated with the trust fund, you understand that, don't you?-- Yes, I do.

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Do you deny that?-- Yes, I do.

Given that and given it's the CMC who's making the request and you send the response on the 13th of 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?-- Not at all, not at all.

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Or anyone at Quadrant?-- Not at all. I mean, all the records are there, you can't hide it.

Thank you.

MR MULHOLLAND: Mr Hickey, in relation to the Ninaford Framelgate invoice-----?-- Yes.

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-----I suppose there'd be a very good reason why a developer company would want a tax invoice raised rather than simply paying a sum of money?-- All he asked for was an invoice.

Can you think of a very good reason why you'd want a tax invoice rather than simply paying a sum of money?-- Well, he didn't ask for a tax invoice, he simply asked for an invoice and I know that particular person, that's just the way he - he is, he's very meticulous with his bookkeeping, but he treated it as a donation, which it was.

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Yes. Nothing further, thank you, Mr Chairman.

CHAIRMAN: Yes, thank you, Mr Hickey.

WITNESS EXCUSED

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MR WEBB: Sir, could I see Exhibit 288? Thank you.

MR MULHOLLAND: Mr Chairman, I tender a transcript of a record of interview between Commission investigators and Joseph George Welch on the 16th of November 2005.

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CHAIRMAN: That's W-E-L-C-H?

MR WEBB: Yes.

CHAIRMAN: Yes. That will be Exhibit 296.

ADMITTED AND MARKED "EXHIBIT 296"

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MR MULHOLLAND: I tender a transcript of a record of interview between Commission investigators and Michelle Lowe L-O-W-E on 27 October 2005.

CHAIRMAN: That will be Exhibit 297.

ADMITTED AND MARKED "EXHIBIT 297"

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MR MULHOLLAND: I tender a transcript of a record of interview between Commission investigators and David Monaghan M-O-N-A-G-H-A-N of the 11th of November 2005.

CHAIRMAN: Exhibit 298.

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ADMITTED AND MARKED "EXHIBIT 298"

MR MULHOLLAND: I tender an affidavit of Constantine William Nikiforides, which was sworn on the 18th of November 2005 clarifying some evidence given by him at the Inquiry on Tuesday, the 8th of November 2005.

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CHAIRMAN: Yes. Just for the transcript can you just spell Mr Nikiforides?

MR MULHOLLAND: Yes. N-I-K-I-F-O-R-I-D-E-S.

CHAIRMAN: Yes. That's Exhibit 299.

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ADMITTED AND MARKED "EXHIBIT 299"

MR MULHOLLAND: We had hoped, Mr Chairman, to call Mr La Castra today. We raised with him as to whether we try to press on. He would prefer us not to do that and Mr De Battista also concurs in that. In those circumstances I would ask that we adjourn until Monday.

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Can I just indicate at this point what the Commission would propose from here on? We would intend next week to call Mr La Castra, Mr Dickson and Mr Scott and also - and to then adjourn to complete the evidence to Monday the 12th of December. So we would sit - the Commission would sit next week to complete those witnesses and then we would adjourn until that date and we would sit at that time to hear the evidence of Mr Clarke and Mr Power and the evidence will be completed in that week, hopefully.

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MR WEBB: Mr Chairman-----

MR MULHOLLAND: It would then be proposed that we would hear oral submissions on Thursday the 22nd of December.

CHAIRMAN: That's from counsel assisting?

MR MULHOLLAND: Yes.

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CHAIRMAN: Yes, all right. Okay. Yes?

MR MULHOLLAND: Can I go first?

MR MARTIN: Did you, Mr Chairman, excuse my witness?

CHAIRMAN: I did.

MR MARTIN: Thank you.

MR WEBB: Might I go now?

CHAIRMAN: Yes, Mr Webb.

MR WEBB: It was suggested at one stage that next week there would be Monday and half of Tuesday; is it the intention that we'll just go until they're finished or-----

CHAIRMAN: I would think we will do that. We will keep going until we finish those three witnesses.

MR WEBB: Right.

CHAIRMAN: Mr Scott, of course, is half-way through his evidence so hopefully he won't be terribly long. Mr La Castra and your client.

MR WEBB: Yes, I was just wondering in which order that might be because on the basis of what I was told I made some commitments for Thursday.

CHAIRMAN: I have no idea of the order.

MR MULHOLLAND: That would be the order that Mr Webb has just stated so it will be Mr Scott first and Mr Dickson. I beg your pardon - I beg your pardon, Mr Scott, it's inconvenient for him to start at the beginning of the day-----

CHAIRMAN: Yes.

MR MULHOLLAND: -----so it's Mr La Castra and then Mr Scott and then-----

CHAIRMAN: And then-----

MR MULHOLLAND: -----Mr Dickson.

CHAIRMAN: -----Mr Dickson. Do you have a difficulty with Wednesday?

MR WEBB: No, with Thursday.

CHAIRMAN: Thursday. Well, we - might give us all a reason to finish in three days. I would hope we could finish those three witnesses in three days. Mr Scott's part way through already and his evidence is fairly short compass.

MR WEBB: I would have thought I'd be assisted if - I take it it's probably hoped - may I ask counsel assisting to complete the first two witnesses on the Monday.

CHAIRMAN: I would hope.

MR WEBB: Hope.

MR MULHOLLAND: Might depend on Mr Webb.

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MR WEBB: Oh no, no, no. I've had a very small part in this huge panorama, Mr Mulholland.

CHAIRMAN: Mr Webb, I would think that should be a realistic assessment of those two witnesses on Monday.

MR WEBB: Yes.

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CHAIRMAN: Indeed and Mr Dickson hopefully on Tuesday but the intention is to sit until those three are completed.

MR WEBB: Yes.

CHAIRMAN: Hopefully we'll break early on Tuesday.

MR WEBB: It would cause me severe problems to be here - I have to be here for Mr Dickson because unexpectedly when next week wasn't going to be used I had commitments which I've now moved backwards-----

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CHAIRMAN: But I understand you're available on Wednesday.

MR WEBB: Certainly am.

CHAIRMAN: I really can't see us going into Thursday.

MR WEBB: Thank you.

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CHAIRMAN: Mr Nyst?

MR NYST: My concern is regarding the week commencing the 12th of December. I hear about that proposal as at yesterday afternoon. I think yesterday morning it had been envisaged that we would go to the week commencing the 5th of December. I raised this with my client and he has a difficulty in that week of the 12th in this sense only; he is a - he shares custody of two young sons with his wife. He had made arrangements to take the boys away on a camping trip that week and this creates a significant difficulty because it's leading into Christmas. His wife wants to take the boys away down to where - to Tasmania where she comes from.

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I raise it on the instructions in the hope that we might be able to revert back to the original plan of the week commencing the 5th of December since it was, at least, envisaged that that would be so as of yesterday.

CHAIRMAN: Mr Nyst, I'm available-----

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MR NYST: I'm available.

CHAIRMAN: -----but it's not my availability that's the problem. That's something, I think, we'll have to discuss with counsel assisting and see the logistics of whether it can be done. I - why I'm hesitating at the moment is those personal circumstances of your client. I can understand the

need for you to mention them because they are, to me, somewhat compelling but, again, I don't know that they're matters that the press should think worthy of printing.

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Can I leave it that we - if you have a discussion with counsel assisting and we'll see if we can accommodate that.

MR WEBB: Mr Chairman, can I return 288 and ask in exchange 289?

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CHAIRMAN: Yes.

MR WEBB: Thank you.

CHAIRMAN: We'll adjourn till Monday morning at 10 o'clock. It seems to be the time, 10 o'clock.

THE HEARING ADJOURNED AT 4.24 P.M. TILL 10 A.M. ON MONDAY,  
28 NOVEMBER 2005

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# WITNESS LIST

STEVEN KENNETH HODGSON, SWORN AND EXAMINED.....	2124	
WITNESS EXCUSED.....	2131	10
ANNE CUNNINGHAM, SWORN AND EXAMINED.....	2131	
WITNESS EXCUSED.....	2140	
ANTHONY WILLIAM HICKEY, RECALLED AND RESWORN.....	2140	
WITNESS EXCUSED.....	2155	20

# EXHIBITS

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ADMITTED AND MARKED "EXHIBIT 294".....	2131	
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