**IN THE CIVIL AND ADMINISTRATIVE TRIBUNAL**
**Administrative and Equal Opportunity Division**

**File Number: 1510239**

**Tom Lonsdale**
**Applicant**

**AND**

**The University of Sydney**
**Respondent**

# APPLICANT'S SUBMISSIONS FOR DIRECTIONS HEARING 2 SEPTEMBER 2015

**1.** The Respondent's submissions for Directions Hearing dated 26 August 2015 was provided to me by email.

**2.** The Respondent's Perks Affidavit dated 13 July 2015 contains the passage:

> Lawyers within the Office of General Counsel are, first and foremost, officers of the court. They are expected to comply with the ethical and professional standards of conduct required of the legal profession including, relevantly, the obligation to provide independent, honest and professional legal advice to the University.

By extension, it would seem that Heesom Legal is bound by the same obligations.

**3.** In my Affidavit of 13 August 2015 I wrote:

> It is my contention that the OGC has suffered a catastrophic failure of its fundamental obligations to the University, the Court and the wider community in respect to:
> a.) failing to forewarn the University of the potentially serious legal, ethical and moral implications of the University's arrangements with the junk pet-food makers at the time those arrangements were first contemplated.
> b.) at this time when NCAT is examining the University's arrangements, failing to warn the University regarding the extent of potential legal, ethical and moral implications of its junk pet-food arrangements by reference to several applicable written and unwritten laws.
> c.) instead of warning the University of the potentially serious implications, the OGC has sought to deny the undeniable and to defend the indefensible and thus dig a still deeper hole of the University's own making.

**4.** It is my belief that the Respondents Submissions and the Perks Affidavit have the tendency to mislead the Tribunal and frustrate the Tribunal's fundamental purpose namely:

> The objects of the GIPA Act are to maintain and advance a system of responsible and representative democratic Government that is open, accountable, fair and effective.
>
> The GIPA Act:
>
> - authorises and encourages the proactive release of information by NSW public sector agencies
> - gives members of the public a legally enforceable right to access government information
> - ensures that access to government information is restricted only when there is an overriding public interest against releasing that information.

**5.** It is my belief that the Respondent's Submissions and the Perks Affidavit have the tendency to deflect attention from the core issues and obscure the University's predominant motives for withholding the sought for information.

**6.** It is my belief that the Respondent's Submissions for Directions Hearing seeks to further intimidate, mislead and frustrate the Tribunal with unwarranted threats and spin.

**Publication of material on website**

**7.** 15 July 2015 Heesom Legal supplied: - the University's submissions; and the affidavit of Olivia Perks. Soon after 15 July I asked my Web helper to post the documents on my website.

**8.** 29 July 2015 Heesom Legal complained about the presence of the documents at my website:

> Documents and other things obtained under a summons must only be used for purposes directly connected with the proceedings. Using the documents or other things for any other purpose or publishing their contents for any other purpose, may constitute contempt of the Tribunal and be punishable by fine or other orders.
>
> This is a general principle of law that applies equally to witness statements.
> The University requests that you remove the submissions and the affidavit from your website immediately. Should you fail to do so, the University reserves its right to apply to the NCAT for an order that you are in contempt of the Tribunal.

**9.** Whilst I was under the impression GIPA provides for and encourages disclosure and whilst, from my perspective, no summons was involved, I nevertheless sought legal advice regarding the Heesom assertions.

**10.** Legal advice indicated that I should seek direction from NCAT. The Divisional Registrar NCAT, in a letter dated 5 August, declined to give advice.

**11.** 8 August 2015 I wrote to my web helper with a title 'Link removal please':

> I was hoping that NCAT would give a clear direction as to whether or not the University links should be removed.
>
> Unfortunately they sidestepped the issue. Rather than get into a heated battle over nothing, please remove the links.

**12.** Following receipt of 26 August letter from Heesom Legal complaining that Google was still able to access the links, despite their removal from my website, I again wrote to the web helper:

> The University all hot and bothered about the links as per the attached.
> Are they right? Can it be erased from Google?
> Anyway, please do what you can and we'll see from there.

**13.** We can be confident that my web helper will do what's possible to remove the links.

**Ruling on evidence**

**14.** The public institution of the University of Sydney clearly has an overriding obligation to uphold the standards of openness, transparency and accountability. Any reputable institution would welcome with enthusiasm the opportunity to demonstrate its stature, its integrity and its reliability in accordance with the evidentiary record.

That the University now seeks to distance itself from the evidentiary record by way of convoluted, circular legal artifice raises questions about the its legal advice and of the University's conduct generally.

**15.** I note that the Respondent reluctantly accepts inclusion of annexures L1, L2 and L3, being just three of the 500 documents released by Murdoch University in relation to the self-same FOI application.

**16.** The Respondent seeks to ban any consideration of annexures L4 to L22. However, then the Respondent sets out various upside down, back to front reasons why the Respondent does not wish for the evidentiary record to be considered.

**17.** I reproduce the Respondent's points contained in Respondents Submissions for Directions Hearing 2 September 2015, numbered 15 to 34 with my comments intercalated in blue:

---

15. The University objects to the Tribunal receiving this material into evidence on the basis that it is irrelevant and will cause disproportionate costs for the University, not to mention the disproportionate use of Tribunal resources, should it be received.

**TL** On any 'reasonable person' test the evidence contained in L4 to L22 is entirely relevant under the terms of the GIPA Act and Administrative Decisions Review Act.

The University objects to consideration of L4 the book *Raw Meaty Bones: Promote Health* and L5 *Work Wonders: Feed your dog raw meaty bones*. This, despite the fact that the University's Submission and the Perks Affidavit first raised the matter of the books as matters of relevance.

***Applicable principles***

16. As observed above, the Tribunal may conduct proceedings as it sees fit: NCAT Act, section 38(1). It is not bound by the rules of evidence: NCAT Act, section 38(2). It "is to act with as little formality as the circumstances of the case permit and according to equity, good conscience and the substantial merits of the case": NCAT Act, section 38(4).

TL. Precisely.

Further, it must "ensure that all relevant material is disclosed to the Tribunal so as to enable it to determine all of the relevant facts in issue in any proceedings": NCAT Act, section 38(6)(a).

TL. Assuredly *all* relevant material and *all* relevant facts.

A corollary of this last obligation is that the Tribunal ought not have regard to any irrelevant considerations or material, which in any event is an obligation of any tribunal under general law.

TL. Matters pertaining to the original GIPA application 29 September 2014 and the truthfulness and trustworthiness or otherwise of the Respondent are surely relevant considerations!

17. All of this is consistent with the object that the Tribunal should endeavour to "resolve the real issues in proceedings justly, quickly, cheaply and with as little formality as possible": NCAT Act, section 3(d).

TL. Entirely reasonable. The Respondent bears a heavy responsibility for seeking to derail the quick, cheap and informal process. The Respondent brings heavy artillery to bear when a short apology and full disclosure would be the honourable course.

18. The obligations set out above are such that it is generally inappropriate to have significant argument as to whether certain evidence ought to be received by the Tribunal.

TL. Precisely. Let the evidence speak for itself. Why does the University engage in specious argument?

It is often the case that the Tribunal will consider that it is more appropriate to receive evidence that may be irrelevant, subject to weight, as it would occupy more time to argue

about it than it would to receive it and then to observe in the course of giving reasons that no regard was had to that irrelevant material. In addition, argument about whether or not evidence ought to be received can have the tendency to increase the formality of proceedings.

TL. By any reasonable measure the evidence I put before the Tribunal is relevant. Seeking to displace clear communication with legal mumbo jumbo about the admissibility of evidence increases formality and costs.

19. However, where irrelevant material will add greatly to the costs of another party, or to the time which might be occupied by the hearing, or where it might have a deleterious impact on the Tribunal's ability to make a timely determination (NCAT Act, section 3(e)), it is appropriate for the Tribunal to consider refusing to receive that evidence.

TL. Hypothetical codswallop. Attempting to redefine highly relevant material as being 'irrelevant' insults the Tribunal and its abilities to 'make a timely determination'.

The alleged costs of the Respondent are entirely a matter for the Respondent. Although it should be said that Government executives and lawyers raiding the public purse in defence of the indefensible and denial of the undeniable falls well short of expected conduct.

20. Moreover, particularly in circumstances where the Tribunal will be constituted for a directions hearing on a date prior to the hearing in any event, it is appropriate for the Tribunal to make such a determination well before the hearing, so that the parties have certainty prior to the hearing as to the evidence which the Tribunal will receive.

TL. The Directions Hearing has been ambushed by the Respondent who, at short notice, seeks to dominate proceedings with vexatious claims.

21. Another reason for the Tribunal to consider the matter in advance relates to the costs of the party not seeking to adduce the evidence, in this case, the University. Section 60 of the NCAT Act has the effect that the Tribunal is generally a no-costs jurisdiction. This means that a party that incurs significant costs in dealing with a large amount of irrelevant material may not be able to seek any recompense in the form of an appropriate costs order. Further, the very incurring of those costs leads to a situation where the proceedings before the Tribunal become far from cheap.

TL. Continued desperate attempts to get highly important information relabelled as 'irrelevant material' purely out of the dubious self-interest of the Respondent is highly reprehensible. The Respondent would be well to address the information and deal honestly with the allegations from any human perspective and from the legal perspective of the Administrative Decisions Review Act.

It's to be hoped the Tribunal will not be swayed by mendacious reference to hypothetical costs.

On the matter of costs, perhaps the Respondent and its junk pet-food partners might like to disclose how much, up to this point in time, they have spent attempting to keep secret their cruel and degrading arrangements.

***Irrelevance of Health Material and Correspondence***

22. The issue before the Tribunal is whether there is an overriding public interest against disclosure in respect of any or all of the information the University has refused to disclose in response to an application made by Mr Lonsdale pursuant to the Government Information (Public Access) Act 2009 ('GIPA Act').

TL. That's a distortion of the issue as I believe the reasonable person would see it. The issue before the Tribunal is how the Tribunal can remain faithful to the GIPA and ADR principles.

It's for the Respondent to attempt to show an 'overriding public interest against disclosure'. However, I again suggest this to be a misguided course of action and I trust that the Tribunal will see through the Respondents continued desperate attempts to suggest the public interest is best served by keeping the public ignorant and in the dark.

23. Mr Lonsdale alleges that the University's sponsorship arrangements with Hill's Pet Nutrition and Royal Canin amount to misconduct in various ways. However, this is not an issue that forms any part of the proceedings under the GIPA Act.

TL. By virtue of the actual or perceived misconduct, the Respondent has the motives for dressing up commercial in confidence and other aspects as 'overriding public interest against disclosure' under the terms of the GIPA Act. However, I believe that the reasonable man and the Tribunal should give the Respondent's legal acrobatics short shrift.

24. While it is true that, if the Tribunal considers that "[d]isclosure of the information could reasonably be expected to reveal or substantiate that an agency (or a member of an agency) has engaged in misconduct or negligent, improper or unlawful conduct" (GIPA Act, section 12(2), Note (e)), that would be a public interest factor in favour of disclosure,

TL. Precisely. No further costs need be incurred. The University has a clear path to disclosure and the first steps on the road to atonement for massive cruelty and malfeasance over many years.

the kinds of allegations made by Mr Lonsdale in both the Health Material and the Correspondence are not evidence that the information to which he seeks access would reveal or substantiate some kind of misconduct.

TL. Says who? Surely it's for the Tribunal to judge on full proper disclosure of the evidence?

25. Similarly, it is true that, if the Tribunal considers that "[d]isclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of

public importance" (GIPA Act, section 12(2), Note (a)), that would also be a public interest factor in favour of disclosure.

TL. Precisely. As a Government Agency, I hope that NCAT will see the imperative for ensuring full disclosure of the secret University/junk food information that 'could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance".

However, in that regard, none of the evidence in the Health Material or Correspondence does any more than provide support for the proposition that the following issues are issues of public importance:

a) pet health;
b) pet nutrition; and
c) the independence of veterinarians and university vet schools from improper influence.

TL. Says who? As can be seen from the Health Material and Correspondence hereto annexed this is lengthy and detailed (voluminous) information that the Tribunal can rely upon in reaching its decisions.

26. The University accepts that these are issues of public importance. However, neither the Health Material nor the Correspondence have any bearing on the question of whether disclosure of the information to which Mr Lonsdale seeks access would promote open discussion, debate or accountability in that regard.

TL. Decidedly, the issues are of vital public importance. The Health Material and Correspondence provides evidence indicating the likely reasons why the Respondent and its junk pet-food allies wish to keep their deals secret; provides insights into what deals and arrangements are likely being kept secret; provides evidence as to the high likelihood — once released into the public domain — that the information will 'promote open discussion, debate [and] accountability' in respect to the University of Sydney and its junk pet food arrangements.

27. Accordingly, the Health Material and the Correspondence are not relevant to the issues before the Tribunal and so could not be taken into account by the Tribunal in reaching a decision.

TL. Says who? Only by reviewing the Health Material and Correspondence and conducting cross examinations and enquiries can the Tribunal satisfy itself as to the relevance of the material. Taking sides with the Respondent, hazarding a guess favouring the Respondent will not lead to a proper open and transparent review of the issues.

***Costs involved in receiving Health Material and Correspondence***

28. Mr Lonsdale's annexures are voluminous.

In Australia it's customary to accord veterinarians the courtesy title 'Dr'. My annexures may be voluminous as per the dictionary definition; they also speak volumes.

29. Of particular concern are the books (L4 and L5)

TL. But the Respondent first referred to the books and now wishes to take them out of the deliberations. I say that the books, taken together with the testimonials from former Directors of the University of Sydney Centre for Veterinary Education, represent an accurate insight into and damning indictment of the Respondent's strategies.

and the videos (L8 and L20-L22).

TL. The videos represent real world evidence, not some legal mumbo jumbo and hypothetical abstractions. The Tribunal, lacking professional veterinary training, should have no difficulty understanding the meaning of the videos. Indeed, how can the Tribunal know or understand the content of the videos without viewing them? Surely the Tribunal should not take the word of the Respondent as if the Respondent were the relevant authority!

This material would take significant time for the University's legal representatives to review in the detail required for preparation of a hearing, and hence the University would incur significant costs in this regard.

TL. Time and cost management are matters for the Respondent. However, please allow me to offer two suggestions:

a.) The Respondent should quickly review the information, stop the prevarication and come to a settlement.
b.) If however — and despite all the information to the contrary — the legal representatives believe the Respondent's resistance is in the public interest, then for them to carry out their preparations free of charge.

I can say this in complete confidence that either a. or b. are honourable courses to pursue. Since blowing the whistle on the junk pet food/vet fraud in 1991, I have incurred costs and forgone income well in excess of $1 million. I did that in the certain belief that the public interest deserved no less than total commitment. If the flotilla of lawyers working for the University hold the public interest in high regard, and believe that the Respondents refusal to disclose information is in the public interest then I challenge them to match my commitment.

If the University incurred those costs, and the Tribunal ultimately considered the material to be irrelevant, those costs would have been incurred unnecessarily. That would lead to disproportion in the University's costs and an inconsistency with the "cheap" aspect of the object in section 3(d) of the NCAT Act.

TL. Hypothetical balderdash. Desperate self-pitying pleas by the Respondent should be treated with the contempt they deserve.

30. Similarly, if the Tribunal is required to review this material in detail, it will impinge upon the Tribunal's ability to make a quick and timely decision.

TL. I do not wish to waste the Tribunal's time on matters that are quite self-evident. A review of the videos and a bit of helpful commentary from me will soon assist the Tribunal to see the way to a quick and timely decision.

While that should not be a barrier to receiving relevant material; it is not appropriate for a party to effectively require the Tribunal to expend resources in this manner.

TL. Who is requiring the Tribunal to expend resources? The University should stop its posturing and assist the Tribunal in accordance with its pious statement lawyers: 'are, first and foremost, officers of the court.'

It affects not only the determination of the present proceedings but also the Tribunal's resources for the determination of other matters.

TL. Who says? By what right or authority does the Respondent seek to proclaim on the Tribunal's abilities and allocation of resources?

31. Further, much of the Health Material is repetitive. The Tribunal may consider it ought to receive evidence of Mr Lonsdale's concerns. The University would not object to that. Mr Lonsdale can give evidence of his concerns directly, and has done so in his affidavit and submissions. The additional detail provided in the Health Material is entirely unnecessary.

TL. Effrontery reaching new levels. I run my case and I believe NCAT decides on how fair hearings are to be conducted. We don't need gratuitous advice from the University and its junk pet-food chums.

***Appropriate orders***

32. For all of these reasons, it would be most in keeping with the balance required by the Tribunal's powers and obligations, set out above, for the Tribunal to refuse to receive into evidence the Health Material or the Correspondence.

TL. In my opinion, if the Tribunal accedes to the Respondent's tortuous reasoning then it will be for all the wrong reasons.

33. Such a decision would permit the Tribunal to preserve the cheap, quick and timely elements of its obligations, as well as to ensure it is not influenced by irrelevant material. It also assists in ensuring a balance of fairness between the parties.

TL. Alice in Wonderland bizarre distortions. Obstruction of the '"cheap", quick and timely' process is entirely of the Respondent's making.

Fairness, what fairness? The taxpayer funded Respondent squanders $thousands in their disgraceful defence of mega multinational corporations and their toxic secret deals. Meanwhile I, as an unrepresented self-funded litigant, do the best I can to shine a light on the squalid conspiracy.

34. If the Tribunal determines to receive the Health Material and the Correspondence into evidence, the University reserves its right to make an application for costs pursuant to section 60 for the costs incurred in relation to the Health Material and the Correspondence at an appropriate time.

TL. Bullying threats out of all proportion to the over-stated hypothetical concerns.

It is to be hoped that the Tribunal will ignore the attempts by the Respondent to hijack the Directions Hearing and will allow the proper evaluation of the Submission, Affidavit and all annexures I filed 14 August 2015.

Tom Lonsdale
Applicant

28 August 2015

Annexures L 6, L7, L9 to L 19 inclusive appended.