LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: Auditor-General's report No 5 of 2006: *Rhodium Asset Solutions Ltd*)

Members:

MR R MULCAHY (The Chair)
DR D FOSKEY (The Deputy Chair)
MS K MacDONALD

TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 10 MAY 2007

Secretary to the committee:
Ms A Cullen (Ph: 6205 0136)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents relevant to this inquiry that have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

WITNESSES

MOORE, MR KEN, Acting Chief Executive Officer, Rhodium Asset Solutions Ltd **20**

SAMARCQ, MR BOB, Chairman, Rhodium Asset Solutions Ltd **20**

The committee met at 2.05 pm.

MOORE, MR KEN, Acting Chief Executive Officer, Rhodium Asset Solutions Ltd
SAMARCQ, MR BOB, Chairman, Rhodium Asset Solutions Ltd

THE CHAIR: Good afternoon, ladies and gentlemen. We will now commence proceedings in relation to our inquiry into the Auditor-General's report No 5: *Rhodium Asset Solutions Ltd*. Before commencing, I need to inform witnesses of the following: the committee has authorised the recording, broadcasting and re-broadcasting of these proceedings in accordance with the rules contained in the resolution agreed by the Assembly on 7 March 2002 concerning the broadcasting of Assembly and committee proceedings.

Before the committee commences taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee in evidence given before it. Parliamentary privilege means special rights and immunities attached to parliament, its members and others, necessary to the discharge of functions of the Assembly without obstruction and without fear of prosecution.

While the committee prefers to hear all evidence in public, if the committee accedes to such a request, the committee will take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of the evidence to the Assembly. I add that any decision regarding publication of in camera evidence or confidential submissions will not be taken by the committee without prior reference to the person whose evidence the committee may consider publishing.

I extend our welcome to Mr Samarcq, Mr Moore and the other officials. The committee would like to give you the opportunity, first, if you would like, to make some remarks or observations before we go to questions. I hand over to you at this stage.

Mr Samarcq: I do not think I need to say much. Obviously the report from the Auditor-General provides that amount of information. I do not think there is anything we need to add at this stage.

THE CHAIR: I lead off with some questions I have. In our previous hearing on 28 March this year, Mr Moore and Mr Samarcq, you may recall that we discussed the strategic direction given to Rhodium by the Chief Minister. You may recall that the Auditor-General's report, at page 29, paragraph 3.18, found:

> … the Board had developed and presented to the shareholders a draft business plan in April 2005. The Board advised that the Shareholders had not approved the draft business plan, as the Government has not yet decided the future directions of Rhodium's business operations.

Could you inform the committee why you did in fact require approval of the draft business plan by the shareholders?

Mr Samarcq: Let me clarify the matter of the business plan, at least from the Rhodium board's perspective. Simply put, we were asked for a business plan by the government.

THE CHAIR: Via the minister?

Mr Samarcq: By the government in December 2004 prior to—

THE CHAIR: Who requested that?

Mr Samarcq: From the shareholders.

THE CHAIR: From which office, sorry?

Mr Samarcq: Sorry, as part of the communication between the shareholders to the chair of the board. Irrespective of that, we would have gone down that path. Our early assessment was that Rhodium lacked a strategic plan when we came on board as directors, particularly for the business going forward, and that was because it was largely part of the Totalcare fleet and then only a component part of the Totalcare fleet; so it was not a stand-alone organisation.

I guess our priority at that stage was to set out how we were going to develop the business going forward. This meant developing a strategic plan and, from that, developing a business plan and a range of subplans. That was seen as our priority task. We did not—and this perhaps is pre-empting some of the discussion later on—deliberately neglect, for example, the operational and governance areas. We felt that as an offshoot of Totalcare, a longstanding territory-owned corporation, there were going to be policies and procedures in place which, at least in the short to medium term, would stand us in reasonable stead.

THE CHAIR: You assumed that or you knew that?

Mr Samarcq: I guess we assumed it, to an extent. Our particular focus was on the business and the business going forward. We also wanted to develop a business plan to underpin what we were going to provide to the government very early on in our existence, which was the 2005 SCI. That is why we provided the business plan to the government for review and discussion in April 2005.

We did not receive any substantive feedback on the draft business plan, for some of the reasons mentioned by the Chief Minister during the hearings, but in view of our statutory requirements we submitted the draft SCI to government and to Treasury for comment in June 2005. After we had received government feedback, as was the case with all TOCs, we finalised it and lodged it in August 2005.

There was an expectation from the government that there would be a business plan as part of the creation of our being a TOC. That is why we provided that business plan to the government. The issue for us then got to a point where we thought in a sequential sense it would be better for the government to consider a business plan from us before we put forward an SCI. But time and events overtook that; so we basically had to go to an SCI without, I guess, interacting with the government on the business plan.

THE CHAIR: Obviously, as you said, the shareholder—and I assume that is Mr Quinlan—asked you to furnish that business plan?

Mr Samarcq: That was in a communication to us, I think, in December 2004, even before we were established.

THE CHAIR: But it was never approved; you simply went to the statement of corporate intent?

Mr Samarcq: That is right.

THE CHAIR: The actual plan was never approved?

Mr Samarcq: No.

THE CHAIR: You said that no substantive comment came back on the business plan before you went to the SCI. Was there any comment at all?

Mr Samarcq: No, not really. They basically said that they were still looking at it and wanted to consider it further but noted that we needed to develop an SCI in the normal course of events.

THE CHAIR: There really was no comment on the plan, was there?

Mr Samarcq: No detailed comment on the plan, no.

THE CHAIR: What was your understanding, as chairman and as a director, of the degree to which the shareholders would determine the strategic direction for the company?

Mr Samarcq: I do not think there was any doubt that we, as directors, had the responsibility to provide strategic direction to the company. We were looking for, I guess, some guidance from the government in terms of its expectations of us. But certainly in terms of strategic direction, as it is contained in the SCI, that is a board-approved document from Rhodium and is the basis upon which we would operate.

THE CHAIR: Do you have an issue with the Auditor-General’s criticism—it could be taken as a criticism—over the failure of the territory to approve a draft business plan?

Mr Samarcq: Let me say, in respect of the issue of certainty, no, we were working on the basis of a request for a business plan. The business plan was put on hold.

THE CHAIR: It was put on hold; it was not a matter of more time; they said, “We are moving on from that”?

Mr Samarcq: In the sense that there was no formal response, it was left on the table;

it was not responded to in a formal way. But events overtook it.

THE CHAIR: Did that trouble you at all?

Mr Samarcq: Only to the extent, I guess, that, as the Chief Minister implied, we were getting not formal but informal mixed messages about Rhodium's future. Therefore, I guess, in the collective minds of the board and management we cannot deny there was some uncertainty associated with it. Did it contribute to the shortcomings of Rhodium in 2005 to February 2006? It certainly did not.

THE CHAIR: Is it true that the CEO had rather ambitious plans to expand Rhodium and get into hospital leasing and all sorts of things—I am not passing comment on that at the moment—and in fact retained a public relations expert? That was very quickly shut down when Mr Quinlan said, "Hold your horses; we are not expanding. I am putting the brakes on all those ideas."

Mr Samarcq: It goes back to the Totalcare days. There was some assessment at that stage that, if the fleet business was going to continue, were there other areas that we might enter into. That was certainly one of the issues the board looked at. If you look at our SCI, the SCI refers to fleet and other activities in a prudent way. That list might include hospital equipment. We never got into that. It could be other forms of leasing as well. I do not recall an engagement of a heavy-duty public relations person.

THE CHAIR: I can assure you that, if we dig far enough, you will find that happened. I am curious as to the turn of events that changed things from this ambitious plan to expand, which may have been commendable, and then suddenly the brakes were put on, as I understand it. Is that not the case?

Mr Samarcq: The SCI reflects that we had the capacity under the SCI, in our commercial objectives, to have expanded, without being very specific about it. I guess we were cautious in our approach going forward.

THE CHAIR: You did not see a point where things changed, in terms of—

Mr Samarcq: Not in an abrupt sense, no.

THE CHAIR: In its strategic sense and direction?

Mr Samarcq: No.

THE CHAIR: There was no such directive, to your knowledge, from Mr Quinlan?

Mr Samarcq: No, not at all.

THE CHAIR: I take you, if I could, to the government's accountability framework issue. I again draw your attention to the Auditor-General's report at page 30, paragraph 3.30. She reports:

> … the Board assigned the former CEO the specific responsibility to develop and implement, by June 2005, a range of policies covering human resource

> management, internal controls, risk management, and corporate governance. Principal among these policies was a corporate code of conduct. This timeframe was not met and while many policies may have been under preparation, few were formally issued until February 2006. The code of conduct, for example, was not approved by the Board until July 2006.

I wonder why the board allowed such a delay in the development of all these policies.

Mr Samarcq: I guess there were two things. There was no doubt that in that start-up period Rhodium was under a fair amount of pressure. It was a new organisation responding, from a board perspective, to demands of a board through ASIC and the Corporations Act as well as to govern in terms of its governance. So there were a range of pressures at that particular time.

THE CHAIR: Every company has got to deal with ASIC.

Mr Samarcq: Yes, but there is an overlay in terms of the government approach to provide information to government. We know that hybrid organisations, organisations that are government business enterprises, have an overlay of governance that is not the case in relation to the normal commercial activity.

THE CHAIR: You would hope so.

Mr Samarcq: Yes. There was a fair amount of work associated with that. I guess the main issue was that we as a board felt—and this was early on—that the management team of Rhodium was fairly thin; it needed to be bolstered up, and we were looking for some support for the CEO for that. I guess we did not put a huge amount of pressure on the CEO at that point in time, because the composition of the management team did not change terribly much in that early period.

I guess we were probably a bit more lenient than we should have been. There certainly were drafts and policies coming forward but they were not formalised until later in the piece, which was, in some cases, late 2005, but in most cases early 2006 to mid-2006.

THE CHAIR: I take you back to your remarks at the beginning of your evidence. You said that you assumed that some of these things were in place—the practices and procedures from its birth out of Totalcare. It was the first bill I debated. We had legislated in this place in December 2004 for the creation of Rhodium. At what point did you realise that in fact your assumptions that these policies and procedures that you had assumed had been handed over—and I say "you", being the board—had not been? What was the trigger point that took you from the assumption that all was well to your directive asking the CEO to develop a range of these policies that were obviously missing?

Mr Samarcq: In terms of directing to the CEO, it was the fact that we had been in operation for some months and there was a requirement to develop these. We had developed, for example, a sponsorship policy in July 2005. We had delegations to the CEO, which we developed early in the piece. We saw those as the key ones. These were other ones that we required her to develop.

I guess in terms of shortcomings, I would not have characterised the term “shortcomings” at that particular point in time. It was more the progressive nature of going through those. The shortcomings were certainly brought to our attention very abruptly in February in relation to a number of aspects of that, particularly—

THE CHAIR: This is February 2006?

Mr Samarcq: February 2006, particularly in relation to credit card usage and employment practices.

THE CHAIR: I want to back up a bit to get the foundations clear. The assumption was that there were policies and procedures, when obviously there were not. You said that in June 2005 you wanted various things put in place. At what point was there a realisation by appointments to the board that apparently there was nothing in place?

Mr Samarcq: I would not say “nothing in place”. There were practices in place, some not terribly good. I guess the first sign was the issue of marketing and communications, which we were keen to have bedded down towards the end of 2005.

THE CHAIR: Is that a euphemism for “sponsorship” or not?

Mr Samarcq: It would have, because it would have provided a framework for the sponsorship. We had a sponsorship policy.

THE CHAIR: What worried you there? The company was not being marketed?

Mr Samarcq: Only because there were issues that we were starting to consider which we did not have an overall framework to consider against.

THE CHAIR: In a constructive sense, they were not dramas arising or anything of that nature?

Mr Samarcq: No. That was probably in November. We really insisted, at the November board meeting, to the CEO that we needed to have the marketing and communications aspects bedded down. There was an undertaking to provide that by either January or February 2006. February 2006 came about and we moved into a different operational mode.

THE CHAIR: If I am not misunderstanding you, there was no point of realisation that there was a deficiency in procedures and systems in that first year of operation; there were assumptions that certain things were in place. You came to a point in the business cycle where you wanted more defined programs or procedures in relation to marketing and the like and other areas, but there was not a realisation that the show had got under way without these—

Mr Samarcq: No, there was nothing obvious, to the extent that, if things were happening, they were not percolating up to the board, certainly not naturally. Sometimes, in retrospect, I guess there were elements that were being concealed.

THE CHAIR: On that theme, does the board have any concern that it may not have been in the interests of the former CEO to develop these policies, those ones I talked about a little while ago, in a timely manner since she may have benefited, not necessarily financially but in terms of autonomy or lack of accountability, by their absence? Is that a view that you and your colleagues hold?

Mr Samarcq: I do not think so. Certainly I do not. I cannot speak for my other directors, but I certainly would be very disappointed if it was one of the motivations. I do not think that was the case. It was simply an issue of the workload, the thinness of the management team and the fact that there were not people there to support some of the managers in terms of providing that. That is a positive.

THE CHAIR: Even with the benefit of the events that have unfolded over these past 14 or 15 months, that has not changed your view. You do not believe that the failure to develop these policies in a timely fashion was an intentional action on the part of the chief executive to avoid accountability?

Mr Samarcq: I would not characterise it as intentional. Some of the things that obviously occurred would suggest that she was not paying a huge amount of attention to those areas or was not considering it to be important enough. But I would not characterise it, in terms of the development of the policies, as intentional.

THE CHAIR: What systems did you have in place to revisit—if the board took a decision in June 2005 that, according to the Auditor-General, sought a range of policies covering HR management, internal controls, risk management, corporate governance, and, principal above these, a corporate code of conduct? So you put out this directive, and then it has been put aside. Did you not revisit this at your board meetings?

Mr Samarcq: The directive was not that we expected all these to be done in the next month.

THE CHAIR: But was there not an update?

Mr Samarcq: Yes. The board did go through it. It has detailed minutes, an action register after each board meeting. If there are undertakings to do things they would be reported at the following board meeting. I might say, in terms of the way the Auditor-General characterises these, they were not there to say, “We are missing all these policies and procedures; we want them at the next board meeting.” We indicated at that point that we wanted to have those areas worked on. It would have been progressively done.

I can recall at one of the board meetings—this is before November—we certainly looked at a draft marketing communications plan which was prepared but we felt it was very much underdone and we wanted it reworked. There were certainly iterations that were taking place over that period of time.

THE CHAIR: How often does the board meet?

Mr Samarcq: It met every month.

THE CHAIR: These items have been listed. In this instance you signed a draft, but otherwise it was "we are still working on it"—that sort of response?

Mr Samarcq: That is correct.

THE CHAIR: As chairman and CEO, would you have formal meetings, or was it all casual?

Mr Samarcq: Initially, for probably the first four or five months of the establishment of Rhodium, I would have met with the CEO on average about three times a month—not once a week—but we would meet certainly at least two times in addition to the board meeting, probably for about an hour going through some of the issues.

THE CHAIR: Did you ever get an agenda ahead of that meeting or not, or was it all done on the run?

Mr Samarcq: No. We had a set of headline issues that we covered in that case. I said that was probably for the first three or four months. Then probably I would have met with the CEO once a month in addition to the board meeting. But obviously the board, the CEO and I were in email communication on a regular basis.

THE CHAIR: Did you feel pretty badly let down?

Mr Samarcq: Yes, I did.

THE CHAIR: Did you feel you were deceived as chairman of the board?

Mr Samarcq: I do. I felt that there were issues that could have been brought to the board's attention and to my attention much earlier on in the piece that we would have addressed in a different light. To be then confronted by a former COO who had left the organisation in these stark terms we were astounded, and I was personally very upset with them, because I had that relationship, as you would expect with the CEO. I felt that the trust that I and the board had bestowed on the CEO was not returned, and we were heavily upset at the time when these issues were brought to our attention.

I guess I should also say that we were not as a board terribly happy with the fact that the COO, who had been developing a range of these or had a dossier on the CEO, had waited until after he had been exited from the organisation to front us with it. Given he was the second most senior person in the organisation, I think he should have approached us at the time that he approached Ms Clark, which was in early December.

THE CHAIR: Just one question on the COO that we will probably discuss in detail: do you believe there was some measure of malice, of intent, on his part in sitting on this information until he lost his job and then responding accordingly?

Mr Samarcq: In retrospect you could suggest that that was the case. I think there was no doubt now in terms of our understanding of the situation that the former CEO and COO were not getting on in that period from, I think, November on. I know the CEO, in her discussion with the board at the time that these matters were brought to our attention, certainly claimed it was malice on the part of the COO—the fact that he had been gathering this information on her, that he had essentially coveted her position as CEO and that the situation changed from one where they were operating satisfactorily together in November when she was reappointed.

MS MacDONALD: When the former COO came to the board—because it was the former COO by that stage—to inform them, what questions were asked of him in relation to this? Did you ask him why it was he had not come to you beforehand?

Mr Samarcq: Yes. His response was very simple: he wanted to give her the opportunity to redress—

THE CHAIR: Do you believe him?

Mr Samarcq: No.

THE CHAIR: Would this be why he is reluctant to appear as a witness before this inquiry?

Mr Samarcq: Sorry?

THE CHAIR: Do you suspect this might be why he is reluctant to appear before this inquiry—that his performance also needs some scrutiny?

Mr Samarcq: I think he has probably moved on and does not really want to be brought back. It was certainly a difficult period.

THE CHAIR: But you have confirmed here today that you do not believe he has been entirely truthful in terms of his motivations.

Mr Samarcq: Well, I would have thought that if he was so concerned about those practices they should have been and would have been brought to the attention of the board earlier on.

THE CHAIR: Mr Samarcq, I know your other role in life, and I am not sort of intruding there, but as someone who is an experienced chief executive, who works with a board, were the arrangements and relationship that existed between the CEO of Rhodium and you typical of what one might expect in an organisation between chairman and CEO in terms of information provided, the sort of issues that would be brought before you as chairman? Were they matters that you as a CEO would typically bring to your chair or are there not parallels that one can draw?

Mr Samarcq: I think I would have probably been a bit more honest in terms of the way I presented issues. I think the CEO did have a view and did have, I guess—how would I term it?—a disposition to like autonomy and to be seen as the centre point of the organisation. The board, I must admit, was not unhappy with that necessarily, because we are part-time members; we have got other activities. A couple of the board members were Sydney based. But I do feel, and particularly with hindsight, that the way she operated was probably that she was being—

THE CHAIR: Keeping you in the dark a bit; would that be fair to say?

Mr Samarcq: Yes. I should say that in the period since the former CEO has left and I have had an acting CEO, both from within the organisation and more recently with Mr Moore, we have operated on a very similar basis in terms of exchange of information, but the information and the communication have been very open. I think I can get Mr Moore to verify that.

THE CHAIR: So you have not changed your style of operation but you have got a lot more confidence now that what you are being told are the facts of what is going on in the business?

Mr Samarcq: Yes.

THE CHAIR: Can I just take you to the Auditor-General's report on page 32, paragraph 3.42, where she says:

> … the effectiveness of the application of these governance principles was constrained by absence of formalised policies and procedures, and deficiencies in financial reporting.

Was your board satisfied with the standard of financial reporting that you received from Rhodium?

Mr Samarcq: Well, in hindsight, obviously not. I think the systems and information, the financial information that Rhodium was operating against and, I might say, inherited from Totalcare, certainly did not fill us necessarily with complete confidence. That has been proven by the amount of remedial work that we have had to do in the period since these issues were brought to our attention.

THE CHAIR: But did you identify any areas of concern as a board in Rhodium's financial reporting before February 2006? If they were not satisfactory with Totalcare, what happened between the inception of the organisation and the revelations of February 2006?

Mr Samarcq: I think the board was certainly seeking more detailed financial information.

THE CHAIR: What sort of things weren't you being told that you asked before these things broke?

Mr Samarcq: I think there was a depth of information about the performance under each product line that we were seeking to get some feel for, which we never got a satisfactory response on, which we addressed very early on with the arrival of a well-credentialed CFO who was able to provide us that information fairly quickly in terms of, essentially, for example, the profitability of our product lines, on which we kept on being provided information that was very generic and broad in context.

THE CHAIR: Did you get proper monthly management reports?

Mr Samarcq: Yes.

THE CHAIR: And they all were satisfactory?

Mr Samarcq: In those terms, yes, but bear in mind that the composition of our board was broad based. We had a fairly well-credentialed financial director on our board.

THE CHAIR: Who was that?

Mr Samarcq: Melanie Willis, who was with Westpac as a senior manager and subsequently director on a number of boards, continuing on a number of boards, as well as running her own corporate restructuring organisation. We had concerns but they were not to an extent where we felt that we could not continue to operate. But we certainly had some concerns about—

THE CHAIR: So what were the concerns, besides not knowing the profitability of your product lines?

Mr Samarcq: I guess issues to do with what we were doing with reconciliations, the interchange of information between various systems, financial management systems in place.

THE CHAIR: But were there proper bank reconciliations and all that?

Mr Samarcq: Yes, there were in that sense, but—

THE CHAIR: What sort of reconciliations are we talking about?

Mr Samarcq: I am talking here about issues to do with motor vehicles that had been leased and payments and bad debts. In very large part that was being addressed over a period of time through the decision of initially Totalcare and then Rhodium to embark on a fairly major IT infrastructure upgrade to the IT enterprise architecture. That was largely around the financial elements of the organisation and aspects of the organisation which were, as I said, appreciated at the time of Totalcare and which we then followed through at Rhodium. So that was very much part of the way of addressing some of these issues—not a complete solution, but certainly would address the main issues.

THE CHAIR: All right. I am still struggling here to understand the areas of concern you had in the financial reporting and then what action you took. We are talking pre-February 2006, before everything unfolded; but what were the issues in that period of roughly 12 months where you said you had issues? What happened, what specifically did you do to address them and what was the outcome of your requirements?

Mr Samarcq: A number of things. We engaged a COO, both of whom had very—

THE CHAIR: You had a couple. You had one for a short time, and then—

Mr Samarcq: short period of time, and they were—

THE CHAIR: What was the story there?

Mr Samarcq: This was not his cup of tea. He had worked in a private organisation, private sector, and had come to Canberra. He felt after a couple of months that he was not suited to an organisation which was hybrid in the sense of having an overlay of governance on it.

THE CHAIR: Did the board approve senior management appointments, or were they all done by the CEO?

Mr Samarcq: Both appointments were approved by the board, but the COOs reported to—

THE CHAIR: So your role was a sign-off, really?

Mr Samarcq: Yes. And we assessed both the applicants.

THE CHAIR: So you thought the CFO was up to the mark?

Mr Samarcq: That is right.

THE CHAIR: Looked good, signed them off, recommended by the CEO, and then they have fallen over and you have got another one in, and—

Mr Samarcq: He was there for five or six months at that particular time.

THE CHAIR: What happened to the second one?

Mr Samarcq: The second one was terminated in February.

THE CHAIR: By the board?

Mr Samarcq: Well, agreed by the board, recommended by the CEO. I guess a lot of the issues were around our systems. I can ask Mr Moore, who has been doing the remedial work, to identify some of those, but they were the ones that we had concerns about. But the IT changes and the enterprise architecture would have been addressing some of those issues for us.

THE CHAIR: Did you get a sense of satisfaction through 2005 that any of these matters were reaching resolution on the financial reporting side?

Mr Samarcq: A large part of it was premised on the IT infrastructure, so there was an anticipation that when we had got through that these issues would be addressed. It was a very manual system. We did not have the capacity to do a lot of the information and to address some of the issues in a more sophisticated way.

THE CHAIR: But that was a bit of a disaster, wasn't it, the IT?

Mr Samarcq: Well, it was, in retrospect. It certainly was.

THE CHAIR: And what was the problem there, if you can explain to the committee? Was it poor design, poor management, inappropriate system for the service required?

Mr Samarcq: I think at the end of the day I would characterise it as a system that probably was overkill for what we needed. That was certainly the tenor of the independent report we got in early 2006, at the time we were making a decision as to whether to go or no go. But, from the period when we embarked on the IT infrastructure to that point in time, there were changes in some of the technologies which we could have accessed more cheaply, so that was one of the elements of the decision.

THE CHAIR: Okay. I will go now to the internal control environment framework, where obviously there has been a fair bit of public discussion and, again, the Auditor-General's report found at page 33 that Rhodium had "a corporate culture that did not encourage care or diligence in spending taxpayers' funds." In particular, the report found at page 34, paragraph 4.6, that "Rhodium senior management has not consistently met community expectations regarding due care and integrity". Do the directors of Rhodium agree with this assessment?

Mr Samarcq: Certainly. From what we now know, the culture and the expenditures that were talked about, certainly the culture left a lot to be desired. Where that particular culture emanated from is anyone's guess but certainly the results of that culture in terms of excessive expenditure and the way it went, and to a large extent in terms of the reviews that we undertook, largely were related to CEO behaviour, were certainly not acceptable from our point of view, and we do subscribe to those sentiments.

THE CHAIR: But I think it went beyond the CEO, we would agree, would we not, Mr Samarcq? In that vein I guess we are talking about the corporate culture. I am just wondering if you or your colleagues on the board have a view about what created this corporate culture, given you have agreed with the Auditor-General's assessment of the problem.

Mr Samarcq: I can just say that in my 35 years of both public and private occupation I have not seen this type of culture demonstrated to an extent that it has at Rhodium. And bear in mind we had stewardship of Rhodium—before these were identified—we had stewardship of Rhodium of some only 12 months, 14 months, so I do not think they would have all—how would I put it?—just developed in that short period of time. I think the issue was that this was the behaviour that was acceptable.

THE CHAIR: To the CEO and those around her?

Mr Samarcq: The CEO should be a model and if the CEO is doing things that are not appropriate or are excessive I guess the managers see that and see it as something that is appropriate, kosher.

DR FOSKEY: I am sorry if you have already covered this, but did the CEO have a history with Totalcare, or was she—

THE CHAIR: She was from the Victorian government.

DR FOSKEY: Okay, so she came with the new entity Rhodium, and she was selected by the board?

Mr Samarcq: No. The CEO's background was largely public sector.

THE CHAIR: In Victoria, wasn't it?

Mr Samarcq: Nursing, Tasmania, Victoria, largely public sector. She came to Canberra in—I cannot recall whether it was 2003 or 2004—the capacity as a deputy CEO of Calvary. That position was abolished shortly after she arrived. She was recruited—Mr Moore has a bit of the chronological detail—to Totalcare to look after the fleet business, subsequently made CEO of Rhodium, under Totalcare, and when we assumed the role, when Rhodium was then created as a stand-alone TOC, we verified her employment agreement that she had with Totalcare, which we reviewed initially because it was only until June 2005. We renewed in May. So the board certainly at Rhodium made a conscious decision that she would be CEO of Rhodium.

THE CHAIR: So you were obviously very happy at that stage—you felt that she was up to the job.

Mr Samarcq: That is right, yes. That is the chronology, Dr Foskey.

DR FOSKEY: Thanks.

THE CHAIR: Let me go back to the internal control environment. You basically said that in terms of creating this corporate culture you really lay most of that at the feet of the CEO, and the managers around her probably operated with that sort of leadership. I am just wondering what steps you as directors took to encourage a corporate culture of diligence and prudence.

Mr Samarcq: In retrospect, obviously not sufficient—

THE CHAIR: Did you do anything that might send a message about how you would like things conducted, given that it was a taxpayer funded organisation?

Mr Samarcq: Well, I think there was—

THE CHAIR: Did you ever say to the CEO, "Look, we need to be especially careful here with the management of funds"?

Mr Samarcq: We did. We had conversations like that. There was certainly a view in relation to the sponsorships and events that we were doing that, for a small territory owned corporation, we had to look at that fairly closely. The sponsorship policy, interestingly, when it was put to us by the CEO in early 2005 for approval, sought an amount of $500,000 cumulative on sponsorships.

THE CHAIR: The CEO sought half a million dollars?

Mr Samarcq: Sought $500,000.

THE CHAIR: For what—just general—

Mr Samarcq: Various sponsorships within her—as her delegation.

THE CHAIR: So she just wanted open—carte blanche—

Mr Samarcq: $500,000.

THE CHAIR: —to dish out a half a million dollars.

Mr Samarcq: Yes.

THE CHAIR: Taxpayer funded organisation.

Mr Samarcq: We cut that back to $100,000—

THE CHAIR: Right.

Mr Samarcq: —after some discussion. We certainly made very clear to her at that point that we were not about to enter into sponsorships that were of that order of magnitude. And we gave—

MS MacDONALD: At what stage did you cut it back?

Mr Samarcq: Sorry?

MS MacDONALD: At what stage did you cut it back? What was the time frame in which it was cut back?

Mr Samarcq: The time frame was that we did not approve the policy. The policy was put to us as a draft policy. We reviewed it. We cut it back.

THE CHAIR: I think Ms MacDonald wanted to know whether this was over some months, all at one meeting or—

Mr Samarcq: It was probably done over a couple of months. We got a draft; we looked at it; we said it was too much. As a board, we said, "No, it has got to be $100,000 cumulative." Obviously, the major sponsorships come to the board. I guess the issue we as a board faced was that, despite that policy, we had a situation where the CEO really did not take a huge amount of notice of it.

THE CHAIR: So you took a decision to cap it at $100,000 and the CEO thought, "Well, that's irrelevant. We'll just go ahead and run the show as we see appropriate." Is that what you are saying to us?

Mr Samarcq: In retrospect, that is the way it certainly looks. The budget for sponsorships in that year, once we had undertaken this Brumbies sponsorship, was well over the hundred thousand.

THE CHAIR: But you said you had monthly management accounts. Wouldn't you have seen this saga unfolding each four weeks?

Mr Samarcq: No. The sponsorships were basically under one line, under marketing.

THE CHAIR: So you had no idea in a fiscal year what percentage of expenditures had been made against the budget for the organisation? You would have an allocation for the year, and that was it?

Mr Samarcq: For marketing, and what the amount was. We certainly were aware of the sponsorship spends in respect of some of the key ones.

THE CHAIR: But no progress reporting on that?

Mr Samarcq: No, because they were—I guess we expected a degree of honesty and diligence on the part of the CEO in relation to the sponsorship.

THE CHAIR: I am amazed that you would not have progress reporting. I have never seen an organisation where you just say, "Well, this is approved for the year, so we won't revisit that again." Normally, I would have thought that you would have the amounts being allocated on a progressive basis so that you could see whether you were travelling to budget, over budget or—

Mr Samarcq: The actual amount of $100,000 was—my recollection of the $100,000 was that it was essentially taken up pretty much at the time we approved it, so there was not scope for new sponsorships until the Brumbies—

THE CHAIR: So are you saying that it went all to the Brumbies?

Mr Samarcq: No.

THE CHAIR: Because you said it was over $100,000.

Mr Samarcq: Until the Brumbies one, the sponsorship amount was within that $100,000.

THE CHAIR: Right.

Mr Samarcq: It is just that the Brumbies one threw it—

THE CHAIR: Took it over the top?

Mr Samarcq: Pretty much took it over the top.

THE CHAIR: And all the sponsorship basically went out more or less within the one reporting month or so—

Mr Samarcq: Time. We went through the sponsorships at that particular point in time. There was a bit of discretion at very small sponsorships which the board was not aware of. The Auditor-General's report goes through that in some detail.

MS MacDONALD: Were there any murmurs getting back to you during this time about the level of sponsorship? Was there anything coming back?

Mr Samarcq: No, there were not any murmurs. Certainly, at the time the Brumbies sponsorship was put to the board there was some indication that it seemed be over the top. We certainly saw it as over the top. It was defended by the CEO at the time. It was that—

THE CHAIR: This is all the cars and all this that you gave out?

Mr Samarcq: Yes, and defended by the CEO at the time after she had agreed to it without going to the board for approval—and then it was that she would reduce the other sponsorships and entertainment to cover the difference, to compensate for the increase that was provided to the Brumbies.

DR FOSKEY: Could you—

THE CHAIR: What did you do when you were presented with that? Weren't you throwing your arms in the air at this point?

Mr Samarcq: We threw our arms—but that was—

THE CHAIR: But are you saying that it was a done deal?

Mr Samarcq: That was January—mid-January 2006.

THE CHAIR: But did you take any action when you were presented with someone making these decisions without the authority of the board? This is before the whistleblower has come forward.

Mr Samarcq: Before the whistleblower. At that point we said we were very unhappy with it—that we wanted to see the amount of funds that were being allocated on a global level met and therefore there would have to be reductions right across the board, which she had indicated she would provide to the board—

THE CHAIR: In sponsorship?

Mr Samarcq: In sponsorship.

THE CHAIR: But I thought you said earlier that the sponsorship figure was not reported on progressively because those allocations were made basically up front in one go. We are here talking about the seventh month of the fiscal year. That does not seem to reconcile. How would you have had the opportunity to reduce all those sponsorships if you had already paid them out?

Mr Samarcq: We did not have an opportunity to review those at that particular time. It was brought to our attention in January, and that is why we acted on it. She was going to come back and look at how she might be able to reduce the sponsorships. I do not know what period they actually fell into—whether they were precisely a fiscal year. They would have been renewable at different times.

DR FOSKEY: I would just like to know how the CEO justified the Brumbies sponsorship—what reasons she gave you, why she argued so strongly for that. One thing is what she said, and the second thing is why you might have thought she did so if it was different.

Mr Samarcq: There is no doubt that, in terms of image and public focus, the Brumbies are essentially the biggest game in town. They are a national rugby union team. The argument she put forward to the board in retrospect, after having done the deal, was that that would, in one go, provide us with the level of exposure that we would be looking for—and the range of other things about entertainment and those sorts of activities could be cut back because this was going to be the flagship sponsorship. That was the principal argument at that point in time.

What was not made clear to the board at that time was the fact that there was an amount of money paid up front to buy those vehicles to give to the Brumbies, before it was brought to the board's attention. The argument was, "Look, that will be the centrepiece of the sponsorship. We'll get rid of all of the other little mickey mouse sponsorships." I am speaking in the vernacular.

THE CHAIR: Yes, I understand.

Mr Samarcq: And that, in terms of the cost of it, it would be met by looking at a whole range of other expenditures that we would be cutting back.

THE CHAIR: Yes. I guess the message that Dr Foskey—

DR FOSKEY: Just one more question—

THE CHAIR: I just want to pursue what you raised. What I am still struggling with here is this: here is a CEO who has gone out without the authority of the board, cut a deal and then told you a way it will be paid for. I still do not hear any sense of outrage that the board has basically been sidelined by a CEO who has gone off and run at her own pace.

Mr Samarcq: No. There was outrage. We were very upset. I am not using the sort of terms that you did, but we were very unhappy with the fact that it was presented to us as a fait accompli. It was a significant amount—and, in preparation for—I guess, in a sense, that outrage at the fact that she had gone and done that. She had indicated that she was going to make savings across a range of fronts to be able to pay that, to be able to compensate for it. We never got to that point because she was not at the February board meeting. All the issues in relation to the COO transpired in that period leading up to the next board meeting, so we did not get to discuss the changes that she was proposing to make.

THE CHAIR: Sorry, Dr Foskey.

DR FOSKEY: Was it seen as a way for Rhodium to get more business? What was the business case for putting a lot of support into the Brumbies? There are the issues of prestige, it being good for the image and so on, but what was the business case?

Mr Samarcq: It is certainly a reasonable business case, because you get the Rhodium image associated with the Brumbies. They have a high profile. We have not been able to develop that because of the problems that we have faced post that time, but there are certainly opportunities. If you look at the sort of leverage that other organisations are able to obtain from the Brumbies sponsorship relationship, it is quite significant for the ACT. Being a fleet company essentially based in the ACT, it would have some measure of appeal. If you asked me purely in a commercial sense whether it was a good deal for the amount of money that had been committed, I would say no.

THE CHAIR: At the end of the day, surely the people making the fleet management decisions are not the mums and dads of Canberra but the people involved in purchasing management for government agencies.

Mr Samarcq: Not only government agencies but the private sector.

THE CHAIR: Private, yes.

Mr Samarcq: We were very largely—a growth area was with SmartLease, which is done on a private basis.

THE CHAIR: But again it is not a mass market you are chasing. You are chasing a very specific group of people who control those—

Mr Samarcq: It is a specific group, but it is a reasonable sized market and one that was growing.

THE CHAIR: Not like the—

Mr Samarcq: I think that, if we looked at it purely in a cost-benefit sense and did a proper business case up front, we certainly would have said it was not worthy of the amount of money that was agreed to.

THE CHAIR: That was invested. Mr Samarcq and Mr Moore, we are scheduled to have a cup of tea. I have got through 12 items; I have got 50 more, I hate to tell you. I am sure you could do with a break.

Mr Samarcq: Yes.

Meeting adjourned from 3.00 to 3.16 pm.

THE CHAIR: Mr Samarcq, can I just take you back to the issue of corporate culture. I asked whether steps were taken to encourage a corporate culture of diligence and prudence. You felt that you and your colleagues had tried to do that and had reinforced that. Can you give us specific examples?

Mr Samarcq: The fact was that we were a new territory owned corporation, a small organisation; certainly, as a chair, my presence was fairly visible. I think we certainly did look to develop a bit of a team approach. However, a lot of the things that have since been brought out were things that the board was not aware of. Under normal circumstances, you would probably say that the board—could it have been aware of? I think under normal circumstances we may have been; I just think that, with the way the CEO operated, a lot of things were just not apparent to us.

THE CHAIR: There is great issue made of the car, which I think cost—I am just looking up the reference—$128,000 for a gold Volvo, Saab convertible or something.

Mr Samarcq: A Lexus.

THE CHAIR: A Lexus convertible. Now, that is a fairly visible item of status, I suppose—of benefit. Did you ever see that vehicle? Did you ever travel in it?

Mr Samarcq: No.

THE CHAIR: Are you sure on that?

Mr Samarcq: I am positive I did not travel in it.

THE CHAIR: Did any of your directors ever travel in it?

Mr Samarcq: Not that I am aware of.

THE CHAIR: No-one ever saw it?

Mr Samarcq: The sequence of events on the Lexus is interesting. The fact was that the CEO had a convertible, and I think it was a Saab convertible—certainly the board were aware of that, and that was part of her package through Totalcare. When we were negotiating her contract in May 2005, her salary—she had a remuneration package which did not include a car or a bonus. To our knowledge at that point in time—and at the point in time when we were renegotiating her contract in November 2005—certainly the board—myself and the other board members—were aware that she was driving a Saab convertible which she had had for some 18 months or so.

THE CHAIR: So you did not realise that it had been upgraded—and to this much more expensive vehicle?

Mr Samarcq: When her November contract was being renegotiated we put a proposal forward which was basically the same remuneration package—no vehicle and with a bonus in 12 months time if certain key indicators were met. The CEO at that point in time came back and indicated that she wanted a higher salary, which we declined. But she asked at that point whether we would be prepared to lease her vehicle and both I, as chair, and the deputy chair, at that meeting, said, “We’ll consider it.” We checked it with the other board members and we agreed we would lease the vehicle. That was in November. The contract itself was to a very large extent redrafted—not a huge amount, just in small places—by the deputy CEO, deputy chair.

THE CHAIR: Remind me: who was the deputy chair?

Mr Samarcq: Margaret Coaldrake. We provided it to the CEO to finalise the additional piece associated with the lease of the vehicle. The lease of the vehicle was contained in the final contract, which was signed on 22 December, and on 14 December when we got a draft of it there was reference to a Lexus vehicle in that new contract. Neither I nor the deputy chair really focused on that in terms of the Saab or Lexus.

THE CHAIR: So it sort of got slipped under your nose and was not—

Mr Samarcq: It was in our view, and in the meantime the vehicle had been received and been driven by the CEO and was actually purchased by the CEO on 6 December, before the contracts were signed. When I say "purchased"—

THE CHAIR: But it was capitalised, wasn't it? It was not leased? Is that right?

Mr Samarcq: Yes, that is right.

THE CHAIR: What was the purpose of that? Was the vehicle in her name or in the corporation's?

Mr Samarcq: It was in Rhodium's name.

THE CHAIR: So why would she capitalise the value of the vehicle rather than have a lease arrangement?

Mr Samarcq: I think, Ken, and you might remind me, she was not able to lease the vehicle, was she?

Mr Moore: The former CEO tried to have the vehicle financed through Westpac, who were our bankers, but there was a dispute pertaining to the amount of GST that was payable on it and could be financed because it was over the luxury tax limit. As a result of that, she took the decision to purchase the vehicle after Westpac declined to finance it.

THE CHAIR: And no-one approved that purchase? She just did that unilaterally?

Mr Moore: It was approved at the staff level within Rhodium but was not referred to the board.

THE CHAIR: But not by the directors?

Mr Samarcq: No.

THE CHAIR: So you have not noticed that this new contract of employment has got the Lexus slipped into the conditions?

Mr Samarcq: Let me say I did notice it was a Lexus but it did not compute with me that it was a significantly more expensive car or that it had been purchased.

THE CHAIR: So you thought it was like the replacement for the Saab?

Mr Samarcq: I did not know and certainly was not aware. I know Margaret Coaldrake indicated she did not even focus on it. I was not aware at that point in time that a Lexus SC430 or 420 was worth what it was. Certainly if I had picked it up we would have said something about it. There are two issues here: firstly, the fact that it was purchased without our knowledge.

DR FOSKEY: You mean it was purchased with Rhodium funds?

THE CHAIR: It was bought outright rather than leased, yes?

Mr Samarcq: Bought outright rather than leased. So that was certainly, to use your terms, slipped under our guard in respect of the actual contract itself. Certainly I should have been more vigilant and said, "What is that Lexus vehicle as distinct from the Saab convertible?" But that was the situation.

THE CHAIR: Given there were fundamental changes in the contract, would it not have been appropriate for you to have taken some advice before signing, outside of your board, through your external legal people, or not?

Mr Samarcq: The actual final contract was redrafted by Mallesons.

THE CHAIR: They did not pick up on this either?

Mr Samarcq: There was an interchange between Mallesons and Ms Clark about the fact that it had been approved by the board and that—

THE CHAIR: She was giving drafting instructions in relation to the contract, not the board?

Mr Samarcq: She gave drafting instructions on that element to Mallesons. We had provided her with a template of the new contract, which was pretty similar to the previous one, with a couple of changes.

THE CHAIR: And were you not aware of the exchange between her and Mallesons on this issue?

Mr Samarcq: No, until after the—

THE CHAIR: And then Mallesons—

Mr Samarcq: Mallesons asked her a very clear question, that this was part of her remuneration package and it would be leased, and she indicated yes, in an email exchange, which we have seen subsequently.

THE CHAIR: But the contract, in fact, did not specify leasing?

Mr Samarcq: It did.

THE CHAIR: Okay, so it was in breach of the contract.

Mr Samarcq: I think it says "leased".

Mr Moore: Yes, it does.

THE CHAIR: All right, so there was nothing untoward then from the basis of Mallesons' inquiries: the contract reflected the decision of the board and Mallesons' understanding of what was going to happen and she indicated to them that it would be a leased vehicle, not a purchased vehicle?

Mr Samarcq: Yes, that is correct.

THE CHAIR: Some other issues I suppose puzzle all of us, and probably the people at large in the community, about why these things were not evident, despite popular claims in the media. In organisations that I have run you would normally send credit card statements, at least the end of month things—not necessarily every slip—to probably a couple of directors; maybe a chairman and a company treasurer was my practice. Did you ever see the credit card statements for the organisation reflecting what was going on?

Mr Samarcq: I did following an interaction I had with Ms Clark in December.

THE CHAIR: December 2005?

Mr Samarcq: Yes, following an indication from the then COO/CFO that he was not comfortable signing her credit card.

THE CHAIR: This is the fellow who had been compiling the dossier?

Mr Samarcq: Yes. Prior to that, the practice at Rhodium and I think Totalcare was that the CEO's credit card acquittals were presented to the CFO, chief finance officer.

THE CHAIR: So as director nobody ever took a casual glance over—there were a number of card holders, were there not, in the organisation?

Mr Samarcq: Not a huge amount. There were probably six corporate card holders.

THE CHAIR: Yes, that is what I am talking about.

Mr Samarcq: The CEO would have looked at each of the others and the CEO's credit card acquittals were being provided and had been provided to the CFO.

THE CHAIR: Do you think that was a bit irregular, that as directors you would never ever look at that issue?

Mr Samarcq: I do not know; in my present role I do not have a corporate credit card—never had one.

THE CHAIR: Probably very wise.

Mr Samarcq: I think the practice varies. I have checked with a number of people since the development of this situation and it varies between organisations.

THE CHAIR: What about with the auditors? Did you as chairman have a session with the auditors at year end without the CEO present, or not? Did you never have the chance to meet periodically with the auditor and raise any questions that routinely you might like examined?

In the organisations that I have run, appointed directors would meet, usually the chairman, with the auditor. At my insistence I would never be in the meeting, and that is not unusual, so that the chairman can be comfortable that the auditor is able to raise issues without any interference. Did that never happen with Rhodium?

Mr Samarcq: It did happen in 2005-06, which was the only year that really mattered. Bear in mind we had an audit and risk committee. That audit and risk committee consisted of the Auditor-General plus the independent auditor right through this period of time. So there was a fair amount of governance associated with the organisation.

THE CHAIR: Obviously not enough, though?

Mr Samarcq: True, in those particular areas.

THE CHAIR: Did your audit and risk committee ever talk about these issues of internal governance, oversight of expenditures, processes for approving expenditures?

Mr Samarcq: I am not a member of the audit and risk committee—two other directors are—so I could not say 100 per cent.

THE CHAIR: But if they had issues they would bring them to the board?

Mr Samarcq: Certainly the whole issue of governance was a live and consistent issue within the audit and risk committee. But I cannot—

THE CHAIR: Why did the CFO indicate that he did not like signing off the CEO's expenses? Was that because he felt that he was subordinate or did he advance other concerns and did it start setting off alarm bells?

Mr Samarcq: He did not do it directly with me; he did it through the CEO. I said to the CEO that I was prepared to sign them from then on and I sought some sort of structure, which was not just simply annotations on the acquittals; I wanted to see, very clearly, what type of expenditures they were so it was very clear; it was a pro forma that sat on top of the acquittal documentation. Previously, my understanding was that it was just the Amex card, or whatever card, with annotations on it in terms of where they provide, you know, an opportunity. But I had sought that pro forma and I went through that with the CEO in preparation for signing them off, but, again, events overtook that.

THE CHAIR: That was December?

Mr Samarcq: Yes.

THE CHAIR: But events did not unfold until February, when this fellow came forward with his claims. So what happened in January—nothing?

Mr Samarcq: No, I think it was prior to early January I did look at the January acquittals and that is when I insisted on the pro forma being provided.

THE CHAIR: Was there anything that alarmed you at that point?

Mr Samarcq: Nothing obvious, no. We had to undertake a fairly forensic exercise through KPMG to ascertain a lot of this; a lot of it just was not in your face. I think that when they went through each of the credit card statements going back for both the CEO and senior management they were able to determine what precisely the expenditures were for. It has been my practice that, if there is an issue about some degree of uncertainty as to whether it is personal or corporate expenditure, you put it on your personal credit card and then you reclaim it. That certainly did not seem to be the case in relation to the CEO's credit card.

THE CHAIR: So there were a lot of personal expenses put onto the corporate card?

Mr Samarcq: Some of which were identified and, again, in hindsight—

THE CHAIR: Reimbursed.

Mr Samarcq: reimbursed and others which were not.

THE CHAIR: Why didn't she run two corporate cards, a personal and a corporate card?

Mr Samarcq: She probably did but never used the other one.

DR FOSKEY: Can I just check that the vehicle did not go with the CEO when she left Canberra?

Mr Samarcq: No. At one point the CEO did indicate through her husband that she was prepared to purchase it. That lasted for a very short period of time. We subsequently had to put it to auction and, as in the report it says, I think, we bought it in December 2006 for $128,000 and it was sold for $80,000.

MS MacDONALD: I think you mean it was purchased in December 2005.

Mr Samarcq: Sorry, December 2005, yes.

THE CHAIR: Is money still outstanding to the corporation from the former CEO?

Mr Samarcq: There is.

THE CHAIR: How much?

Mr Samarcq: We have recently come to an arrangement with the former CEO. She owes of the order of $20,000-plus. She paid five earlier this month or late last month.

Mr Moore: April.

Mr Samarcq: And she is paying the remainder by 15 June. It has been a very long and tortuous process.

THE CHAIR: What has been the problem, a capacity issue or an unwillingness?

Mr Moore: That is a very good question. We don't know. She didn't respond to a number of letters of demand. We appointed, through our debt collection agency, a law firm in Melbourne to pursue the debt. We weren't satisfied with the progress they were making, so we then referred it to a Canberra based law company and, within a month, we ended up with her agreeing to repay the $20,000. But it has taken a lot of effort over about 15 months to get there.

THE CHAIR: Just talking about other officers or other staff of Rhodium, has your board identified any others whose conduct you consider to have been unacceptable?

Mr Samarcq: In terms of the senior management team, certainly there were at least one or two that we felt were either involved in—I wouldn't go so far as to say complicit, but certainly were demonstrating some of attributes of the CEO. They have both left the organisation. There were some practices which the former CEO engaged in in terms of her relationships with the senior managers which caused us some concerns. In retrospect, we weren't aware of it at the time.

THE CHAIR: Can you explain?

Mr Samarcq: For example, the purchase order for the Lexus vehicle was signed by one of her senior managers, obviously directed by her. There were purchases of some promotional material which were done through a relationship with one of her managers at that particular time, which, again, we weren't aware of until one of the forensic reviews was done.

THE CHAIR: What do you mean by "promotional material"?

Mr Samarcq: I guess the more common things would be caps, shirts and things like that.

THE CHAIR: Okay, merchandise.

Mr Samarcq: In this case, some golf putting sets for distribution to clients. Remind me.

Mr Moore: Royal Doulton glassware, Waterman pens.

THE CHAIR: Royal Doulton glassware, did you say?

Mr Moore: Yes.

THE CHAIR: That is fairly expensive, isn't it, Mr Moore?

Mr Moore: Yes.

THE CHAIR: And Waterman pens don't come cheap, either.

Mr Moore: That's right.

THE CHAIR: What were they for? Who were these gifts for?

Mr Moore: That's a very good question. Clients, dealers. Some were given out—

THE CHAIR: Most of your clients are government officials, aren't they?

Mr Moore: Some are. We've got a lot in the private sector.

THE CHAIR: We were told before that you were doing business with, I think, 37 government departments federally or in the territory.

Mr Moore: We have got, obviously, a tied contract for ACT government agencies for their passenger and light commercial vehicles and half a dozen agencies dominate that demand. For our SmartLease product we have got master lease agreements with a number of commonwealth government agencies, such as Centrelink and defence, and with a number of private sector organisations, so it spans right across.

THE CHAIR: Have these fairly expensive gifts been finding their way to people who make procurement decisions in government agencies? You have been a very senior person at the commonwealth level. I am sure that you would be familiar with the rules on that. Do you suspect that they have been breached?

Mr Moore: They were making their way to those sorts of people, I suspect. They haven't been since March 2006.

THE CHAIR: Have you any detail on where those items have landed?

Mr Moore: No, because there was no proper accounting. I know how much was bought.

THE CHAIR: What was the value of that, Mr Moore?

Mr Moore: It is in the audit report. From memory, it was $33,000.

Mr Samarcq: Something like $32,000.

THE CHAIR: There was $32,000 worth of gifts.

Mr Moore: Yes, and other merchandise. Some of it was totally appropriate, like car bumper stickers and baseball caps, relatively cheap items, but there were others like wine decanters and glassware that were quite expensive.

THE CHAIR: Since March, since you moved in as acting chief executive, have you put an end to the largesse being directed to government procurement people?

Mr Moore: Absolutely, or anybody else.

THE CHAIR: I think that is reassuring to hear. Mr Samarcq, when all these things were presented to Ms Clark, when your board confronted her with the issues that have now become, to some extent anyway, in the public domain, how did she respond to you?

Mr Samarcq: Obviously, she was very upset from the point of view of—

THE CHAIR: We as taxpayers were a little upset too.

Mr Samarcq: Her defence was that the sorts of things that she was doing were not inappropriate, not unreasonable, and, with the exception of one or two, like the tardy repayment of the advance and the issues associated with that, she did not see those as being outside her remit as CEO. The issue, of course, when it comes to the full gamut of, I guess, the misdemeanours is that we weren't aware when we engaged with Ms Clark at that point in time of the extent of the excesses that we now know. We only had in mid-February to early March the first and second KPMG reports; the first, I think, definitely.

THE CHAIR: Had she gone on leave or resigned at this point or been terminated?

Mr Samarcq: She essentially went on leave the day after we met with the COO. We met with her at that point in time. She was on leave at that point and she resigned in early March, effective in late March. Look, she certainly defended her position in respect of the advance, where she claimed there was a misunderstanding and in relation to the expenditures on the corporate credit card. Her response, in large part, was that they had all been reimbursed. The issue in relation to employment practices was that obviously she felt she wasn't involved in those decisions in terms of employing people and they were all done at arm's length from her.

THE CHAIR: Even though there was a large number of relatives there.

Mr Samarcq: Yes. I think the point we made at the time was that we felt as a matter of course that she should have declared that conflict to the board, no matter what level a person is.

THE CHAIR: Were there in the order of five relatives that ended up working for Rhodium?

Mr Samarcq: There were at different times, not necessarily all at the one time. I guess one of the complications was that they were all under different names. There was no "Melissa Clark" or "Betty Clark".

THE CHAIR: Did anyone at Rhodium know, or were they all under instructions, you assume, never to disclose that?

Mr Samarcq: No, I think it was well known in Rhodium that they were related in some way. Some were temporary positions in terms of a receptionist and filling in during the holidays, those sorts of things, but there were a couple of major positions.

THE CHAIR: I just keep coming back to the feeling that it is just amazing that all this was going on—the extravagance, the tens of thousands of dollars in gifts to people they were doing business with, the relatives being hired, the car being purchased when it was supposed to be leased—and the directors were completely clueless in terms of what was going on there. The thing that amazes me is that in a small city such as this no one said a word until a disgruntled employee obviously tipped her in.

Mr Samarcq: As I've said before, if we had become aware, and you would think we would be, I think we weren't aware because a lot of it was deliberately concealed.

THE CHAIR: But you are saying people knew that there were family members being hired out there and the other staff knew.

Mr Samarcq: Yes, but, again, to put it into perspective, I think the issue of family members in an organisation is not that unusual. The issue is about probity and conflict and due process. I think that's the issue.

THE CHAIR: Mr Quinlan, as the minister, never flagged any concerns or went for a wander with you to look at how the place was going?

Mr Samarcq: Not in my time in respect of the employment practices and those sorts of things. The issues in respect of the credit card, those sorts of things, weren't obvious to us because the level of detail wasn't provided to us as a board. It was largely contained in reports that were headline sorts of numbers.

THE CHAIR: Just going along the lines of what Dr Foskey raised with you about the Brumbies, the Auditor-General notes at page 43 that Rhodium spent $374,000 on vehicles in lieu of a sponsorship agreement with the Brumbies. It found that at the time of incurring this cost no agreement had been signed with the Brumbies and negotiations for sponsorship were continuing. Were there any specific plans for the vehicles to be used for other purposes if negotiations with the Brumbies fell through? It seems extraordinary that the cart was being put before the horse, that the deal wasn't done and the vehicles had been purchased.

Mr Samarcq: I might get Mr Moore to respond to that in terms of the nature, because Mr Moore has since then been in discussions with the Brumbies in terms of what we do with these vehicles and how we move forward, particularly given the sale.

Mr Moore: There are a couple of points. The vehicles were purchased and delivered to the Brumbies ahead of the former CEO advising the board that she had done so. We have now financed those vehicles through Westpac, so they have been put on what we would call a normal Rhodium business basis. We are into leasing vehicles, not having lots of vehicles on our balance sheet. The agreement wasn't signed at the time of the order and I have decided not to sign it and it has gone into the sale process with potential buyers as an unsigned agreement.

THE CHAIR: I will just hold you there at that point. When the board were told about this, in fact you still could have walked away from the deal, the contract wasn't signed.

Mr Moore: We had paid what is referred to in the unsigned agreement as the sponsorship fee. We had delivered the vehicles.

THE CHAIR: But there was no contractual obligation at the time the board found out, that the board had then accepted.

Mr Moore: Legal advice is that, whether it is signed or not, once you pay a sponsorship fee and exercise your sponsorship rights, which Rhodium has, it has still got the force of law behind it, whether it is signed or not. That is exactly the situation that I found myself in when I came into the role.

One of the reasons why I decided not to sign it is that, in discussions with the Brumbies, they are flexible about the agreement going forward, depending on the requirements of the buyer of Rhodium. For example, the vehicles that we bought in early 2006 are due to be replaced after two years, halfway through the agreement, but the Brumbies would be willing to negotiate with the buyer whether, in fact, they are replaced. That is not an official position of the Brumbies at this stage, but that's just in discussions.

So, instead of locking in Rhodium's buyer for another $380,000 worth of vehicles, I thought it would be better for the buyer to negotiate their own sponsorship agreement with the Brumbies going forward, seeing there was nothing we could do about the agreement while we remained in ACT government ownership, because we had paid the fee and we had exercised the rights through ground signage, an ad in the Brumbies program et cetera.

THE CHAIR: Since then, in your discussions with the Brumbies, of which you have obviously had to have a number, did they not think it was rather strange that the Rhodium group would be off delivering a fleet of vehicles to them without a signed agreement?

Mr Moore: Yes, they did.

THE CHAIR: Did they take it up with the board or with anybody?

Mr Moore: They certainly took it up with me. I don't know if they took it up with the former CEO, but they did find it strange. They didn't find it strange that a company would want to provide vehicles as a sponsorship. We were about the third company to have done it; the first ACT government company to provide them with vehicles, but they had previous commercial arrangements with other companies for vehicles before us.

DR FOSKEY: A company like that just expects largesse.

THE CHAIR: Yes. Did the sponsorship agreement with the Brumbies provide any benefits or privileges to officers or board members of Rhodium?

Mr Moore: That did include some corporate hospitality which, since I have been associated with it, included a corporate dining table in the western stand for a total of 10 and we have been using that under the approved board policy for corporate hospitality of a two to one guest to host ratio, with instructions from the ACT government that we do not have to entertain ACT agency people because we have a tied arrangement. But we paid the fee with the delivery of the vehicles and that's about the—

THE CHAIR: You are stuck with this facility, whether you use it or not.

Mr Moore: Yes. In fact, I sold half of that table this year to my parent company, Maximus, to try to minimise the cost, and we actually got revenue in from Maximus for half the table.

THE CHAIR: Are there any other benefits, corporate boxes or the like?

Mr Moore: Apart from the corporate table, there are two tickets to what is called the long room. We get two signed jumpers a year. I have just had two turn up and I am just scratching my head about what to do with them as we are about to be sold.

DR FOSKEY: Raffle them.

Mr Moore: Yes.

THE CHAIR: Have any politicians been beneficiaries of any of the hospitality that has been extended?

Mr Moore: To my knowledge, no politician and no board director has been entertained through the Brumbies agreement.

MS MacDONALD: I can vouch that I have never been.

THE CHAIR: I am sure that none would now.

Mr Samarcq: Let me just say in terms of most of the corporate entertainment, if not all the corporate entertainment, the board didn't participate. One could argue that they should have participated, they may have got a better flavour of what was happening, but the policy was that it was to be used for clients.

THE CHAIR: Given that, according to the Auditor-General's report, there was $232,000 spent on entertainment, they must have had to tiptoe around the town to avoid the directors knowing all this was going on. Were you not aware of this level of hospitality and so on?

Mr Samarcq: No, I wouldn't say not aware of this level of hospitality. Bear in mind that quite a bit of the hospitality was carried over from Totalcare in terms of the nature and the type of entertainment.

THE CHAIR: Can you explain what type of entertainment you mean? You are talking about tearing down to the Grand Prix and the cricket?

Mr Samarcq: Yes.

THE CHAIR: It is interstate activity, basically?

Mr Samarcq: Yes, that is right.

THE CHAIR: Good times out of town.

Mr Samarcq: If you look at what happened through 2005, those arrangements were entered into prior to the creation of Rhodium, whether it be the Grand Prix, the tennis or football. We were certainly aware of it, and we were very much aware of it when we discussed the Brumbies contract, because that was the area we said we wanted—and the CEO offered—to cut right out, because we were not able to continue to do that at that level. We were not aware of the precise level necessarily.

THE CHAIR: Do directors attend events such as the cricket, the tennis or the Grand Prix? I am not saying it is a crime.

Mr Samarcq: I know.

THE CHAIR: I am curious to know.

Mr Samarcq: No director, apart from myself. I attended the Prime Minister's XI here in the first year and one of the cricket finals in Sydney in the beginning of 2005.

THE CHAIR: Who were the people going to all these events?

DR FOSKEY: I was going to ask that. Do you have any way of knowing who were the recipients of this hospitality?

Mr Samarcq: Certainly, there were. It was mainly clients, suppliers and those people that were at those functions. For example, in the function that I went to in Sydney there would have been two or three suppliers, a couple of the salary packagers that we have relationships with. Pickles auction house had two or three people there. That was the nature of the people that were at that particular event.

THE CHAIR: What about government departments?

Mr Samarcq: Not in my time.

THE CHAIR: Mr Moore, we have heard about the $32,000 worth of gifts to people. In terms of these sporting events, I am sure you have got a pretty capable mind to identify who were getting a benefit. Have you picked up which government agencies would have been recipients, or are they all private sector guests?

Mr Moore: Since I have been here, we have basically shut them all down.

THE CHAIR: I understand things have changed but you have obviously been heavily involved in looking at the history of this. With all of these major, high-premium sporting events and the like that Rhodium has been linked with, who have been the beneficiaries of the tickets and hospitality?

Mr Moore: As Mr Samarcq said, it is the car dealers, other suppliers, our auction house, our bank, private sector COs. At the Brumbies, for example, I have had some commonwealth government corporate type people there.

THE CHAIR: Which government agencies are likely to have been principal recipients?

Mr Moore: We try to spread it around so that we do not keep entertaining the same people. But we have stopped entertaining people like our bankers because I do not believe that is appropriate. It really is key clients, trying to maintain the relationship with those elements of commonwealth government departments, private sector agencies, that we had our agreements with.

THE CHAIR: And territory agencies and government departments too have been part of this?

Mr Moore: Not in my time.

THE CHAIR: I am looking primarily at this period.

Mr Moore: I would have to take that on notice. I really do not know.

THE CHAIR: You do not know; you have got no clue as to who the beneficiaries were?

Mr Moore: In terms of the FBT return for March 2006, we had to try to work out the employee component of all this entertainment, and that took a fair amount of effort.

THE CHAIR: There are FBT implications for other employers, if their employees are benefiting from doing business with you. In fact, that should be declared too, as you know, by those employers. It is pretty hard for those employers if their officers are being wined and dined without their knowledge. Obviously, I am curious to know, given that so much of your business is government—

Mr Moore: We certainly have not been focusing on the ACT government, because it has been the policy. For example, when we were given the new contract for the ACT government fleet, it was made very clear to Rhodium that we did not need to entertain ACT agencies because they are tied to us.

THE CHAIR: Obviously we have got a new show with the way it is run now, since you stepped into the breach. I am curious as to the past. Are you saying that that was the practice in the past too, that they did not entertain them?

Mr Moore: I would have to check the extent to which we did it in the past.

THE CHAIR: We would be interested to know a bit about that, if we could. In terms of the corporate entertainment, the $232,000 mentioned on page 43, is there any detail of identifiable benefits that the directors found from this entertainment and any attempt made to quantify it?

Mr Samarcq: In retrospect or at the time?

THE CHAIR: At the time. You said you had some knowledge, not necessarily the precise quantum. Did you feel at the time that this was delivering an outcome or did anyone ever say, “This is not good value for money” or “it is”?

Mr Samarcq: I guess the issue is that we are talking of a period of about three, four or five months where this was being experienced at the board level. We were concerned about the level of sponsorship, and that was why we reduced that to a significantly lower level. I am not sure whether that level of sponsorship was a carryover from Totalcare or something that was concocted by the CEO.

If we had been aware of the nature of some of them, we would have had problems; there is no doubt about that. We were not aware of the extent of corporate entertainment, in the sense that it is not something that is obvious to us in terms of what is being expended on entertainment, as distinct from sponsorships. That really only came about following the COO’s intervention, and we went through it in some detail.

Certainly, we as a board are not comfortable with that level of corporate expenditure and corporate excess. There is no doubt that there is some reasonable level that would be acceptable but, prima facie, we certainly believe that was over and above what we would have expected of a small, territory owned corporation.

THE CHAIR: Has the board become a lot more demanding now in terms of information it requires of the chief executive or the acting chief executive? Are you still acting, Mr Moore?

Mr Moore: Yes, I am.

THE CHAIR: That is not a reflection on Mr Moore, but I trust that there has been some learning out of it all.

Mr Samarcq: We moved very quickly to develop policies that were very clear in terms of the requirements of senior management and staff.

THE CHAIR: Have you looked at this month’s credit card expenditures?

Mr Samarcq: I have, but I am pretty sure you do not have any.

Mr Moore: The board-approved policy on credit card expenditure is that I give a copy of my monthly statement to the chairman to countersign. Everybody else—and there are about, from memory, three—come to me to sign off. The principal use of the corporate credit cards is to pay the ACT registry for motor vehicle registrations; it was their preferred method of payment. On three or four occasions I have used my corporate credit card in the 12 months, whatever it is that I have been acting, and

I have gone to Mr Samarcq for countersigning. It basically has been shut down.

THE CHAIR: What has Mr Stanhope had to say to you, Mr Samarcq, about this whole saga? Has he expressed his disappointment with yourselves as directors or does he feel that you have all been innocent victims in the whole saga?

Mr Samarcq: There are two parts to that. He is certainly disappointed in respect of what has transpired. He has certainly indicated to us, in respect of the remedial work that we have done, that he felt that that is exemplary. I think he said that to you. There is no doubt that, as the chief minister, he would be disappointed with the way things have transpired. From my perspective, in hindsight, so are we.

I can tell you categorically that since February 2006, when most of this broke, we as a board have spent a huge amount of time on this issue—one that, I guess, we have learned some lessons from. I can tell you that some of the other directors who are members of other boards are now asking questions far more regularly and in depth.

THE CHAIR: Do you think people will be reluctant to take these public sector boards going forward after this?

Mr Samarcq: It is certainly something that you need to think about fairly carefully; you need to think about the nature of the business that we are in and the culture that particularly dominates an organisation. I probably was not as educated on Totalcare and where it had come from and its various iterations. I personally took on trust the senior manager. I certainly would not have expected it. It certainly was not expected. I was very disappointed by what had happened and at some of the things that were done there.

In hindsight, we as members of the board have all felt that we acted as expeditiously and as appropriately as possible once the situation was brought to our attention. In terms of whether we should have been across some of the issues much earlier, perhaps we should have.

THE CHAIR: Perhaps or you should have?

Mr Samarcq: We should have. That assumes that the information was available to be assessed, and in a lot of cases either it was not or it was concealed from us.

THE CHAIR: We are running out of time. Dr Foskey has a few questions.

Mr Samarcq: Sorry.

DR FOSKEY: Rhodium is now up for sale. I gather there is a process that is probably coming to an end. I am not sure whether you feel you can answer this, but I would like to know whether you believe that that was the only solution to the problem that was presented by all the things that were revealed in the auditor's report and the things that you have told us today, for which I thank you very, very much. Is that the only possible solution? What other solutions could have been found? It sounds as though things have been going along quite satisfactorily on everyone's part since everything came to light.

Mr Samarcq: There are two issues there. It would be fair to say that the decision for sale was not based on the developments and an outcome of this particular report. It may have, I guess, verified—

THE CHAIR: Hastened the decision.

Mr Samarcq: Not hastened but certainly verified the issue to them. But the government made a decision to sell Rhodium. Its process of looking into the sale of Rhodium was established well before February 2006. It was a decision about whether the government should be in the fleet management business. They took a decision. That was part of the issue about the uncertainty going forward, given that it was clear to us as a board—and I think the Chief Minister acknowledged this in his discussions with the committee a month or so ago—that it was a lineball decision to keep fleet management as a territory owned corporation.

There were issues about whether it should continue or not. The decision to sell the business was done on the basis of the functional review and some advice that obviously Treasury and independent assessors gave to the government. In retrospect, this probably would indicate that it probably verifies or strengthens the decision that this is a business that they do not necessarily want to be in. But I would counsel against a direct connection.

THE CHAIR: How many meetings have you had with the Deputy Chief Minister in her capacity as a shareholder?

Mr Samarcq: As a shareholder in the period leading up to this or post?

THE CHAIR: She took over when Mr Quinlan left, did she not?

Mr Samarcq: I probably had three meetings with him—three or four.

THE CHAIR: What has been the nature of those?

Mr Samarcq: The nature was to brief him on developments.

THE CHAIR: I am talking about Katy Gallagher.

Mr Samarcq: The deputy?

THE CHAIR: Yes.

Mr Samarcq: I have not met the Deputy Chief Minister formally.

THE CHAIR: Ever, in this capacity?

Mr Samarcq: We have communicated with her quite regularly, as we do with both shareholders.

THE CHAIR: She has not asked you to be briefed on the state of affairs, the history of all this matter?

Mr Samarcq: No. The principal interaction with us, the board, and Rhodium is through the Treasury and the Treasurer, as it was with Mr Quinlan and now the Chief Minister.

THE CHAIR: Mr Moore, when I went to Rhodium—and I have only been there once since I took over as shadow minister for the territory and corporations—I raised a question as to what happens with gifts from motor vehicle suppliers. I was told initially that there was no policy and then not long after I was told that subsequent to that question they had instituted a practice where these gifts were collectively put together and then given out across the spectrum, auctioned or given away to charities or something. Do you know what the practice is nowadays?

Mr Moore: There is an approved board policy on gifts; we maintain a gift register. The number of gifts we get from dealers is minuscule, of a very low value. One dealer comes in fortnightly with a cake for the staff. We had a dealer drop off some baseball caps the other day. Anything over a certain financial threshold—from memory, it is $50; it might be a bit higher—we put on the gift register. I make a decision, if it is a cake or ice creams, the staff can eat them. But in my time, our rental car contractor provided a Christmas hamper of some food which we put into the staff Christmas party, and that is about it.

THE CHAIR: There is no real largesse from the manufacturers of vehicles?

Mr Samarcq: No.

Mr Moore: No, not at all.

THE CHAIR: Mr Samarcq and Mr Moore, I appreciate your cooperation with the committee. It has been a long session this afternoon. Thank you for your frank answers to us. I now adjourn this hearing. I thank you for your attendance this afternoon.

The committee adjourned at 4.06 pm.