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TRANSCRIPT OF AFTERNOON PROCEEDINGS

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INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

TUESDAY, 24 NOVEMBER 2020

(34th day of examinations)

BEFORE THE HONOURABLE ROBERT REDLICH AM, QC

Counsel Assisting: Mr Michael Tovey QC  
Ms Amber Harris  
Mr Tam McLaughlin

OPERATION SANDON INVESTIGATION

PUBLIC EXAMINATIONS PURSUANT TO PART 6 OF THE INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION ACT 2011

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*Every effort is made to ensure the accuracy of transcripts. Any inaccuracies will be corrected as soon as possible.*

1 UPON RESUMING AT 1.51 PM: 01:51:11PM  
2 <SAMEH AZIZ, recalled: 01:51:11PM  
3 <EXAMINED BY MR TOVEY, continued: 01:51:11PM  
4 COMMISSIONER: Yes, Mr Tovey. 01:51:11PM  
5 MR TOVEY: Thanks, Mr Commissioner. Could the witness please 01:51:18PM  
6 have played to him a conversation on 3 November of 2018, 01:51:22PM  
7 which is tab 257. 01:51:35PM  
8 (Audio recording played to the Commission.) 01:52:18PM  
9 MR TOVEY: So before this conversation had you raised with 01:57:02PM  
10 IPsoft, with Mr Ayad, the prospect of you entering into 01:57:08PM  
11 some sort of agreement with them?---Yes, we spoke 01:57:13PM  
12 about - - - 01:57:29PM  
13 Was that a proposal by you that you do some sort of consulting 01:57:30PM  
14 work for them?---No, they approached me. 01:57:33PM  
15 Let's have a look at this, where you say at line 10, 'I just 01:57:38PM  
16 wanted to have a chat with you about the referral 01:57:47PM  
17 agreement.' 01:57:50PM  
18 COMMISSIONER: You need to go back to line 10. 01:57:52PM  
19 MR TOVEY: Sorry, line 10. And you say to them, 'We're going 01:57:57PM  
20 to do it a little differently' ?---Yes. 01:58:06PM  
21 So you're telling them what you are proposing; 01:58:08PM  
22 true?---(Indistinct). 01:58:17PM  
23 Then you indicate that you want an agreement which isn't going 01:58:18PM  
24 to be signed until after the decision, and the decision 01:58:34PM  
25 you're there talking about was the decision to award the 01:58:40PM  
26 project to IPsoft; true?---Yes. 01:58:48PM  
27 All right. So you now don't want the agreement they've sent 01:58:52PM  
28 you. You want one that does it differently by not getting 01:58:59PM  
29 signed until after the decision to award them the contract 01:59:05PM

1 is made. You then go on to say, lines 17 through to 19, 01:59:07PM  
2 'Do it without the involvement of a third party'. What 01:59:17PM  
3 are you talking about there?---I can't recall exactly, but 01:59:21PM  
4 I think they may have mentioned an institution. It may 01:59:28PM  
5 have been the Municipal Association of Victoria or a 01:59:38PM  
6 university, I can't recall. I wanted it to be generic. 01:59:40PM  
7 So at this stage what you're talking about is an agreement, you 01:59:45PM  
8 don't even know whether it's going to be in respect 01:59:51PM  
9 of - involve a third party or not, and this agreement is 01:59:58PM  
10 not going to be made until after the Amelia contract is 02:00:01PM  
11 awarded?---Yes. 02:00:06PM  
12 Are we right there?---Yes. 02:00:07PM  
13 So the agreement is linked to the Amelia contract being 02:00:09PM  
14 awarded?---No, it wasn't. It was designed so that I could 02:00:15PM  
15 avoid a conflict of interest. 02:00:19PM  
16 Designed to avoid a conflict of interest? What you were 02:00:20PM  
17 wanting to do, you are dealing with people who are 02:00:27PM  
18 currently at that particular time negotiating with 02:00:30PM  
19 council; you are moving motions, you already told me, to 02:00:35PM  
20 support their position. How could you be doing that and 02:00:38PM  
21 be in a conflict of interest situation?---Because the work 02:00:46PM  
22 they wanted me to do was totally unrelated to the City of 02:00:50PM  
23 Casey. 02:00:54PM  
24 What you wanted to do was to put back the agreement with them 02:00:54PM  
25 so it wasn't too obvious that the agreement was related to 02:00:59PM  
26 the awarding of the contract?---No, because I declared 02:01:05PM  
27 that to the manager governance as the agreement was 02:01:08PM  
28 beginning to take shape. 02:01:12PM  
29 Did you ever tell Ms de Kretser that in fact they paid you some 02:01:13PM

1 \$30,000 or more?---No, because at the time I told her 02:01:18PM  
2 I wasn't paid anything. It was when I was about to 02:01:22PM  
3 consider seriously the breadth of the work they wanted me 02:01:27PM  
4 to do under the agreement. That was done, I believe, in 02:01:30PM  
5 May because I recall talking to her around the time of the 02:01:33PM  
6 conference in New York. 02:01:37PM  
7 Here you are, you don't even know what sort of agreement you're 02:01:39PM  
8 going to be having in order to justify a kickback; that's 02:01:42PM  
9 what it boils down to, doesn't it?---I totally object to 02:01:45PM  
10 that. There was no kickback. The reason that this was 02:01:48PM  
11 proposed is so that we can understand exactly the breadth 02:01:51PM  
12 of the work that was required of me because they wanted me 02:01:58PM  
13 to do referrals to the local government sector and also 02:02:01PM  
14 they wanted me to do work specifically in the university 02:02:05PM  
15 sector in relation to marking, student marking. 02:02:07PM  
16 I would suggest to you that's rubbish because it's apparent 02:02:14PM  
17 from this that Mr Ayad wasn't sure whether the contract 02:02:17PM  
18 was going to specifically relate to your work with Casey, 02:02:23PM  
19 because he says, 'If we say we were successful would we 02:02:27PM  
20 still contract directly with Casey or with you'?---Yes, 02:02:32PM  
21 and I said - - - 02:02:36PM  
22 Sorry, he thinks you're getting paid as an intermediary between 02:02:37PM  
23 them and Casey. That's totally - he's got the wrong end 02:02:41PM  
24 of the stick there, you would say?---He doesn't understand 02:02:46PM  
25 how local government operates and I did specifically say 02:02:50PM  
26 that I would have to declare a conflict of interest, which 02:02:53PM  
27 is the advice that I sought from Ms de Kretser as the 02:02:58PM  
28 contract provisions were shaping up. They had many - - - 02:03:03PM  
29 He mightn't know how local government operates, but he knows 02:03:06PM

1           how you operate. What you're discussing with him left him 02:03:10PM  
2           of the view that what you were contracting for at that 02:03:17PM  
3           stage was for you getting paid for the work you were doing 02:03:19PM  
4           with Casey. That was his understanding as expressed to 02:03:24PM  
5           you?---No, I disagree with that. That's your 02:03:30PM  
6           interpretation. 02:03:33PM  
7 All this other rubbish you're talking - sorry, I won't use the 02:03:33PM  
8           pejorative 'rubbish'. All these other concepts you're 02:03:37PM  
9           talking about is just stuff you're making up to make the 02:03:40PM  
10          intolerable marginally tolerable, isn't it, 02:03:44PM  
11          Mr Aziz?---I disagree entirely. 02:03:50PM  
12 Because you go on at line 44 to say, having said you want a 02:03:51PM  
13          consulting agreement based on advice that you're going to 02:03:57PM  
14          provide, which is totally different to what he thought it 02:04:02PM  
15          was all about, then you go on, 'So nothing that mentions 02:04:04PM  
16          Casey, or Amelia, or a trial or anything. Just a generic 02:04:08PM  
17          consulting agreement.' Is that what you were saying to 02:04:13PM  
18          him?---Yes, absolutely, because that's exactly what 02:04:16PM  
19          I wanted to see in place that I would be doing for them. 02:04:19PM  
20 Then you go down to line 78 and you say, 'And the reason we're 02:04:22PM  
21          going to do it afterwards' - that is after the contract 02:04:29PM  
22          has been awarded - 'is because at the moment we don't know 02:04:33PM  
23          the quantum of the consulting fee.' All right? Now just 02:04:35PM  
24          listen to me. And then you go on at line 83 to say, 'It 02:04:40PM  
25          gets awarded, we would just insert hourly rates and put 02:04:44PM  
26          forward, yeah.' So you're saying to him, 'We can't work 02:04:49PM  
27          out how much he has to pay you until we know how much 02:04:53PM  
28          Casey Council is paying him.' That's what you're saying 02:04:58PM  
29          there?---What I'm saying there - - - 02:04:59PM

1 Is what I am putting to you correct or not? Is what you are 02:05:02PM  
2 saying - - - 02:05:05PM  
3 MR PECK: Commissioner, if Mr Aziz might be allowed to answer 02:05:06PM  
4 the question rather than having four or five questions put 02:05:10PM  
5 to him at once. 02:05:12PM  
6 COMMISSIONER: Yes, I think that's right, Mr Peck. But, 02:05:14PM  
7 Mr Tovey, I'm not sure why you're wasting your time 02:05:16PM  
8 putting what you contend is a summary of an improper 02:05:20PM  
9 relationship because you know in advance that when you put 02:05:24PM  
10 the matters like that Mr Aziz is always going to disagree 02:05:29PM  
11 with you. There's really no point. 02:05:33PM  
12 MR TOVEY: I'm a sucker for punishment, I know. But I'm 02:05:38PM  
13 putting what I think is the obvious, but I'm always wrong 02:05:41PM  
14 about that, according to Mr Aziz. 02:05:44PM  
15 COMMISSIONER: All right. 02:05:47PM  
16 MR TOVEY: But I'm giving him the opportunity of explaining. 02:05:47PM  
17 You see, one would conclude looking at that, that what has 02:05:51PM  
18 happened, Mr Aziz, is that you can't work out how much you 02:05:53PM  
19 need to be paid as a consulting fee until you know how 02:05:58PM  
20 much the contract is awarded for, and that's what you say; 02:06:03PM  
21 and that means, does it not, that your payment was linked 02:06:07PM  
22 to how much Casey Council was paying IPsoft?---Have you 02:06:11PM  
23 finished, Mr Tovey? 02:06:19PM  
24 Well, yes, I have?---May I be allowed to answer, Mr Tovey? 02:06:20PM  
25 You've never been shy about trying to answer before, Mr Aziz, 02:06:24PM  
26 so please go ahead?---You interrupt me at every 02:06:29PM  
27 opportunity. I'm asking for space to be able to answer 02:06:33PM  
28 your question. 02:06:35PM  
29 Please do?---Thank you. The reason I wanted to wait until the 02:06:36PM

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Amelia contract had been awarded is because the work that we were doing in Casey was going to be modelled in other environments, and therefore I wasn't sure what the quantum of trial was going to be and it was never going to be my decision. Like I said, it was an officer decision, and that's why I wanted to wait because the market was going to deliver to us, being the Casey example, of what trials of this nature would cost and therefore what the appropriate consulting fee would be based on a certain workload. That's exactly why I said those words to Mr Ayad.

And was it the case that at the end of July 2019 - sorry, on 30 July 2019 IPsoft got paid \$42,705 and then a few weeks later you get \$30,800 from them?---I wouldn't be aware of what Casey paid them or how Casey paid them.

COMMISSIONER: Mr Aziz, can I just ask you about your constant point that you weren't making a decision. Firstly, would any part of this matter that you're discussing here with Mr Ayad come before the council?---It would when I declared the conflict of interest.

No, no, what would come before the council?---The fact that I declared a conflict of interest.

Yes, and how would that arise?---I would advise the CEO and the CEO would advise the meeting, and I would be asked to depart from the room if there was a council decision about awarding a contract to IPsoft.

Was there going to be a council decision?---No, this matter was administered under delegation and never came before council.

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1 And how was that decided?---The officers decide that. The 02:08:54PM  
2 officers canvass the market and make decisions about what 02:09:02PM  
3 is appropriate to award under a certain threshold. 02:09:04PM  
4 So, in the conversation that's been played to you there's a 02:09:06PM  
5 reference there to a council decision. What's that in 02:09:13PM  
6 relation to?---I believe that referred to what would occur 02:09:16PM  
7 beyond the trial. I can't see that reference, but if you 02:09:20PM  
8 allow me to read it - point out to it, I can tell you the 02:09:24PM  
9 context exactly. 02:09:30PM  
10 I wonder whether we could scan down, please. Yes, I'm sorry, 02:09:32PM  
11 I didn't note the line where it's referred to. (To 02:09:57PM  
12 witness.) I'm sorry, what I'm not understanding is when 02:10:07PM  
13 you were going to declare a conflict, what was the 02:10:13PM  
14 conflict between?---The fact that this particular company 02:10:16PM  
15 had undertaken a trial as decided by the officers and that 02:10:23PM  
16 I was going to consult for them thereafter in other 02:10:30PM  
17 matters, including what I mentioned about the university 02:10:34PM  
18 sector. 02:10:39PM  
19 I'm sorry, where was the conflict between your financial 02:10:40PM  
20 benefit that you were going to get from this company and 02:10:45PM  
21 something happening in the council?---Any future decisions 02:10:48PM  
22 relating to this company beyond the trial that had already 02:10:52PM  
23 been decided. 02:10:56PM  
24 But no conflict arose before that time; is that your 02:10:58PM  
25 reasoning?---I suspected eventually there would be a 02:11:04PM  
26 conflict, and that's why I state to him that I will 02:11:10PM  
27 declare it to the chief executive if it does arise, and 02:11:14PM  
28 I had discussions outside of that with the manager 02:11:17PM  
29 governance and she advised me that because the decision is 02:11:20PM

1 not made by us as a council, as in the elected council, 02:11:25PM  
2 that I did not need to declare a conflict of interest and 02:11:29PM  
3 she actually was very positive about the prospects that 02:11:32PM  
4 working with this particular company had for my future 02:11:36PM  
5 career. 02:11:38PM  
6 That's nice. Mr Aziz, this feeds into an earlier flaw in your 02:11:41PM  
7 thinking in which you've constantly iterated that if there 02:11:53PM  
8 was no contract in existence but only discussions, 02:12:01PM  
9 pre-contractual discussions, that didn't give rise to a 02:12:08PM  
10 conflict. You'll recall that that was your position early 02:12:12PM  
11 in your testimony?---Yes. 02:12:17PM  
12 Do you not see that by these machinations of yours you were 02:12:18PM  
13 simply playing with the rules to avoid disclosure of the 02:12:26PM  
14 fact that a significant contract that is about to be 02:12:31PM  
15 entered into with the council is being made at a time when 02:12:36PM  
16 you, a prime mover in persuading the council and the 02:12:41PM  
17 council officers to adopt this proposal, are in the course 02:12:47PM  
18 of securing for yourself a significant financial benefit? 02:12:53PM  
19 Do you not see the difficulty you've raised?---I don't for 02:12:59PM  
20 one reason, and that is that the work that I was going to 02:13:07PM  
21 be doing for them was unrelated to Casey and I actually 02:13:13PM  
22 argued against continuation with this company in relation 02:13:18PM  
23 to Casey based on the outcomes of the trial that was 02:13:21PM  
24 conducted, and I'm on the record in various meetings as 02:13:25PM  
25 doing so. So - - - 02:13:28PM  
26 But, Mr Aziz, back then - we're not talking about very long 02:13:31PM  
27 ago - did you not understand this notion of a perception 02:13:37PM  
28 of a conflict of interest? Did you understand that 02:13:40PM  
29 notion?---Yes, I did. 02:13:46PM

1 Did you understand that if you went to any one of your fellow 02:13:47PM  
2 councillors or to the planning officers or to the officers 02:13:53PM  
3 involved in this contract and said, 'Look, I know I've 02:13:58PM  
4 been advocating that we should enter into this contract 02:14:05PM  
5 with this company, but please understand I'm going to 02:14:07PM  
6 secure a financial benefit from this company at the same 02:14:14PM  
7 time as we are negotiating with them about this contract 02:14:18PM  
8 with the council,' do you not understand that that would 02:14:22PM  
9 have raised in all of their minds the perception of a 02:14:25PM  
10 conflict on your part?---But I raised that very issue with 02:14:28PM  
11 the responsible manager for administering conflicts of 02:14:35PM  
12 interest. She was well aware of what was happening in 02:14:38PM  
13 relation to this contract. 02:14:41PM  
14 I suggest to you, Mr Aziz, you didn't need to go to anybody. 02:14:43PM  
15 An experienced and intelligent councillor, you didn't need 02:14:48PM  
16 to go to anybody to know, as this conversation shows where 02:14:53PM  
17 you are so alive to the conflict of interest issues, you 02:14:58PM  
18 didn't need to go to anybody to get advice that what you 02:15:03PM  
19 were doing would create a perception of a conflict of 02:15:05PM  
20 interest?---I did, because the advice I was providing them 02:15:08PM  
21 was unrelated to anything at Casey. So - - - 02:15:15PM  
22 It's irrelevant. Surely you recognise that's irrelevant. You 02:15:19PM  
23 might have been talking to them about a contract to be 02:15:25PM  
24 applied in a foreign country, but you were going to get a 02:15:27PM  
25 financial benefit from it, from the very company that is 02:15:32PM  
26 engaged in contractual discussions with your council. By 02:15:36PM  
27 definition you know that created a perception of a 02:15:42PM  
28 conflict of interest, didn't you?---I don't know what to 02:15:45PM  
29 say, Commissioner. 02:15:54PM

1 Very good?---I'm trying to relay to you what was in my mind at 02:15:56PM  
2 the time. 02:15:59PM  
3 Yes. And, Mr Aziz, can I make it clear to you I find it 02:16:00PM  
4 extremely difficult to believe that in all of these 02:16:04PM  
5 transactions in which you are dealing with a company which 02:16:09PM  
6 is engaged in contractual discussions with the council or 02:16:13PM  
7 with council officers, that you didn't realise there was a 02:16:17PM  
8 perception of a conflict of interest?---I did realise 02:16:22PM  
9 that, Commissioner. 02:16:29PM  
10 But did nothing about it?---I did. I spoke to the manager 02:16:30PM  
11 governance about it. 02:16:35PM  
12 All right. Yes, Mr Tovey. 02:16:37PM  
13 MR TOVEY: Can the witness please be played tab 285, which is a 02:16:43PM  
14 conversation between him and Mr Ayad on 26 February 2019. 02:16:54PM  
15 I tender that previous conversation, Mr Commissioner. 02:17:02PM  
16 COMMISSIONER: Yes, that will be exhibit 294. 02:17:05PM  
17 #EXHIBIT 294 - Tab 257. Audio recording of conversation 02:17:09PM  
18 between Mr Aziz and Mr Ayad of 03/11/18. 01:51:28PM  
19 COMMISSIONER: Just a moment. Mr Aziz, are you feeling all 02:17:27PM  
20 right?---No, Commissioner, I'm not. I'm not at the 02:17:30PM  
21 moment. 02:17:34PM  
22 All right. I think we might adjourn. I think we might see 02:17:34PM  
23 that Mr Aziz gets some assistance. 02:17:38PM  
24 <(THE WITNESS WITHDREW) 02:18:11PM  
25 (Short adjournment.) 02:18:11PM  
26 COMMISSIONER: Mr Peck, I understand from what you've conveyed 02:48:49PM  
27 to Counsel Assisting that your client thinks that it was 02:48:55PM  
28 simply heartburn that he was suffering from and he wants 02:49:00PM  
29 to resume. But given the hour of the day, given his 02:49:03PM

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medical history, the only cautious and appropriate course is that we don't resume today.

I'm anxious, however, that before we do resume with him he's got appropriate medical clearance that is able to have regard to his medical history and to advise him that it's safe for him to proceed further. Now, whether that can be obtained before we commence tomorrow or later in the day so that he could return later in the day, or whether it needs the hearing of his evidence, the very short portion that's left to be dealt with, whether it needs to be adjourned to another day will really depend upon that medical advice.

So, if you could communicate with the legal officers of the Commission once he's had that advice, then we can work out at what point of time we will return to the completion of his evidence. Hopefully you'll explain to him why the only appropriate course is, however, that we first satisfy ourselves about his medical condition.

MR PECK: Thank you, Commissioner.

COMMISSIONER: So, Mr Tovey, we'll resume at 10 o'clock tomorrow morning. Who is the witness tomorrow, Mr Tovey?

MR TOVEY: Ms Graley, Commissioner.

COMMISSIONER: Very good. And perhaps we may see you later in the day, Mr Peck.

MR PECK: Thank you, sir.

COMMISSIONER: Very good.

ADJOURNED TO WEDNESDAY, 25 NOVEMBER 2020

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