

Tom Lonsdale v University of Sydney
Review of a decision under Government Information (Public Access) Act 2009
File No. 1510239

Transcript of sound recording of cross examination of Olivia Alexandra Perks,
witness for the Respondent on 17 September 2015

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Tom Lonsdale v University of Sydney

Before: Senior Member J A McAteer

Dr Tom Lonsdale, Applicant

Miss Brenda Tronson, Barrister for the Respondent

Miss Olivia Alexandra Perks, witness for the Respondent

CD 2 – Miss Perks takes the stand at 40:00mins in.

Miss Tronson: I call Olivia Alexandra Perks

Miss Tronson: Senior Member, I understand she will take an oath.

Senior Member McAteer: Miss Perks, I understand that you're prepared to take
an oath. The evidence you give the Tribunal is sworn evidence.

Olivia Alexandra Perks do you swear by almighty God that the evidence you give
will be the truth, the whole truth and nothing but the truth?

Olivia Perks: I do.

Miss Tronson: Could you please state your full name for the record and spell
your surname?

Olivia Perks: Olivia Alexandra Perks. Surname spelt P-E-R-K-S.

Miss Tronson: And what is your occupation?

Olivia Perks: I'm a solicitor.

Miss Tronson: Where are you employed?

Olivia Perks: By the University of Sydney.

Miss Tronson: Have you sworn an affidavit in these proceedings?

Olivia Perks: Yes I have.

Miss Tronson: Have you had a chance to review that affidavit?

Olivia Perks: I have.

Miss Tronson: Do you adopt that affidavit?

Olivia Perks: Yes I do.

Miss Tronson: I have no further questions. Thank you Senior Member.

Senior Member McAteer: Right Mr Lonsdale, now just remember — I say this only because you're not qualified — if there is any reason that I feel the need to pull you up on a question, I'll do that. And I'll explain why, all right? I do the same with counsel, but I'm not expecting you to be fully across some of the issues.

Tom Lonsdale: OK.

Senior Member McAteer: We'll try and be as efficient as we can.

Tom Lonsdale: Yeah. Can I take you to your affidavit of the other day.

Miss Tronson: 13th July. Sorry Mr Lonsdale to interrupt. Miss Perks, do you have a copy of your affidavit?

Olivia Perks: No, but I can grab it.

Miss Tronson: Thank you.

Tom Lonsdale: Oh very well, OK. In paragraph 4, should I read that out so the Tribunal can hear it?

Senior Member McAteer: Well, it's probably not necessary to read it out, I've got it in front of me. Is there a particular sentence you want to ask about or refer to?

Tom Lonsdale: Yeah, well (reading affidavit).

'In my role as the senior solicitor, I am responsible for providing legal services to the university. I provide legal advice to the senate, the Chancellor, Vice Chancellor, senior executives and other officers of the university. I also assist the university to identify and manage legal risks.'

So I'd like to ask about that if you'd be kind enough to tell me your purpose for putting that paragraph in and what you mean by it?

Olivia Perks: Well I-

Miss Tronson: I object to that question. It's a statement of fact. The purpose is a matter for submissions.

Senior Member McAteer: I think the purpose is self-evident Mr Lonsdale — bearing in mind our discussion about the admissibility of the sworn evidence, the affidavit where the deponent sets out their function and the agency and the structure of the area they work in. So it's a job description.

Tom Lonsdale: Can I ask if I'm to be impressed by the role at this senior level?

Senior Member McAteer: Well when you say impressed by the role at the senior level, I don't know what you mean by that question.

Tom Lonsdale: Well we have some very eminent legal person here who manages legal risk and liaises very directly with the Chancellor, Vice Chancellor, senior executives —

Senior Member McAteer: Well I don't know if that's what the affidavit says, I read the paragraph to mean — but submission will follow no doubt at some stage — that the deponent, Miss Perks, is a solicitor. That means she is legally qualified and has a current permit to practice in NSW.

I don't know if she has an unrestricted permit or not but that's not a matter for me at the moment and the issue is that she says what she does.

You know. If somebody asked me what I'd done as a lawyer, I'd say I'd appeared in the High Court, the Supreme Court, the Court of Appeal, the ADT, the Local Court, the District Court, that doesn't mean it's eminent, it's fact.

She's the relevant person the university has sought evidence from. We need to focus on the issues about the GIPA application and the evidence of what she did in respect of that or the matters that GIPA application relates to.

Tom Lonsdale: I'd like to do that.

Senior Member McAteer: These pages, to my mind, put the witness in context. Is that controversial?

Tom Lonsdale: No, not at all. I'm just confirming the context. I'd just like her to say yes, that's the context in which I operate.

Senior Member McAteer: Well, if you can just answer the question in respect to paragraph 4 Miss Perks.

Olivia Perks: Yes, that's the context.

Tom Lonsdale: Terrific, and 5 and the page over. So that locates you very precisely. [reading from the Perks affidavit]

7A. Lawyers within the OGC are first and foremost officers of the court, they are expected to comply with the ethical and professional standards of conduct required by the legal profession including relevantly, the obligation to provide independent, honest and legal advice to the university.

That seems to somewhat overlap with um the requirements of the um [Model Litigant Policy](#), would you agree?

Senior Member McAteer: I don't know if the witness is aware of the Model Litigant Policy.

Tom Lonsdale: Ok, I think I've got a copy of the Model Litigant Policy here, I'd like you to just have a look at that.

Senior Member McAteer: You were reading from one earlier Mr Lonsdale.

Tom Lonsdale: Here, hand that to Miss Perks please. There's the Model Litigant Policy.

Senior Member McAteer: Mr Lonsdale, do you want to put some context to this because she's got her affidavit now she's received a government policy. You might want to put the context to her bearing in mind she's giving evidence that she's not aware of.

Tom Lonsdale: Well I thought it was very much before the tribunal that this was all-

Senior Member McAteer: It may be before the tribunal, but this is a witness giving evidence before the tribunal.

Tom Lonsdale: But she is a senior lawyer, she would understand the necessity for this Policy to apply to all legal proceedings.

Senior Member McAteer: She's given evidence that she's not aware of the Policy so-

Tom Lonsdale: So we're now making her aware. She can read it.

Senior Member McAteer: Just as I said, let's be mindful of the time.

[Miss Perks reads Model Litigant Policy]

Tom Lonsdale: Have you read that now?

Senior Member McAteer: Just answer for the record, that's all.

Olivia Perks: Yes I have.

Tom Lonsdale: Great. And I guess you understand from that that you're to be held to very high standards in indeed. [reads from Model Litigant Policy]

3.1. That by more than merely acting honestly, according to the court rules, it also goes beyond the requirement for lawyers to act in accordance with their ethical obligations. Essentially it requires that the state and its agencies act with complete propriety and fairness in accordance with the highest professional standards.

That I would have thought would be axiomatic and nailed to the notice board in your office. But if it isn't, I'm sorry that's it all new to you.

Miss Tronson: Senior Member, perhaps there could be a question.

Senior Member McAteer: Relevant observation. Look, as I said the witness has already given evidence that she wasn't previously aware of this Policy. She's now been made aware of the Policy. The Policy's obligations first and foremost attach to her employer or senior people and um it's not for an employee, in my view, to have any obligation unless they're made aware of it.

Tom Lonsdale: Ok, all right, well. That being the case, that's fine, let's press on. Um, so returning to your paragraph 4 and that you've managed legal risks. So, um, look, I think we've got to face the fact that um the very existence of these proceedings implies considerable legal risk for the University, wouldn't you agree?

Olivia Perks: Potentially.

Tom Lonsdale: Potentially. Terrific. Um. In deciding on the course of action — that you've chosen to resist at all junctures, any disclosure, you would have evaluated the risks of so doing, presumably?

Senior Member McAteer: Mr Lonsdale, the facts are the university has not resisted any disclosure. As I understand it, the university has provided you with some information.

Tom Lonsdale: No. Only what's in the public domain.

Senior Member McAteer: Right, but they did provide you with some information —

Tom Lonsdale: That was already available —

Senior Member McAteer: The reason is different. I'm just saying that you have been given some material in response to your request.

Tom Lonsdale: Half a percent of what's available, yes. If the other 99 and a half percent doesn't count, well, I'm sorry. That's what we're here to seek to obtain. All right so, you've been managing the legal risks. Did you consult the ICAC Act before you embarked on this course of action?

Miss Tronson: I object. There seems to be an assumption in that question about Miss Perks involvement in the decision-making in relation to the GIPA application at all stages. Ah, perhaps that can be confirmed before the questions are asked.

Senior Member McAteer: Maybe I'm not across it, this evidence as I understand it, um, from Miss Tronson's submission earlier this morning is not about a person whose role was to um facilitate and respond to the GIPA application but advice was sort of about some material in that application and evidence was given as to the nature of that material.

Miss Tronson: Yes, it's more that some of the material concerned, as you're aware, um, material that the respondent claims is legal professional privilege. Much of Miss Perks affidavit goes to that question and much of her evidence is in relation to the process that gave rise to that material which was at the time, considerably anterior to Mr Lonsdale's —

Senior Member McAteer: She wasn't responsible for making any decisions.

Miss Tronson: Under the GIPA Act, no.

Senior Member McAteer: No. No. So do you remember Mr Lonsdale when we discussed this earlier today, that — it's partly my mistake — where ordinarily the lead witness, if for want of a better term, of an agency is the officer who processes the application, makes the decision, determines the matter, they give evidence.

But I said that in examples as such a matter where legal professional privilege is claimed, you'll often see an affidavit that talks about what is the meaning of um legal relationship between a lawyer and a client, whether they are a lawyer, the structure they work within etc, which is a lot of what Miss Perks covers. I can't remember what it was you were trying to press there but I think there was an assumption that Miss Perks had made a decision. Is that how it was received?

Miss Tronson: That's how I understand the question. But perhaps Mr Lonsdale can ask questions about that process so that he can then ask the questions that he wants to ask on the basis of the evidence given.

Senior Member McAteer: Do you want to do that Mr Lonsdale?

Tom Lonsdale: Well I took it as read that um she's the Head of the Office of General Council, it says so. It says she's the Head of the Office of General Counsel and should be across all aspects of this case. And now to um fudge and-

Senior Member McAteer: No. Well the General Counsel is Mr Richard Fisher

Tom Lonsdale: I beg your pardon?

Senior Member McAteer: She's the Director of Legal Services.

Tom Lonsdale: [reading affidavit] 'I provide legal advice to the senate, the Chancellor, Vice Chancellor' and so on and she manages risk.

And so the risk that she's encountering now is that she's got me opposite her and that must be a very unpleasant experience I'm sure but had she considered that um maybe this might end up before ICAC for instance? — in her attempts to manage risk?

Miss Tronson: But again there's an assumption there about the involvement in the process Senior Member. All I'm suggesting is that questions can be asked anterior to this, I'm not suggesting that Mr Lonsdale cannot ask the ultimate question at all, only that it might assist if the anterior questions are asked first.

Senior Member McAteer: Are those being about her role?

Miss Tronson: I presume so, I don't know exactly what Mr Lonsdale —

Senior Member McAteer: I don't either but we keep seeming to come back to the same point.

Miss Tronson: Yes, her involvement with the decision-making process and so on.

Senior Member McAteer: Perhaps that question could be asked Mr Lonsdale and then we can see what else you want to ask in that vein?

If you wanted to ask the witness what was her involvement in the decision-making role because, the relevance is, to these proceedings, the reference to legal risk, in general reference to part of her function and then you asked her a specific question, whether in her view these proceedings could constitute some potential legal risk to the university and she answered in the affirmative.

Tom Lonsdale: Would you like to ask her the question?

Senior Member McAteer: No, no, but I'm asking you to ask because you're the one who wants to know —

Tom Lonsdale: Well you frame it in the legal terminology and do it much better than I.

Senior Member McAteer: Well just ask the witness — I may have questions for the witness when you're both finished. Perhaps, perhaps madam if you can inform the tribunal what your role in the decision-making process was in respect of this matter.

Olivia Perks: I had no role whatsoever.

Tom Lonsdale: So we're to take it you had no role. Do you have any knowledge of these proceedings?

Olivia Perks: Only as set out in my affidavit.

Tom Lonsdale: Only in so far as? So there's no one here from the university who's in a position to answer for any of the positions adopted by the university other than the lawyers at the bar table, is that correct?

Miss Tronson: I object to the question.

Senior Member McAteer: Well the witness, Mr Lonsdale, isn't really in a position to answer that question. It possibly could be answered by inference but that's not good enough. I don't think it's relevant. It's really a question for the respondent, not for this witness.

Tom Lonsdale: In her capacity as Senior Counsel for the OGC I thought she might have a view.

Senior Member McAteer: Well she says she has no knowledge of these proceedings, um, I'm not going to make much of that.

There's obviously knowledge of these proceedings now, if she's been asked to do an affidavit and called to give evidence but putting that to one side, as I said, I do not take any issue with that, she has made no decisions in the process and her general answer was she had no knowledge of the proceedings.

Tom Lonsdale: Ok, you heard that and so did I —

Miss Tronson: Other than, as set out in the affidavit.

Senior Member McAteer: Yes yes, other than as set out in the affidavit which is partly my qualifier about the answer.

Tom Lonsdale: So Miss Perks, who wrote your affidavit?

Miss Tronson: I object.

Senior Member McAteer: These matters go to the matter of lawyer client privilege. It's deemed that an affidavit may be drafted by any number of people, but the person who attests it, says it's true and correct to the best of their knowledge.

Now before we get on to pages 5, 6 and part of 7 as we discuss as we were going through the affidavit when it was to be tended, and it's now been adopted we discussed what the affidavit was seeking to do.

And whether you agree with the import of what it does, I didn't see that it was controversial in what it was seeking to do. The deponent, as part of the University's response to your proceedings, has had a witness prepare an affidavit to set out their role and function and predominantly, to give evidence about the lawyer/client relationship in the nature of what will ultimately be the claim for legal professional privilege in those documents there. So on this front part of the affidavit, she's been asked to prepare an affidavit, whether it's typed by someone else, or corrected or amended by someone else —

Tom Lonsdale: I didn't ask about that.

Senior Member McAteer: But you asked who wrote it. Well, it's deemed that the affidavit is that of the person making it so —

Tom Lonsdale: So why didn't she say so? She had that opportunity.

Senior Member McAteer: Well I don't see the need for the question. You know, the affidavit of John McAteer is, for want of a better expression, my affidavit. It's not like a book where somebody ghosts write it and you put your name to it. Lawyers prepare affidavits.

Tom Lonsdale: Maybe she can answer.

Senior Member McAteer: Well I'm trying to work out what the relevance of it is.

Tom Lonsdale: The relevance is that she says she doesn't know anything about these proceedings — and then tenders an affidavit with her signature on it as Senior Counsel for the OGC and but pretends that well, she doesn't really have any knowledge or understanding of what she's written.

Miss Tronson: Mr Lonsdale has mischaracterized the witness's evidence — the witness's evidence is that she had no knowledge of these proceedings other than as set out in her affidavit.

Senior Member McAteer: Noted, yes.

Miss Tronson: So that's different from the inference that Mr Lonsdale is —

Tom Lonsdale: But to write an affidavit, she's got to have understanding otherwise it's just completely random monkeys with typewriters.

Senior Member McAteer: No but the understanding is, as referred to in this affidavit. You know, in order to depose paragraph 10 the deponent needs to get their mind across the matters that paragraph 10 ultimately reports by way of a succinct example. It could be Mr Lonsdale that obviously it's your case in reply but it might be a case of thinking: What do you want to glean from this witness? The-

Tom Lonsdale: Well if you allow me, I will ask her, but —

Senior Member McAteer: The main function of cross-examination is to ask questions that you already know the answers to and if you believe a witness um is not telling the truth, highlight that with evidence.

Tom Lonsdale: That's what I've just done. Did she consider ICAC as being a possibility for this as one of the risks that the university runs before she put her deposition down that it's all about GIPA and the trivial elements that she puts forward. Had she considered these other issues?

Senior Member McAteer: Well she said no and —

Tom Lonsdale: Right, OK. Very good. Move on. Move on to the next one please. Did she consider the *Prevention of Cruelty to Animals Act 1979* as being relevant to these proceedings in any way shape or form in terms of the University's dealings with, secret dealings, with Hills and Royal Canin?

Miss Tronson: I object to the last part of the question 'secret dealings'. I'm content for the question to be asked: 'Did she consider that act?'

Um. I also note that for the record, the witness has not answered that question in relation to ICAC because it had been framed in a different way originally um and Mr Lonsdale didn't ask it again after the witness responded to the question about her involvement in the process —

Senior Member McAteer: All right, Mr Lonsdale, the concern I have, as I've said is where these proceedings are partly presentorial.

Basically, unless I think the evidence is relevant, it's ultimately irrelevant because I'm the one who considers what weight is to be given to it. Without asking a witness questions from different angles, when I see the reference to legal risk in paragraph 4 that to my mind is a reference that any solicitor employed by any entity other than a legal corporation or a legal practice would have as part of their duties.

All lawyers who are employed by a company that doesn't provide legal services manage legal risks in everything. Whether these proceedings are a risk to the university or not — well I suppose an actress would say, the model of litigation against you in some way identifies the level of risk or exposure you have to being _____ (-2:35mins to go on CD 2. Single word on tape is inaudible). I won't say any more than that but-

Tom Lonsdale: If I could just mention that the preamble to this line of enquiry involved the Model Litigant Policy.

Senior Member McAteer: Which the witness had no knowledge of .

Tom Lonsdale: Right, but she does now and um —

Senior Member McAteer: But this affidavit was drafted without knowledge of that.

Tom Lonsdale: If the university is claiming no knowledge of fundamental legislation affecting misconduct then I'm concerned.

Senior Member McAteer: Well, just one moment, are you talking about the Model Litigant Policy?

Miss Tronson: Yes.

Senior Member McAteer: Well it's not legislation, as I said, in my experience, people who are legal practitioners of the Crown, receive instruction and training in Model Litigant Policy. The media has had a lot to say, so has this Tribunal to where our departments get a serve for being anything but a model litigant. I'm not going to name those departments but they're on the public record.

Tom Lonsdale: We've got another case here, haven't we?

Senior Member McAteer: Give me an example where an employee of a government agency has given evidence that she's not aware of the Model Litigant Policy.

I don't take any great issue with that. If I was to take issue with that, if I was a public servant or a Member of Parliament, I'd take issue with the head of the university, or the head of the legal section but I'm a person performing a judicial function in a hearing so —

Tom Lonsdale: You refused to allow me to call them [other employees of the University] as witnesses so I'm having to appear here with this lady.

Senior Member McAteer: Mr Lonsdale, the Model Litigant Policy is about how these proceedings are conducted. You have ventilated a number of arguments about access to email, one party's use of fax, ignoring summonses etc. I've tried to deal with those as best I can. If you believe that lawyers have engaged in inappropriate or misleading conduct —

Tom Lonsdale: Yes I do.

Senior Member McAteer: As I've said before you need to take those matters somewhere else, not here. They might ultimately end up here on another list but that's a different matter. That's for legal services arising-

Tom Lonsdale: I'm seeking to test the evidence that Miss Perks puts on before the Tribunal. I'm trying to test her *bona fides* and whether this is indeed the person she reports to be in paragraph 4.

TAPE ENDS.

CD 3- Track 1 audio CD, Track 1 29:26 track 2 0:07 and track 3 33:57

Senior Member McAteer: You dispute the matters deposed in paragraph 4 do you? On what basis?

Tom Lonsdale: No I don't dispute them. I seek to test them. I seek to test the validity, the veracity, of what Miss Perks has —

Senior Member McAteer: Well bearing in mind I'm going to be deciding this matter ultimately — can you tell me how testing that is going to assist me to perform my role?

Tom Lonsdale: Very much so sir. Because in my Applicant Submissions of the 14th August 2015, you'll see that we'll then run through a number of Acts and Statutes. That in fact the University should have taken into account in formulating its response. These are all background issues, I'll grant you, but all come under the auspices of Miss Perks in her role as the external, as the um Senior Solicitor —

Senior Member McAteer: Where is the evidence in the Notice of Decision that these other um background Acts and matters weren't adhered to? Is it because of the nature of the outcome? Or is it something in there?

Tom Lonsdale: A number of things — and all we're doing at the moment is just checking if she cross-referenced to these matters. That's all. That's all and I think it's my right. I think there's a certain sort of natural justice requirement that I get to be heard here.

Senior Member McAteer: But these proceedings are not about the process administratively or otherwise that was engaged in by the university. These proceedings are whether the university made the correct and preferable decision having regard to the terms and conditions of the GIPA act in withholding or releasing documents.

Tom Lonsdale: Yeah, correct.

Senior Member McAteer: As I've said a number of times, nothing more, nothing less.

Tom Lonsdale: Fine. Correct and preferable in light of all the different aspects that bear on this decision — bearing in mind the Model Litigant Policy that —

Senior Member McAteer: Well no, Mr Lonsdale, my preliminary view is that none of that's relevant and it's never been relevant to any decision in determining GIPA unless something arose and then, as I said in the preliminary hearing, I made or a colleague made a decision to refer a matter to the Minister under whatever section it may be. That's not the role of the function of the Tribunal —

Miss Tronson: In 1 12 [believe this is reference to 12 Public interest considerations in favour of disclosure]

Senior Member McAteer: Yeah, 1 12 – in these proceedings. Those satellite issues —

Tom Lonsdale: It's not satellite, its core, it's what she says: 'I deal with legal risk.'

Senior Member McAteer: Aren't the core issues that the University says the document is legal professional privilege materials or-

Tom Lonsdale: We'll get to that.

Senior Member McAteer: Commercial in confidence and the issue is for me to decide if that's factual or not through a fair assessment.

Tom Lonsdale: Well that comes later but right now I would like to ask her

Senior Member McAteer: Well what I'm — I'm going to give you a little bit more leeway but it's really about relevance. And if I don't think it's relevant, even if — this is not — whilst GIPA is a rights act, this is not about rights that pertain to you other than access to the material.

Tom Lonsdale: Correct

Senior Member McAteer: Its not rights about the process.

Tom Lonsdale: But the person opposite me is reporting to be of some considerable eminence and that her —

Senior Member McAteer: I don't know if they are. They're just saying that that's what their role is and that they're the person who's been asked to give evidence.

I'm not saying that they aren't eminent or they are, but you use the term Senior Counsel which means the modern version of a QC, well the affidavit says Senior Solicitor. You've referred to them as General Counsel, another person is General Counsel. But it could well be that the eminence that this witness is held in is as high as that and that's neither good nor bad.

Tom Lonsdale: But she hasn't got much to say for herself. She isn't getting the chance, is she?

Senior Member McAteer: Well she's not getting the chance because I can't see how these questions are relevant to the decision I have to make, have to determine.

Tom Lonsdale: How about you let me ask the questions and at the end of it, you form the view? Rather than trying to —

Senior Member McAteer: Well, well no, Miss Tronson.

Tom Lonsdale: Your predetermined views —

Senior Member McAteer: Mr Lonsdale, Miss Tronson is objecting. The purpose of an objection is to stop a question being answered —

Tom Lonsdale: Let's move on to the next one. So in all of this, of course, it relates to the veterinary decision making of the University and the refusal of the FOI — [refusal] to release those documents. Now, the people who took those decisions are for the most part vets. It's incumbent on them to observe the Veterinary Practitioners Code of Professional Conduct. Are you aware of that?

Miss Tronson: Senior Member, I'm not sure that the people who made those decision were vets.

Senior Member McAteer: Well it's the first I've heard of it, but anyway.

Miss Tronson: I'm content for the question to be asked but I'm not sure the premise is correct.

Senior Member McAteer: I thought the decisions were made by the administrator within the university. People who aren't scientists, for want of a better word.

Tom Lonsdale: Well I think the Dean of Vet Faculty is in fact a vet.

Miss Tronson: And the decision in relation to the GIPA Act, senior member, was not made by the Dean.

Tom Lonsdale: Well her signature appears on all the documents that were withheld. So let's move on.

We've got aspects of consumer law and misleading, deceptive conduct, consumer rights and obligations, all that are reflected upon by this refusal to release the documentation.

Consumers can't take confidence that what the University is doing is completely ethical and above board. Of course, it's being denied to them so when you presumably contemplate the fact that consumers might be aggrieved, outraged and very upset at your conduct that you will have dismissed any consideration of their rights because you felt that the GIPA Act took precedence, is that correct?

Miss Tronson: I object. There are many many —

Senior Member McAteer: Mr Lonsdale I understand the problem you have where the witness, it appears, isn't across the matters that you're focusing on and so you need to place them in a context, I understand that. The purpose of

cross-examination is to take somebody to something and then question them about it.

Tom Lonsdale: Can I take them to my Applicant Submission of that date that I mentioned then — and seeing that she's here as the University's representative, presumably is aware of this stuff, I mean she deposited her stuff a month before, I'd grant you that, but she came here today to answer questions.

Senior Member McAteer: I don't know if she'd read any of your submission, I really don't know.

Miss Tronson: Senior Member, Miss Perks is not here as a University representative, she's here as witness, called by the University.

Senior Member McAteer: Yes, she's the University's witness, not yours, you're just cross-examining her.

Tom Lonsdale: Well OK, as the University's witness, as the person who is going to answer for the University.

Senior Member McAteer: Well no, she's only going to answer about her affidavit.

Tom Lonsdale: Is that right or is she here as a witness of the university? Which is it?

Miss Tronson: Senior member, as your're aware, um, a witness is not a representative for a party. I'm content for Miss Perks to be asked a broad range of questions but my objection was not so much to the content of the question but to the many assumptions —

Senior Member McAteer: I was trying to glean whether Mr Lonsdale was trying to create a context or paint the picture. I've allowed questioning in cross-examination to go on for a while but they usually reach conclusions that aren't controversial, then a question is put. Bearing in mind if you agree with a, b, c and d, if there's 4 questions, how could you have arrived at e?

Miss Tronson: Yes, and I'm content for Mr Lonsdale to ask those questions, but in fairness to the witness, those questions must be asked separately and the witness should be asked separately whether she agrees with those matters.

Senior Member McAteer: All right Mr Lonsdale, what do you say about that? That's the position that I think is going to be most efficient because the purpose of cross-examination is for this witness to assist your case but the broad purpose of all evidence is to assist the tribunal.

Tom Lonsdale: Hmm, all right, well. She'll go on at some length about client legal privilege and all that thing and then presumably in the Office of General Counsel-

Senior Member McAteer: Mr Lonsdale, you can't in cross-examination say she'll go on about x, y and z presumably. That's not the function of cross-examination.

Tom Lonsdale: No no, I'm. There you are, first sign of madness, speaking to yourself. I'm just musing aloud as to the position we're at.

Um. Ok. Now, section 23, 24, um, you chose to include a lot of this third party material from Hill's Pet Nutrition is that right?

Olivia Perks: Yes.

Tom Lonsdale: Could you explain to the Tribunal your reasoning for that?

Miss Tronson: I object.

Tom Lonsdale: Why are you?

Senior Member McAteer: I'm trying to work out what this humming is as well [referring to noise in the room]. Can anyone else hear that?

Miss Tronson: I can hear it as well. It sounds like feedback.

Senior Member McAteer: All right, Miss Tronson objects to the question. Can you just ask the question again? I was distracted.

Tom Lonsdale: Ok, that Miss Perks makes considerable reference to the Hill's Corporation and their views on what should or should not be released.

Miss Tronson: I didn't object to that question and the witness answered that she did include that materials.

Tom Lonsdale: And my question was: Why did she include that material?

Miss Tronson: And I did object to that question.

Senior Member McAteer: On the basis of ah?

Miss Tronson: It's a matter for submissions.

Tom Lonsdale: What are submissions? What is this?

Senior Member McAteer: So what am I looking at? Paragraph 23?

Miss Tronson: And 24 as I understand it.

Senior Member McAteer: Miss Tronson are these paragraphs or are they not references to the consultation process?

Miss Tronson: Yes.

Senior Member McAteer: So why aren't they relevant?

Miss Tronson: That's not the issue. Miss Perk's evidence about her reasons for including those in the affidavit is not a relevant question.

Tom Lonsdale: Can I ask? Is this just a random series of acts then, that they throw stuff in regardless? I don't know. I'm not a lawyer.

I'm a vet but I try to be ethical and logical.

Senior Member McAteer: Well I thought it would have been abundantly clear why they're in the affidavit because they build the University's case that there were consultations about the redactions.

Tom Lonsdale: Right.

Senior Member McAteer: Paragraph 24, we agree with the University's proposed redactions.

Tom Lonsdale: So they [Hill's] agree with the University. And when I [seek to] call the witnesses who agrees with me, they're not to be included is that right?

Senior Member McAteer: Well no, I've said you'll be able to — subject to relevance —

Tom Lonsdale: Oh. I question the relevant of this because this is a corrupt organization [Hill's] that's putting forward it's corrupt thoughts. How is that helpful?

Senior Member McAteer: I can tell you now why my preliminary view is that in the context of this affidavit, or these proceedings, that would be relevant, because it involve matters in response to your GIPA request.

It's not about some contract that you've got no interest in or you haven't asked for, and it's not about something happening in the engineering department. It goes to the core of what you were engaged in with the University and how they responded to you.

Tom Lonsdale: Terrific. So they chose to put in this Hills guff, why not Royal Canin?

Miss Tronson: If that's a question for the witness I object on the basis the question of reason and the building of a case, as you put it, is really a matter for submissions? The fact is that there is no evidence from Miss Perks in her affidavit as to Royal Canin.

Tom Lonsdale: Correction. There is.

Senior Member McAteer: Sorry, not of that same nature. There's the response, or a response from Royal Canin in the same way as there is from Hills.

Tom Lonsdale: Because she chose not to. Why did she choose not to?

Senior Member McAteer: What is it you wish to learn from this witness that assists your case? You're not required to persuade me, the University is, but what is it you believe this witness can tell me that will make me give less weight to the arguments of the University?

Tom Lonsdale: Well maybe we can explore the fact that Hill's Corporation and Royal Canin are completely unreliable as I would —

Senior Member McAteer: Mr Lonsdale that's a matter arising, that's not a decision of the University. If these bodies have lied to the University, that doesn't turn to the University. If these bodies have misled the University-

Tom Lonsdale: No, no, she's a senior solicitor, of course not. [sarcasm]

Senior Member McAteer: What I'm saying is

Tom Lonsdale: She's got to have her eyes and ears wide open and keep her nose clean.

Senior Member McAteer: The University has been dealing with your GIPA application. An agency will have a GIPA application and will decide either for discretionary reasons or mandatory reasons to consult with the third party depending on what sort of material it is. It's not over to the university to grill or question or be responsible for the answers given in consultation. They just take them on board and decide, if any, what weight they should attach to them.

Tom Lonsdale: Exactly right, so they've got to exercise due diligence and I'm trying to assess —

Senior Member McAteer: Well, when you say due diligence, you don't have to exercise due diligence in every aspect of your functioning. It's a case of —

Tom Lonsdale: I most certainly require that of everybody I deal with. May they be a builder, a plumber or whatever —

Senior Member McAteer: Well due diligence is something that you require, but most people do due diligence when they believe it's required or when it's mandated.

Now I can tell you that the NSW public sector would not test the veracity of third parties they consult with under GIPA. They would just receive those answers and say they're rubbish, they're water tight or they're somewhere in the middle

Tom Lonsdale: Well they're saying they're watertight and they put them here.

Senior Member McAteer: Well they've received them and that's the view they've formed about them.

Tom Lonsdale: And thrust them at the Tribunal and said you take them as read, as accurate, and I'm suggesting you should have a mind to question the fact they're not. Furthermore,

I'm interested to know whether Royal Canin made a submission. You say they did, you didn't include it here. Why not?

Senior Member McAteer: What do you say about that question Miss Tronson? Is there an objection to that?

Miss Tronson: I, um, I'm just trying to find the reference but —

Senior Member McAteer: I've got a teleconference at 1:15pm so —

Miss Tronson: I don't believe that Miss Perks said in her affidavit that Royal Canin did provide a response.

Tom Lonsdale: [reading] 'After consulting with Royal Canin and Hills' at item 12, 'the University decided to refuse to provide access to the information.'

So consulting with, whether it was on telephone, email, written, I don't know, I'm seeking the answer. Please, Miss Perks.

Miss Tronson: Um, I have um, I have no objection to that question but perhaps you might like to refer me to the paragraph of the notes you're referring to.

[shuffling paper]

Tom Lonsdale: Paragraph 12, 18. 'The University has signed confidential sponsorship agreements with each of Hills pet nutrition and Royal Canin.'

They're very much in the frame these folks. They're only the biggest junk food company in the world — Mars. And Hills is the one that corrupts most of the vets on the planet. So you know, we shouldn't in effect *not know* any of this because Miss Perks is the University's legal risks person.

She needs to know who she's in bed with.

Senior Member McAteer: Well you might want to ask the witness what role they had in respect to these agreements.

Tom Lonsdale: I tried to do that.

Senior Member McAteer: Well let's hear it.

Miss Tronson: Miss Perks has already given evidence that she didn't have a role in the decision making process under GIPA.

Senior Member McAteer: Under GIPA, but I'm talking about the contracts. The sponsorship agreements.

Tom Lonsdale: Exactly right, yes.

Senior Member McAteer: Well ask that question.

Tom Lonsdale: Yes, well you note in your affidavit you make much mention of dealings with Hills and Royal Canin, you say at 12 that you consulted with both of those companies. Um. You chose only to put a redacted passage from Hills in your affidavit. Why not Royal Canin?

Miss Tronson: Um. Might I just clarify that Mr Lonsdale has said that Miss Perks consulted with Hills and Royal Canin but —

Senior Member McAteer: That was the University.

Miss Tronson: Yes.

Tom Lonsdale: Well I think we've established that the Office of General Counsel had much to do with it. Did they or didn't they? Let's ask that question. Did the OGC have anything to do with these deals?

Senior Member McAteer: So are we talking about the consultation about GIPA or the commercial agreement about sponsorship?

Tom Lonsdale: I'm talking about this affidavit.

Senior Member McAteer: Well, there are two different references. Paragraph 12 is about GIPA. Paragraph 18 is about sponsorship.

Tom Lonsdale: And it's before this GIPA application.

Senior Member McAteer: I'm not sure I understand.

Tom Lonsdale: Well, let's go with 12. Well?

Olivia Perks: I wasn't personally involved in consulting with Royal Canin or Hills. And when I prepared my affidavit, I was made aware of the responses that were available to me in preparing the affidavit.

Tom Lonsdale: In house or outside lawyers?

Miss Tronson: I object, I'm not sure what the question means.

Tom Lonsdale: Who made her aware? Where did she get this information?

Miss Tronson: I object.

Senior Member McAteer: What's the basis Miss Tronson?

Miss Tronson: Privilege.

Senior Member McAteer: So lawyer/client privilege?

Miss Tronson: Yes.

Senior Member McAteer: All right. Unfortunately Mr Lonsdale matters that go to discussion that a party has internally or with lawyers about preparing matters for the proceedings are privileged.

So by way of example, where a party obtained a document or how they cannot obtain a document which they annexed to the affidavit is privileged. The fact that they say it's a true and correct copy of the document is obviously clear and open and not privileged.

So you can't ask a witness or a party questions about how they prepared their case. That's as simple as I can put it. Now I'm going to have to adjourn in a couple of minutes, I've got the teleconference with about seven other parties. Not here, but on this floor. So I disallow that question in respect of paragraph 12. What's the next question you wish to ask Mr Lonsdale?

Tom Lonsdale: Ok. At the directions hearing you, at the time, commented on this affidavit of Miss Perks.

Senior Member McAteer: Only to give you an example of —

Tom Lonsdale: Now I'll repeat, I'm not saying that this is absolutely verbatim.

Senior Member McAteer: But is the question of the witness or of me?

Tom Lonsdale: To let you know where I'm coming from and why I'm going to ask her the question all right? And you commented that this affidavit reproduces the view of third parties and you were talking about Hill's. You at the same time said, is there something from Royal Canin?

Senior Member McAteer: But that would have been in conversation about the issue you were raising —

Tom Lonsdale: What conversation? This was in the hearing.

Senior Member McAteer: Well we only had a hearing on — when I say we had a conversation, this is a conversation in a hearing. You throw these things at me from the bar table, I try to respond to them.

Tom Lonsdale: Well allow me, please, to read you the rest and maybe respond then rather than interject.

Senior Member McAteer: All right well you've got to remember Mr Lonsdale that you don't conduct or run these proceedings, I do. As I've said I'm going to have to adjourn in two minutes so off you go.

Tom Lonsdale: Is there something from Royal Canin? You put to Miss Tronson. Perhaps one of those people needs to give evidence as to the relationship.

Senior Member McAteer: That was in response to a question you asked. You said how do I get witnessed here and I said

Tom Lonsdale: No no no that was quite separate.

Senior Member McAteer: It's not for me to tell you what your case is or how to run it.

Tom Lonsdale: Absolutely not.

You flicked through the evidence [at the Directions Hearing], you said: [to Ms Heesom, as I recall]:

'Just looking at the public interest in the table of Section 14, your affidavit reproduces the views of these parties. Is there something from Royal Canin? Perhaps one of those people needs to give evidence as to the relationship maybe. If that evidence is put in written form, subject to any valid objections, they should be available to be cross-examined.'

Senior Member McAteer: Mr Lonsdale, did you hear the 'if' in what you said? The University doesn't seek to rely on any evidence other than the evidence of this witness. They believe that their case is determined on the material. That the Tribunal will read the material and form its view.

The Tribunal doesn't know what view it will form yet. They [the University] don't believe they need to mount a robust defense of the matter you seek. Presumably because it's not a matter that has, in their view, significant evidence other than submission as to the meaning of these documents.

Now that's how I understand their case. We did have a further discussion; I don't know what you're reading from there, about how it's a matter for the respondent to put on this evidence.

Now, Miss Heesom said on the first occasion that they didn't propose to. And from memory, Miss Tronson reiterated that at the second preliminary hearing. So that's the answer to that.

You then sought to summons these people. When we had that conversation on the first matter about the evidence, I wasn't aware of those five summonses. You

mentioned that as we adjourned. I had no idea who the identified were but we dealt with that earlier this week.

Tom Lonsdale: But that was in the letter that you dealt with because that was in the letter I sent to the tribunal. That was the reason for the hearing. So you didn't read the letter?

Senior Member McAteer: My understanding is, the reason for the hearing was, that there was an issue about the publication, and then there was an issue that the Respondent raised about reading the evidence.

Tom Lonsdale: Yes. She ambushed us.

Senior Member McAteer: That was the reason for that first preliminary hearing. I could be wrong on that but that's my recollection.

Miss Tronson: That's my understanding as well.

Senior Member McAteer: Now, I'm going to have to adjourn. This witness is still on oath. I understand the witness isn't going to be available for very long.

Miss Tronson: Might my instructor consult with the witness about her availability from this point forward? Might I ask that they be permitted to leave the room to do so?

Senior Member McAteer: Yes, of course.

Miss Tronson: Thank you Senior Member. Um the witness is available until 3pm.

Senior Member McAteer: We'll adjourn until 2:15pm.

Off radio.

Track 2 has no recording. It goes for only 0:07 seconds.

Track 3:

Senior Member McAteer: Back on record. We'll recall the witness. All right Mr Lonsdale.

Tom Lonsdale: Open to me again is it? Miss Perks if I could take you to your page 6, bottom thereof. 'Should the terms be made public', these are the Hill's presumably, not the Royal Canin terms, the commercial bargain...can you read that for me please then over the page to the end of the italics. Just if you could read it and know what it says.

[Miss Perks reads]

Tom Lonsdale: Thank you, have you done that? Good. Now you'll be aware of course that there's a presumption that all information that's contained in government archives should be available to the public. Is that so?

Olivia Perks: Yes.

Tom Lonsdale: And that this company, you've retained their information, says that their opportunities would be diminished if this information was out in the public domain. Which is in direct contradistinction to the requirements of the GIPA act. Is that not so?

Olivia Perks: Well I think there's a presumption against disclosure in certain instances and I think that the terms upon which they're set out here are reflective of some of those admissions in the GIPA act.

Tom Lonsdale: OK. But in terms of these last couple of paragraphs they're talking about this stuff being in the public domain. And that's then bad for them although GIPA says everything is good for the public unless a special reason is made for withholding it.

Anyway, their contention that it's not in the public domain I think is something that we need to test. In your paragraph 25, you say to the best of your knowledge, the information the university has refused to provide to the applicant is not in the public domain and remains confidential. Can you tell me to what extent to the best of your knowledge?

Olivia Perks: Well based on advice provided to me.

Tom Lonsdale: OK, so you haven't seen any documents? You haven't seen, for instance - you have not seen my Submission and Affidavit?

Olivia Perks: I've read your Submissions and Affidavit.

Tom Lonsdale: Right, so can you see then that I might consider [L1](#), [L2](#) and [L3](#) are very much in contradistinction to what you have asserted.

Miss Tronson: Perhaps Miss Perks should be shown those documents.

Senior Member McAteer: They're in annexures to your Affidavit Mr Lonsdale. Have you got ones that can be shown to the witness?

Tom Lonsdale: Yes, I do

[Hands to Miss Perks]

Tom Lonsdale: The University makes a big deal about the fact that even if these documents are identical to those in the Murdoch file.

Senior Member McAteer: Or very similar.

Tom Lonsdale: No, identical they say. If they bear the same name, but they're not the same. If John Smith and John Smith come into the room through separate doors, they're not the same person. So they really stretch a point. So I'm finding it really difficult to deal with these people who manipulate logic in that sort of fashion.

Senior Member McAteer: The issue is it not that if they relate to dealings with one university then how can they be the same documents as document relating to another university?

Tom Lonsdale: Effectively the same. If one document is essentially the same, but one says Murdoch and one says Sydney University, then they're in the public domain.

Senior Member McAteer: I say this though, that I don't know if they're essentially the same document or not because I haven't looked at them. If I have a contract with you, and we come to an agreement that I'll pay you x and you'll pay me y, and I have contract with the other party they they'll pay me something and I'll pay them something, that's a separate contract. They don't know the bargain that I struck with you or *vice versa*. Its immaterial as to whether a company has sponsorship arrangements with many universities. I'm not quite sure how they stack up.

Tom Lonsdale: Well it's for you in good conscience to make that decision. Shadow boxing!

Senior Member McAteer: I'm not sure what you're asserting.

Tom Lonsdale: I'm asserting that Miss Perks asserted that this information is not in the public domain.

Senior Member McAteer: Information involving her employer.

Look at page 6, under the heading Submissions. I think she's giving evidence on matters that she knows having seen your Submission and Annexures, or having seen them now, she could give evidence if she was asked as to whether your Annexures had been revealed outside of the organisation.

So I think we need to move on, I don't understand how if one set of contracts is in the public domain, that means that it's been revealed. I can see how it's an argument that if it's all right for one uni to release it, why doesn't this one?

But that's not the argument they've relied upon. They've relied upon the fact that they don't believe it's in their interest and they're saying that significant weight should be placed on that provision in GIPA to say why it doesn't have to go out.

Tom Lonsdale: And I'm saying insignificant or no weight should be placed on it because the information is well known and that's what they're up to.

But you can side with them if you choose.

Senior Member McAteer: Well, I'm not siding with anyone, the issue is um as you say, shadowboxing is the term you used.

I have no idea if that information is in the public domain. You seem to infer that it is. You just need to confirm it and you confirm it by getting the documents.

Well, this is not really a truth or dare moment but if you were given the documents and let's say before you saw the documents, six months ago or whatever, you thought they were in the public domain and when you got them, they were something that wasn't in the public domains, what would you have to say about your view then? Its supposition isn't it?

Tom Lonsdale: Oh this is all centered on supposition. But we know the nature of the beast that we're dealing with.

Senior Member McAteer: I understand what is now being referred to as the substantive issue, which is a matter I'm not hearing. I'm hearing a GIPA application but we all understand that, we all differ on the facts. I don't profess to have any knowledge of the facts of the broad issue.

Tom Lonsdale: Yet! You're going to read the book and watch the videos.

Senior Member McAteer: That will give me information, opinion and evidence, yes. I might think you're 100% correct or 0% correct. But what I think is not that relevant unless it's relevant to the GIPA application.

Tom Lonsdale: All right let's just have a look at number 26. [reading from Perk's Affidavit]

'I'm aware that the applicant has published two books promoting a raw food diet for pets . . . *Raw Meaty Bones* and *Work Wonders*.'

So Miss Perks you seem to know a lot about me and my books and things but you don't seem to know much else. How is that?

Miss Tronson: I object. The question's unfair.

Senior Member McAteer: I don't really see how it has any pertinence. If you think there's something the witness should know more about, ask her about it and the limit of her knowledge. I'm not even sure of the relevance of paragraph 26 but anyway, it's not my affidavit to object to.

Tom Lonsdale: Delighted that she introduces it into the conversation, but beyond which it would seem, there can be no discussion. I'm interested to know, as Senior Solicitor in the Office of General Counsel, that you have this

information which you felt was relevant. Do you agree you thought it was relevant?

Olivia Perks: Yes.

Tom Lonsdale: In particular, what relevance do you attach to mentioning the book *Raw Meaty Bones*?

Miss Tronson: I object. The question of relevance is one for the legal representatives or the self-represented parties to make submissions on.

Senior Member McAteer: Perhaps the question might be, why have you included that information in your evidence?

Miss Tronson: I'd object to that question.

Senior Member McAteer: Well, perhaps you can assist me, why is it in the affidavit?

Miss Tronson: One of the factors that the Tribunal can take into account, factors relevant to table 14 are the personal factors of the applicant. One of the matters on which the respondent made submissions is that Mr Lonsdale does have a commercial interest in these matters to some extent because he's published two books and those books are available for sale. That's it.

Senior Member McAteer: How is that relevant to this witness though? Who didn't process the GIPA application?

Miss Tronson: it's not relevant to this witness but it doesn't need to be. This witness has simply provided that evidence so that the respondent can rely on it.

Senior Member McAteer: Well I think the applicant provided that evidence so the respondent can reply on it also.

Miss Tronson: At the time of the affidavit, the applicant had provided no evidence.

Tom Lonsdale: Well I can conclude this fairly rapidly now I think. Just, I'm disappointed that Miss Perks doesn't seem to know much about the University's position, however in your affidavit the first annexure OAP1, can you tell me the names of the people at the bottom, their annotation? Veronica somebody?

Olivia Perks: I think they're members of the Faculty of Vet Science.

Tom Lonsdale: Ok, um, and you've got a Doctor Peter Higgins looks after what? I can't read that.

[Silence]

Tom Lonsdale: So you don't know either of these two veterinarians?

Olivia Perks: No. But I assume that they're members of the Faculty of Vet Science.

Tom Lonsdale: Ok. If I were to tell you that Peter Higgins used to be sales person for Mars and then subsequently for Nestlé, junk pet-food makers, does that make any difference?

Olivia Perks: I'm not aware of that. I would assume that these are notes from Tim Robinson in terms of who you need to consult within the faculty. And they're internal university numbers so I'm assuming that he was planning to contact those two individuals.

Tom Lonsdale: So I make the point that people processing my FOI application are in fact compromised, I would suggest by virtue of their previous employment.

Senior Member McAteer: Hang on Mr Lonsdale, you've got to ask a question.

Tom Lonsdale: I'm just interested to find out what the Office of General Counsel feels about people who have got compromised positions ruling on.

Olivia Perks: Just to clarify, they would have had no responsibility for processing the application. Tim Robinson would seek information from people who he thinks might have relevant information but he would also search all the University's TRIM records and use various means to collect that information so they would have no involvement other than to be the subject of an inquiry.

Tom Lonsdale: OK and their *bona fides* are not to be questioned, OK. Now, OK, and we're talking about those three envelopes [containing the withheld University documents]. How many pages do you think those envelopes contain, just guessing?

Senior Member McAteer: How is that relevant Mr Lonsdale? I would have no idea whether there should be one folio or 20 thousand.

Tom Lonsdale: Well I'm trying to help you understand the predicament you find yourself in.

Senior Member McAteer: Well I'm here to rule on this application. If a person were to make a GIPA application and believe that the material provided wasn't all the material within scope or —

Tom Lonsdale: Well this is part of my application, absolutely. It says so here, section 26.

Senior Member McAteer: Well, by virtue of the GIPA Act, the Civil and Procedural Tribunals act and the procedural guidelines, directions and rules is all the material within scope of your application.

Tom Lonsdale: I don't believe it and that's what I'm trying to test with Miss Perks but she won't come clean.

Senior Member McAteer: Well, perhaps when the Hearing's concluded we can see something of an evidentiary nature from the University and the parties can make submissions on that, an affidavit or something saying but broadly, the position is that based on your letter, that's what the university located.

I hear what you're saying that to not seek out information and assess it is contrary to what the GIPA Act says but this is the first I've heard of this.

I understand from the initial planning meeting that other jurisdictions or other entities under similar or non-existent or stronger law provide different responses. The Murdoch University has been cited by you. I accept that, but if you're saying that the Uni has not complied with the request and processed it, and in processing it, hasn't provided one of the outs provided for under the Act then that's a completely different matter.

Tom Lonsdale: It's all part of the same GIPA application. They have provided me with say 10 documents against 500.

Senior Member McAteer: And they haven't provided you with these documents. But what I understand you to say is that in your view, and I'm not sure what you base it on; there should be a lot more within the scope of your application.

Tom Lonsdale: 110%

Senior Member McAteer: Well, I don't have any evidence other than your assertions from the bar table. But the decision relates to their refusal to give you access, not to um refuse to process the application.

Tom Lonsdale: No no, to refuse even you — to refuse to see what they're withholding.

Senior Member McAteer: But Mr Lonsdale how do you have evidence of that when it relates to me and I don't have evidence of that and when I read these documents, I'm not sure I'll have evidence of it.

We need to move on. We need to possibly spend a few moments with a witness confidentially so I hear this matter you've raised now, I can't do anything more with it at the moment.

The building blocks of this matter, I've taken in good faith that this is the University's response that they file with a schedule along with the confidential documents and I take it that it's access to those that's in dispute not that they are

only willing to talk about half the relevant material and the other half doesn't exist.

I'm not saying that's a submission you've made. It's not a finding I'm making. It's just an observation that you're using fairly colourful words and I understand why. But what you're asserting is that the University hasn't complied with the requirements of the GIPA Act irrespective of giving you access to the material. Well that's a new one for me today in these proceedings. Is there any more specific questions of this witness from you?

Tom Lonsdale: No. Unless something follows from what I'm about to ask you now. This all comes as a bit of a surprise to you, it would seem, as to what's in my Submission.

Senior Member McAteer: No, I'm talking about your Application.

Tom Lonsdale: So for my own information, may you tell me, will you read my Submission? Will you read my Affidavit?

Senior Member McAteer: I will read all the submissions and all the evidence prior to beginning to form a view and then I will form a view. I do that in every matter.

Tom Lonsdale: Terrific. It's just that you're surprised today by what I say but —

Senior Member McAteer: I can say this though, with those matters being raised, at the moment, that's not the Application before me. The Application before me is the refusal to give access to the information of withholden and withholden under the ground of GIPA Act.

Tom Lonsdale: And all the other information they're withholding.

Senior Member McAteer: This is the other issue.

Tom Lonsdale: Yes yes. Well any way, that's fine. That's fine.

Senior Member McAteer: So was there another question for this witness?

Tom Lonsdale: No. Thank you indeed.

Senior Member McAteer: Then again I'd ask the witness to remain in the witness box briefly and I'll ask everybody else except counsel and instructing solicitor for the Respondent to leave the hearing room.