

## **GBC Day 12**

### **8.45am: People have been queuing since dawn at the Supreme Court building for a chance at a seat at the trial.**

More than 100 people were in the line by 8.30am, hoping to get in.

Court 11 has 48 seats, including 16 for family. An overflow court and media room will also be full.

Three court rooms plus a media room have been made available to the crowds.

Last week the 43-year-old choked back tears as he told the Brisbane Supreme Court how he fell in love with his wife and wanted to spend the rest of his life with her.

Allison Baden-Clay's body was found on a creek bank in Anstead, in Brisbane's west, on April 30, 2012.

The discovery was made 10 days after her husband reported her missing from their home in nearby Brookfield.

More than 70 witnesses have given evidence since the trial began three weeks ago.

### **10.15am: The accused is in the witness box wearing a suit, white collared shirt and a blue/green patterned tie.**

In evidence-in-chief questioning from barrister Michael Byrne QC, Baden-Clay said he and his wife were successful professionally following the birth of their second daughter but personally "it was quite challenging".

He told the jury he went back to work to earn some income but it put some strain on his wife.

Baden-Clay said he would arrive home by 5pm for "what we called in our house "happy hour".

He said he fed his daughters, bathed them and put them to bed.

"Most occasions I would do the majority of that routine, on many occasions Allison would go to bed pretty much as soon as I walked in the door," he said.

He said towards the end of 2004 he and his wife determined they could start their own business.

"I went and got a full real estate's licence, my father did as well and we started a Century 21 franchise in Kenmore from scratch. We had nothing," he said.

Baden-Clay said it was a more comprehensive qualification that allowed him to run the real estate business and operate a trust account to handle client's funds.

He said he started it with himself, his parents and a receptionist.

“When we first started it was just the four of us,” he said.

Baden-Clay said the business very quickly became successful.

“We had two young children and Allison wasn’t really coping very well with that and with me then having to work, so I was at work all day, we’d come home at 5pm for happy hour and have the children asleep by 7pm so I could, if need be, meet evening clients from 7.30pm,” he said.

He said his wife would often call during the day to say she needed him.

“I could be home within five to 10, 15 minutes tops, pretty much from wherever I was at that time,” he said.

He said he would take his eldest daughter with him to breakfast meetings to give his wife some respite at home.

The accused said communication between him and his wife deteriorated.

“Unfortunately it deteriorated quite dramatically and the main reason for that was Allison was putting a lot of her best efforts into the children, which was great on one hand, it gave her some positives in her life but that effort ... and if we ever went out, her putting on the facade of being together, was very draining for her,” he said.

Baden-Clay said his wife was still taking medication.

“It certainly assisted with the depths of her depression and anxiety ... the medication is an antidepressant so it assists with smoothing out those lower ends of mood it does, unfortunately, tend to knock off the upper ends, as well ... great elation ... gets sort of blunted by the medication as well,” he said.

He said his wife was a lovely, energetic person when they first met.

“She had a love of life and was very sociable but she became much more withdrawn through that period,” he said, through tears.

“She was just like, sort of a blurry image of herself, if that makes sense.”

Baden-Clay said his wife suffered a loss of libido after taking the Zoloft and put on weight.

He said their sex life became non-existent.

He said his wife was very keen to have a son.

“I think she wanted a son for my sake. She wanted to be able to continue the Baden-Clay name. Each time we’d been pregnant with the other two children, we’d always...,” he dried his eyes with a hanky.

Baden-Clay said he did not want another child.

“After the challenges that Allison had been through with her previous pregnancies, all three of them, and potentially the financial pressures and that sort of thing we were in a little town house and we’d potentially have to move ... I wasn’t keen and we discussed it at length and she became quite depressed about that,” he said.

“I just wanted to make her happy. I’d always just wanted her to be happy and um, so, we agreed in the end, and as soon as she found out she was pregnant her mood lightened immeasurably,” he said.

**10.45am: Baden-Clay told the jury through tears he had not been faithful to his wife in 2006.**

“I just wanted sex,” he said, dabbing his face.

“And Allison and I hadn’t had any physical intimacy for years. It’s not an excuse but that’s why.”

He said he had an affair with a woman called Michelle Hammond, who he worked with at Raine and Horne.

Baden-Clay said it lasted a month.

“I just felt really bad about it and it was just a mutual, we both wanted it for the same reasons and it was nothing more,” he said.

“Just the sex.”

Baden-Clay said the real estate business started to build up and he hired new sales staff he could train up in 2006.

He said employees included Phil Broom, John Webb and Toni McHugh.

“It was going terrifically well, we were going from strength to strength. We were growing a market share, we were making money...,” he said.

Baden-Clay said there were two core areas in a real estate business: sales through selling property and rentals, which involved property management.

He said reinvestment in the business was through staff recruitment and in office technology.

The accused said his wife fell pregnant in 2006.

“As soon as she knew she was pregnant her mood certainly brightened a lot,” he said.

He said they went for a 12-week scan where there was an opportunity to determine the gender but his wife asked not to know.

Allison and Gerard ‘hadn’t had any physical intimacy for years. It’s not an excuse but that’s why’ he told the court.

Baden-Clay said they agreed he would know the child's sex and it was a girl.

"Having another girl, I felt a confidence I knew how to change their nappies and how to care for them and look after them, so I was in a way, quite relieved but I was worried how Allison would take that news," he said.

He said his wife was still seeing psychiatrist Dr Tom George and her mood generally was good.

He said in the third trimester she experienced more negative mood swings and they organised to have an elective caesarean section to control the delivery.

Baden-Clay said he spoke to Dr George about the child's gender.

"Because Allison was so set on wanting to have a boy and I knew it was a girl and I was concerned there may be some emotional backlash for Allison when she had the girl," he said.

He said his third daughter was born on September 15, 2006.

Baden-Clay said his wife's initial reaction was shock.

"Of course I'd had six months of knowing it was a girl so I was delighted and wanted to convey to Allison I was delighted as well because I knew so much of her wanting to have a boy was for me," he said, again in tears.

He said his wife quickly fell in love with their daughter, bonding with her "just like she had with the other two".

"I can't imagine life without (her), so I'm really glad we did have her," he said.

Baden-Clay said his big vision with the real estate business was to have a network of six or seven offices across the western suburbs, working together as one big team, rather than against each other.

He said he was the principal of the business in 2007.

The accused told the jury he initially hoped to open the business with licensing managers in each office but then decided the best way forward would be to have partners in each.

"At that stage Phil Broom was one of our best performing agents in our office and I felt a good connection with him in a business level," he said.

Baden-Clay said he discussed Mr Broom buying in and becoming a partner in the business.

He said they made a handshake agreement they would be 50-50 partners in the business.

But the accused said the agreement was never finalised because Mr Broom spoke with Century 21's top sales person Jocelyn Frost at a state conference on Hamilton Island.

Baden-Clay said they decided to bring Ms Frost on board as a partner, as well, rather than have her work nearby in competition.

“They both paid \$25,000 each to become one-third owners in the business,” he said.

He said the money was paid directly to Peter Cranna, Baden-Clay’s friend, who he borrowed money from to start the business.

Baden-Clay said life at home was “pretty tough”.

“Allison didn’t generally cope very well with that on her own, so I would generally assist her,” he said of caring for the children in the mornings and the evenings.

He said his wife was at a point where she was throwing all of her energies into the children.

“She was certainly getting a bit better, progressively better generally, and able to take the children to ballet ... which was great, but that took a lot out of her emotionally and I guess physically as well,” he said.

Baden-Clay said his wife would just collapse on the couch, sleep during the day with their youngest daughter.

He said their physical relationship was “non-existent”.

“Allison just had no interest in any physical intimacy at all and I didn’t want to force her or put her under any pressure, so we just didn’t ... It became the norm I suppose, that there was no physical intimacy,” he said.

#### **11.10am: Gerard Baden-Clay said he hired Toni McHugh in 2008.**

He said she had originally joined the business as a sales person, was a past client and took on the property management business when she came on board.

He said Ms McHugh was a “pretty good” sales person.

“We developed more of a closer relationship, she was having some issues with her own relationship, with Rob ... and I, like with all of my staff, I tried to assist them and counsel them if I could with any of their issues and we became a bit closer through that,” he said.

Baden-Clay said he started a physical relationship with Ms McHugh.

“That I think, for both of us, was purely for that in the end of August, 2008,” he said.

“Business was going great, just brought in two business partners and I didn’t have any physical intimacy and we started that relationship.”

The accused said the relationship started one night late in the office.

“I would have gone back to the office after doing my happy hour and then on a couple of occasions we actually met up and had a tryst in my car, the Prado, Snowy,” he said.

He said it was over the ensuing years that he tried to “break off with Toni on numerous occasions”.

“Sometimes we were successful for days, sometimes for a month or two but we always ended up recommencing that physical relationship,” he said.

Baden-Clay said he was concerned when he learned Ms McHugh had ended her marriage.

“For me it was just a physical relationship and I didn’t want it to be any more,” he said.

“As time went on, she wanted me to divorce Allison and start a life with her. I told her categorically that I would not do that, that my loyalty, it doesn’t feel right using that word, but my loyalty was to Allison and my children and I didn’t want to jeopardise that.”

The accused said it would have been towards the end of 2008 and the beginning of 2009 when they had that conversation.

He said it was a recurrent theme in the affair.

“The thing that made the relationship particularly awkward was that Toni worked in the business and she was quite a successful sales person as well,” he said.

“She was a bit more volatile with her moods and that sort of thing and I was very concerned of the impact it might have on the business if we separated permanently and Toni wasn’t happy about that.”

Baden-Clay said Ms McHugh “pushed” for things and “I would say whatever she wanted to hear”.

“It was always me,” he said of trying to break off the affair.

“Typically it would be me saying to Toni there wasn’t a future for us together because I was not going to leave Allison and the children and if there was no future, there was no reason continuing now.”

Baden-Clay said he was in the affair “primarily for the physical intimacy, certainly I was flattered at the outset because she looked up to me as a boss, I was getting acknowledgement and appreciation which I hadn’t experienced before”.

“But really it was for the physical intimacy,” he said.

The accused said he attended counselling with his wife, Allison.

“Aside from the physical relationship we were having challenges in our marriage that we were trying to work through because we wanted it to work,” he said.

He said they saw a counsellor recommended to them by their psychiatrist, Dr Tom George.

Baden-Clay said he never revealed that he was having affair because he was “ashamed”.

“I hoped to be able to end it and that would be something in our past that I would never have to deal with and we’d be able to move on,” he said.

He said his wife did not find the counsellor constructive because she felt the woman they were seeing was “taking my side”.

Baden-Clay said his wife spoke to another psychologist, a man, and arranged for him to meet them.

“Allison for years as part of her affirmations and that sort of thing would keep telling herself ‘I’m not depressed, I’m not depressed’ and that was an affirmation she kept reiterating to herself,” he said.

“And her depression she did largely overcome but there were occasions when there were some triggers that would bring it back on and for me it felt like it was always hovering there ... over her and if things for her turned bad she could relapse to her lowest levels and that wouldn’t be great because we now have three children.”

He said he wanted his wife to do more around the home when he was there.

“As it was, we were almost living separate lives.

“When we were together she would go to bed and I would look after the children and do everything else and when we were apart she would look after everything around the household and I would be at work,” he said.

“I wanted us to do everything as a family ... and for us to be able to really enjoy each other’s company again and Allison wanted that too, but there was this wrestle between mentally wanting it and being physically able to have the energy for it because she was throwing so much into the children when I wasn’t there.”

Baden-Clay said his wife eased off Zoloft and did not need to take it anymore.

“She kept telling herself she didn’t have depression and she wasn’t depressed, she did know what the triggers were ... she had a psychology degree, so she had an understanding ... she sort of didn’t want to reveal a weakness for want of a better description, to me, when she wasn’t feeling her best,” he said.

He said he only found out his wife occasionally went back on Zoloft when he saw it in the cupboard one day.

Baden-Clay said his wife learned strategies to help her drive when she was anxious and for other triggers.

He said Dr George had spoken to his wife about cutting her Zoloft tablets in half depending on what was happening in her life.

Baden-Clay said that the new three-way partnerships in his business began in August, 2008.

But he said it was a clunky arrangement.

“I basically took responsibility for all the management of the business, recruitment and training of staff, the accounts and administration ‘back-end’,” he said.

He said he farmed out clients to the new partners, who focused more on selling property.

Baden-Clay said the business won awards and became the number one office in Queensland, and number 10 in Australia.

He said the three partners would share equally in remuneration.

He said business was so good at one point they each took home \$5500 a week.

The accused said his partners bought “flashy things” but told the jury he “did not want to cast aspersions”.

He said he bought a Lexus on a “whim” when Phil Broom bought one.

“They just were living it up, basically and Jocelyn’s key thing was jewellery, travel and clothes,” he said.

Baden-Clay said there was enough money being left in the business to pay the bills but not much reinvestment was happening.

**11.30am: Gerard Baden-Clay said the business partners found a new premises on Swan Rd at Taringa and they decided to shift to a newer, larger office space instead of open smaller offices.**

He said they rented the space and negotiated to have naming rights to the building.

Baden-Clay said the agreement to move to the new premises was signed at the end of 2010.

He said they were to start paying rent in either December or January.

But Baden-Clay said his partners, Ms Frost and Mr Broom, stopped selling properties in about September, 2010.

“We had massive outflows for taking up the new premises and our two key selling performers basically stopped selling so we had a big, double whammy which came to a head because we weren’t able to pay ourselves,” he said.

He said the business had also spent to hire new sales staff.

Baden-Clay said the business shut down between Christmas and New Year in 2010 and the move into the new premises took place.

He said nine new sales staff and another support person was brought on board on January 10, making a total of 26 staff at the business.

The accused said the January, 2011 floods hit and “threw everything into disarray”.

He said the core catchment area for his business, such as Bellbowrie and Moggill, were inundated as well as properties in Kenmore, including his parent's home.

"What we found was the whole area, from a real estate perspective, went into a depression," he said.

Baden-Clay blamed some of the downfall on banks who refused to loan money for property purchases in flood affected suburbs.

"Basically the real estate industry hit the wall," he said.

"We had some properties that were on sale that completely went under water and nobody wanted to buy them."

The accused said the rental roll was shared between the three partners, as well as property manager Ben Bassingthwaite.

He said the effect of the floods on his business was "catastrophic".

Baden-Clay said his partners Ms Frost and Mr Broom suggested shutting down and going into liquidation, or sacking staff in order to hold out.

"My belief was if we could hold out during that period ... when things started to turn around, if we could remain firm, we'd be in a position to move forward," he said.

He said the relationship between Ms Frost, Mr Broom and himself broke down and he offered to buy them out.

"They would retain all of the benefits of being a partner in the business, that involved a very high commission payment base, car parks offices and all of that sort of thing, so they didn't lose face, effectively ... and I actually took practical control of the business back," he said.

Baden-Clay said he bought his partners out for \$1 each and they agreed to remain in the business as sales people on an incentive plan with added benefits, based on performance, of up to \$30,000.

He said Mr Broom stayed but failed to meet his targets and was unable to achieve his additional bonuses, leaving the business in 2011.

He said Ms Frost insisted on having the first bonus payment up front, on the proviso she would earn it back, but left once the cheque cleared.

"Within weeks she was working at Re-Max," he said.

Baden-Clay said his partner Mr Broom sold his quarter of the rent roll to Ms Frost.

He said he wanted to own the whole of the rental business because it would give him an opportunity to stabilise it.

The accused said he contracted to buy the rental business from Mr Bassingthwaighte and Ms Frost at the end of 2011.

He said Mr Bassingthwaighte left real estate to become a police officer.

The contract was for a total value of \$400,000 and he owed Mr Bassingthwaighte \$100,000 and Ms Frost \$200,000.

He said he tried to get finance to pay his partners out but was unable to.

“So they agreed to let me buy the business from the beginning of January but only pay them at the 30th of June. I had to pay a 10 per cent deposit up front and interest payments,” he said.

He said he paid Mr Bassingthwaighte \$10,000 and Ms Frost \$20,000 as well as monthly interest repayments.

Baden-Clay said he was effectively given until the end of September, adding later that was always the intention.

**12.20pm: Gerard Baden-Clay said after the floods and the dissolution of the partnerships he needed to obtain finance to secure the business’ future.**

He said he called his friends Peter Cranna, Stuart Christ and Robert Cheesman who helped him by each loaning \$90,000.

Baden-Clay said he referred to the trio as his “advisory board” and before committing the funds they did an investigation of the business and its future.

He said the money was loaned on the proviso he not spend anything without first gaining approval from Mr Cheesman and on the basis that he gave them regular financial updates on the business’ progress.

“I was very confident in the viability of the business,” he said.

Baden-Clay said he felt confident the market would improve.

He said the business did not experience an “instant turn-around” upon the injection of funds but the net cash flow position slowly improved by mid-2011.

Baden-Clay said he was still having an “on again, off again” affair with Toni McHugh at the time.

He said he attended a conference in Sydney when he had a liaison with another woman, Jacqui Crane.

“I was going to a conference in Sydney for the weekend and the relationship that I’d had with another woman previously, who was also attending that conference, we got together for a physical relationship on that weekend,” he said.

“That was the only time, we actually, we actually had sex.”

Baden-Clay said his partners became aware of his relationship with Ms McHugh.

“I think it was Jocelyn (Frost) initially who suspected something and she spoke to Toni who denied it. I think she spoke to Phil as well and at some point it was acknowledged,” he said.

The accused said his partners relayed a conversation he had with them about Ms McHugh, back to her.

“During that conversation the issue of Toni was raised and the relationship we had had and, I admitted to them that there were occasions when I was effectively sleeping with Toni for the sake of the business which I didn’t want her to leave the business and I didn’t want her to cause any dramas should the relationship end,” he said.

He said it got back to Ms McHugh.

“She was quite justifiably very unhappy about that and I think at that time we were, the affair, was in some sort of a hiatus, but we got back together because, for the sake of the business,” he said.

Baden-Clay said not long after he received a phone call from his wife, asking to meet him.

“I was at the office and Al called on the mobile,” he said, his voice breaking.

“She just said ‘we’ve got to talk’ and I sensed straight away what it was about. So I suggested that we meet at the Indooroopilly McDonalds which was just not far from our office.”

Baden-Clay said he met his wife in the car park.

“I got out of my car and um, sat in the passenger seat of her car, which was Snowy... the Prado. She just came straight out and asked me if I was having an affair with Toni and I said ‘yes, I was’. Or ‘I had been’,” he said.

The accused sobbed into a hankkerchief and said his wife reacted with disbelief.

“When I’d acknowledged it she was just in shock,” he said.

“She didn’t yell or shout or scream or anything, that’s just not Al. It’s just not her. She got out of the car. She was just shaking her head, saying I can’t believe this and she got out of the car and she sat on the little concrete curb thing next to the gardens there and I got up and came around and sat next to her.

“There wasn’t much said, she was just shaking her head, had her head in her hands, dhe might have been feeling physically ill, she didn’t vomit, that’s why she got out of the car.”

He said after a little while his wife asked “do you love her?” and he replied he did not.

Baden-Clay said his wife told him he had a choice to make.

“It was just an absolute a no-brainer for me. I think I may have said there is not choice, I want to be with you and the girls,” he said.

He said when he went to put his arm around his wife's shoulders she shrugged him away.

Baden-Clay wiped his face with the hanky and took a sip of water.

"I think she went home," he said.

He said he called Ms McHugh and met her at her St Lucia unit.

"And I just told her that Al had found out and that I didn't want to be with her, I wanted to be with Allison and the girls," he said.

"She was very angry. She said she couldn't believe it, she called me all sorts of names. Said I was the scum of the earth, that I ruined three years of her life.

"She yelled at me and screamed at me and threw things at me."

He said Ms McHugh told him she would never return to work at the business.

Baden-Clay said he tried to calm her down but she yelled at him and said: "Get out, I never want to see you again".

"I went back to the office," he said.

He said he told his work colleagues about the affair, that it had ended and Ms McHugh would no longer work there.

"I wanted them, the staff, to know the facts from me rather than getting a grape-vine version," he said.

The accused said he spoke to the school principal and told him about the affair.

"I didn't want him hearing through the tuckshop rumour mill, which is how it happened in the first place... to give him a heads-up if there were any issues with the children we could be made aware of it straight away," he said.

Baden-Clay said it was very uncomfortable between him and his wife after that.

"Al at that stage said if I was committed to her and our relationship, that in light of my breach of trust, I needed to submit to some conditions she had and I agreed to do that, whatever she wanted, because I was committed," he said.

He said those conditions included no night time appointments, unless his wife approved and access to his phone, including passwords, that she would check and take control of each night.

Baden-Clay said Ben Bassingthwaighe left the business and his wife came on board to take over the property management side of the business.

He said she was given the title of general manager.

“I think that was probably partly, from her perspective, a trust thing so she knew what was going on,” he said.

The accused said it started within three weeks of his wife finding out about the affair.

He said she was nervous about coming into the office as the woman whose husband had cheated on her.

“I actually spoke to the staff, as well, and... just asked them to be mindful of Allison’s situation and they were all very lovely,” he said

**12.45pm: Gerard Baden-Clay told the jury Toni McHugh texted him numerous times, “all of which Allison saw” and tried to phone him in the months after the affair ended.**

He said he had contact with Ms McHugh because he “heard she was really struggling”.

“I felt a great deal of responsibility for that and it was around Christmas time when I just thought at that time of year, I wanted her to know that I didn’t hate her and to apologise for want of a better description, so I contacted her,” he said.

Baden-Clay said he met Ms McHugh at a Taringa coffee shop.

He said she was fragile and asked him if he loved her.

“I told her I didn’t and I was sorry, but I didn’t,” he said.

The accused said Ms McHugh went to work at Re-Max with Jocelyn Frost, then to Ray White at Toowong.

“Toni was struggling, she didn’t like what she was doing, she reported to me on one of those occasions that she’d had an anxiety attack when she was at work and passed out in the toilets there and I was obviously concerned about her,” he said.

Baden-Clay said he met Ms McHugh on a couple of occasions and at least twice, they had sex.

He said the last time he saw Ms McHugh would have been in March, 2012.

The accused said they last had physical contact in February or even January of that year.

“I never called her, she only ever called me. If she called me, after the phone call, I would delete the history of that call from my phone record. There were no text messages ... and that’s when we utilised that other email account that I had that Allison didn’t know about,” he said.

Baden-Clay said the Bruce Overland account was a “dummy” email account he sent up with Phil Broom when they were establishing the business.

He said the business was sub-let to another tenant to help reduce costs.

Baden-Clay said his wife would discuss the business and its future with him at length.

He said the sales team had been reduced to three.

The accused said a development strategy for the business was devised by March or April, 2012 and the prospects of it going forward were “very positive”.

Baden-Clay said more than \$150,000 in revenue was generated by the sales business in April alone.

He said his wife dealt with the couple’s personal finances, including their rental property on the Gold Coast.

The accused said his wife investigated their insurances in the months before she disappeared.

Baden-Clay said his strategy to raise finance for the purchase of the rent roll from his former partners was, if not through a bank, via Charles Tarbey who owned Century 21.

He said his plan C was to ask high net-worth individuals for the \$400,000 he needed to raise.

Baden-Clay said those people included Moggill MP Bruce Flegg, who he developed a good relationship with over the years.

The accused said he approached Dr Flegg around Christmas, 2011.

“He wanted to go into a lot more detail than I was prepared to go into at that time, like who were the partners ... and I wanted to maintain a little more confidentiality at that point,” he said.

Baden-Clay said Dr Flegg told him at the time he had put in a contract for an apartment in New York and his excess funds were largely tied up in the purchase.

“He said once that was completed he would then be in a much better position to know what his financial position was,” he said.

Baden-Clay said he also approached a past client who lived at Pullenvale but he and his wife had children who were young adults and already financially committed to investing with them.

He said another client he was never able to meet with and ask.

Baden-Clay said he made further contact with Dr Flegg in March, 2012.

“Really just to say, okay, has the New York apartment settled and where are you at? He didn’t answer his phone ... the election was on, but he did ask Sue, his friend, to give me a call on his behalf,” he said.

The accused said he spoke to Susanne Heath and mentioned a possible loan of \$300,000.

“I remember actually breaking into tears at that point and nobody ever asked me if I was okay, so I was a bit touched about that,” he said.

He said he spoke with Dr Flegg later and by then had “moved on” from requesting money.

Baden-Clay said he went with his wife to see Rosamond Nutting at Bardon.

“We didn’t really feel a great connection with her. She had some, she talked about the trauma that Allison had been through and Ros had some ideas about trauma counselling and how to deal with that trauma. Some of the suggestions that she made were a little bit out there from our perspective,” she said.

Baden-Clay said Ms Nutting wanted to meet with his wife on her own to deal with the trauma dialogue but she was not as keen.

He said they stopped seeing her and then his wife had a session with Carmel Ritchie.

The accused said his wife liked her and made an appointment for them both on Monday April 16, 2012.

**1.05pm: Baden-Clay said he anticipated he and his wife Allison would go in to the counselling session together on Monday April 16, 2012.**

He said he filled in a form about himself before going into the room with Carmel Ritchie by himself.

Baden-Clay said Ms Ritchie told him she wanted to have an opportunity to find out about him, as she had with his wife.

He said he was taken aback that he had to go to the room by himself, when he thought it would be a couple’s session.

“I really felt a connection to her ... we talked about the affair with Toni (McHugh) ... and she expressed her view that it would be useful for Allison to be able to express her feelings and ask any questions that she wanted to, about details of the relationship, in order to recover from it,” he said.

Baden-Clay said he was resistant, at first, because he didn’t think it would be helpful.

“Whenever she did that she seemed to regress and it seemed to me quite strange ... but what Carmel further explained to me was it wasn’t an anytime, anywhere, anything type of thing but she recommended a structured, setting aside of 10 or 15 minutes every second night,” he said.

The accused said his job was just to listen to any feelings his wife had about the affair.

“I knew that for me, it would be certainly easier to deal with on a 15 to 20 minute basis every couple of nights and for Allison it would probably be better because she could formalise her thoughts ... rather than getting potentially overly emotional about things, which had happened before,” he said.

Baden-Clay said the couple's 15 to 20-minute session on the Monday night centred mostly on whether he liked Ms Ritchie and the suggestions she had made for them.

He said he told his wife he was happy with Ms Ritchie.

Baden-Clay said he was doing his best to "distance" himself from Ms McHugh.

He said she would call around 4.30pm or 5pm.

The accused said Ms McHugh was wanting to reconnect and for him to leave his wife in order to "build a life with her".

The jury was shown the emails between Baden-Clay and Ms McHugh, exchanged via the secret Bruce Overland account.

The first email was dated Monday February 20, 2012 from Ms McHugh to the Bruce Overland account, which said she was "sick of being second best and having to take the back seat".

He said he was doing his best to help Ms McHugh find something other than him "to be fixated on and focused upon".

Baden-Clay said he was encouraging her to go overseas and take on a teaching role with friends in Singapore or in Japan.

"I was just trying to encourage her to find something else, basically, that would make her happy and make her, additionally, preferably, go away," he said.

The accused said he was trying to push Ms McHugh away, but because of her volatile personality, he tended to "roll over and say whatever she wanted to hear".

He said he thought the email was Ms McHugh understanding he really did love his wife.

### **LUNCH RECESS TAKEN**

**3.15pm: Supreme Court Justice John Byrne has told the jury he is asking for an investigation into an incident that took place over the lunch break involving a journalist and a juror.**

"I thank you for drawing it to my attention straight away you have done the right thing in doing so," he said.

The trial then continued.

Gerard Baden-Clay continued to tell the jury about an email from Toni McHugh to his Bruce Overland account on February 20, 2012.

He said he was "braver" in his dealings with Ms McHugh when they were not face to face.

The jury was shown an email from Ms McHugh to the accused on March 27, 2012.

Baden-Clay said it was an example of Ms McHugh “applying pressure” and encouraging him to leave his wife.

He said he gave Ms McHugh a date of July 1, 2012.

“When we would be together, Toni and I would be together, that was what Toni was asking: ‘when are we going to be together?’” he said.

But Baden-Clay said he wanted Ms McHugh to leave him.

“In her eyes, I had ended everything with her, when Allison found out about the affair and she was very much the person who was left without a choice in the matter and I felt she would probably be able to get on with her life better and be able to move on if she were making the decision to leave me,” he said.

The jury was shown an email from the accused to Ms McHugh on April 3, 2012.

It said: “I have given you a commitment and I intend to stick to it – I will be separated by 1 July.”

“It was my way of saying straight away... leave it to me, leave it at that,” Baden-Clay said.

But he said he had no intention of leaving his wife to be with Ms McHugh on that day.

The jury was shown another email from the accused to Ms McHugh on April 11, 2012.

“Again it’s my way of trying to placate her and calm her down. I consistently did that over the three years,” he said.

Baden-Clay said he did not see Ms McHugh for a good few weeks and wrote in the email she should “leave things to me now”.

“As a way of trying to say to her just calm down and leave things to me, if I’m going to leave Allison it’s my decision,” he said.

Baden-Clay said he and his wife Allison agreed to do a 15-minute venting session on Wednesday, April 18, 2012.

“We picked up takeaway coffees from McDonalds and went in the car up to Mt Coot-tha,” he said.

He said they did not get out of the car but parked on a downward slope in the car park.

Baden-Clay said his wife brought with her a journal in which she had written a number of questions to ask him.

“Things had been improving so it was okay, there was a little bit of tension I suppose because ... I didn’t know what she was going to ask me but given the commitment I would answer anything she asked and she would listen,” he said.

The accused said the conversation lasted a little over 20 minutes but not long.

He said his wife did not finish all the questions she had and called time on the session.

Baden-Clay said his wife did most of the talking and he answered questions.

“We were sitting in the front of the car and had turned in our seats so we were facing one another and she started telling me that she was feeling very sad about what had happened but determined we should be able to work things through,” he said.

The accused said it was not the first time they had discussed the affair.

“There were a number of themes Allison kept revisiting which were predominantly around where Toni and I had been intimate with one another,” he said.

Baden-Clay said he told his wife about the tryst in the car “Snowy” and she refused after that to drive it.

He said his wife had always written notes in books for most of their marriage but never kept a daily journal.

The jury was shown Ms Baden-Clay’s journal.

It was opened to the list of questions she had for her husband on April 18, 2012.

Baden-Clay said the ones that were crossed out were the questions his wife asked him at Mt Coot-tha.

He said his wife asked whether he ever went to the movies with Ms McHugh, whether they drove together, had dinner or whether they were scared of being seen.

He said he only drove together in Ms McHugh’s car because it was less conspicuous.

“I was terrified of being seen and did we kiss and hug? Never in public,” he said.

Baden-Clay said he and Ms McHugh had a “couple of intimate meetings in Snowy”.

He said his wife asked him about putting the seats down.

“It says ‘lie there afterwards?’ No we didn’t. It was just the sex,” he said, reading from the journal and answering the questions his wife had written down.

Baden-Clay said he drew a house plan of Ms McHugh’s unit while sitting in the car with the journal balanced on his knees.

He said his wife asked him whether he celebrated birthdays with Ms McHugh.

“My recollection is that she asked what we did for Toni’s birthdays and I can’t even remember when Toni’s birthday is,” he said.

The jury was shown a question from Ms Baden-Clay asking how they paid for hotels.

“Toni had paid for those because I didn’t want there to be any evidence on my credit card,” he said.

Baden-Clay said Ms McHugh had told him she felt bad because he had a wife.

“I don’t recollect if we talked about it then, but I’d certainly said to Toni that I wasn’t going to leave Allison, that just wasn’t going to happen,” he said.

The accused said his wife asked him, “Do you regret the whole thing or just being caught?”

“I told her that I regretted it very much indeed and that, I told her I was very, very remorseful I wished it had never happened, and I told her I really appreciated how she was handling things and being so understanding and forgiving of me,” he said

He said that was the last question and they drove home, speaking very little.

“When we got home, mum and dad were there watching TV, one of their favourite shows were on. There was some conversation about the fact that our nephew had just been born and then Allison went to bed and I stayed up with mum and dad watching the show on TV,” he said.

Baden-Clay said he went to a Kenmore Chamber of Commerce breakfast meeting on April 19, 2012.

He said his wife agreed to drop the children to school.

“By this stage, a number of months before we had sold the Lexus and traded it down to a Captiva ... so Allison’s car was Sparky, the Captiva, and she drove that pretty much all the time,” he said.

“She rarely if ever drove Snowy in 2012.”

The accused said the family had been doing a clean out of the children’s clothes the weekend before.

Baden-Clay said they also got rid of some old toys the girls no longer played with and planned to give them to charity, give them to relatives or hand them down.

“They kept the ones that they really wanted and they had some attachment to and we got rid of the rest,” he said.

He said the clothes were put downstairs outside the garage door because a friend volunteered at the RSPCA and was going to come and pick them up.

“There were so many I think it took her two or three trips to come and pick them up,” he said.

Baden-Clay said his wife loaded the toys into the back of her car, to give them to charity, on April 19.

The jury was shown a photo of the boot of the Holden Captiva with children's toys inside it.

Baden-Clay pointed out a toy stroller for dolls, a toddler walking frame, a pink bassinette for dolls, a timber rocking cradle, a basket filled with dolls and a plastic container with a backpack and other toys.

**4pm: Gerard Baden-Clay told the jury he had no knowledge of how blood came to be on a rear boot panel of his wife's Holden Captiva**

He said his wife had work appointments during the day, including a pre-arranged meeting with a property management expert, on April 19, 2012.

The accused said he had to go to the chemist to get medication for a blood-shot eye and then went to his daughter's cross-country event.

He said his sister Olivia Walton met him there, as she was down visiting from Townsville.

Baden-Clay said he was talking to P&C president Cameron Early at the carnival when something bit or stung him on the neck.

"I just went, 'oh, what's that?' and scratched at it. It felt like it was there, it was very itchy there and later I had spreading itch all over my chest but at the time I got some, there were a whole bunch of mother's there including my sister ... and one of them gave me an antihistamine and one of them gave me some Stingose, I think," he said.

The jury was shown a photo of Baden-Clay at the carnival with a blood-shot eye and red marks on his neck near to his collar.

He said he never saw the offending insect, adding he pulled a spider off another parent and it may have been a spider "for all I know".

Baden-Clay said he went to a friend's home renovation that afternoon.

He said two staff members come along to the home to check it before it went to auction, and while changing a light fitting he cut his hand.

The accused said his wife had a hair appointment that night.

He said he picked up his daughters from his parent's house and they had barbecued sausages.

Baden-Clay said his wife called him to say she would be home that night.

"Bed time normally was around 7pm to 7.30pm. I seem to recollect they'd been for a swim at mum and dad's, so we didn't bother with baths and that sort of thing," he said.

The accused said they put their daughters to bed together.

"We would just do our various evening routines with them. Where possible we would try to make it that I would go last with each of the girls because they tended to settle more that way," he said.

He said his wife sometimes sung the girls a lullaby and he would go in afterwards and would chat to them and sing a song.

“We just sat on the couch to start with whilst just making sure that the girls were settling and we talked about the day because there had been the cross country in the morning that Allison hadn’t been able to go to and I had texted her some photographs during the day,” he said.

“We talked about the parent teacher interview with (one of their daughter’s) teacher and we discussed the following evening, there were going to be sleepovers planned the following evening.”

Baden-Clay said his wife had follow-up questions from the night before.

He said he agreed to answering two questions; two follow-up on questions on the birthdays and asked him a second time if he regretted the whole thing or just getting caught.

The accused said he told his wife again that he regretted the whole thing.

He said their mood was normal.

“It was perfectly normal, certainly civilised, those two questions were not done in an aggravated way in any way at all, as I say she asked permission to ask them and we were just talking about what had happened during the day,” he said.

Baden-Clay said his wife was wearing blue and white chequered pyjamas, with a sloppy joe and blue hiking socks that she would usually wear around the house.

He said he did not see her wearing anything else.

“When we got home she was already changed into that,” he said of her pyjamas.

The accused said he wore normal business clothes and got changed into a T-shirt and an old pair of boxer shorts.

“I would put on my running shoes and not do up the laces when I was doing ironing and I was doing ironing that night,” he said.

Baden-Clay said he thought he had a cold coming on that night.

He said he went to bed around about 10pm.

He told the jury he gave his phone to his wife when she arrived home that day.

“That evening there were a couple of, a text message or two, I seem to remember, so she gave me the phone for that and then I didn’t see it until the following morning,” he said.

Baden-Clay said he did not plug his phone into a charger at 1.48am.

He said he spoke with Toni McHugh that afternoon but deleted the phone records.

“I never called Toni, she called me, and if that ever did happen I would immediately at the end of my call go into the call history and delete those calls from the call history,” he said.

He said he could not say if his wife came to bed that night.

“I have no recollection of her coming to bed that night,” he said.

Baden-Clay said he was a “very heavy sleeper” who had a “tendency to snore quite loudly”.

He said he woke up the next morning about 6am.

“I got up, Allison was not there ... I went to the toilet, took my phone with me, checked my messages and my emails and it was, I had actually woken up a bit late because it was after 6am ... I felt like I was under the pump a little bit and I was rushing that morning,” he said.

Baden-Clay said he knew his wife had to be ready for the conference that day and he had to get the girls ready for school.

“I started to shave and it was whilst I was just about to shave that I heard (my daughter) make a noise so I ran through to see her, she was awake but lying in her bed ... so I then raced back to actually shave and I was really rushing then and that’s when I cut myself shaving then,” he said.

He said he would ordinarily shower first and then shave but he did not on April 20, 2012.

“On that occasion I was using obviously my normal razor, it was quite old and blunt, because it was blunt and I was pushing down quite firmly on my skin and I pulled down and flicked up like that...” he said.

“And that hurt a lot...”

Baden-Clay said he continued to shave and did it a second time.

“I had a bit of an issue shaving around those cuts and cut myself again,” he said.

He showed the jury with a highlighter how the razor had cut his cheek.

“There were two fairly long slices off my face,” he said.

Baden-Clay said he put a balm on the cut and got dressed and he asked one of his daughters to help him put a Band-Aid on but it wouldn’t stick.

He said he put his wife’s hot rollers on in the bathroom and started to get his daughter’s ready for school.

The accused said he texted his wife and tried calling her but it went through to voicemail.

He said he and his wife both put an app on their phones that utilised the GPS component of the phone to enable them to tell where the other person was at any stage.

Baden-Clay said it was a condition after his wife's discovery of his affair.

"I checked the app and it couldn't find her," he said.

He said his wife almost always took her phone walking and sometimes wore head phones.

Baden-Clay said he phoned his parents at Kenmore.

"They said that they would come immediately to try and help find Allison and by they, that was Dad and my sister, who was staying with them at the time, they said they would come straight away," he said.

He said he tried to call Sgt Murray Watson at the Indooroopilly police station but the call went through to an automated service.

Baden-Clay said he told his daughters at that stage he was concerned about their mum not returning from her walk.

He said his father came into the house and looked after the girls while he went out to drive the streets.

**4.30pm: Baden-Clay told the jury he drove in a Holden Captiva around Brookfield for around 20 minutes looking for his wife.**

He said he called his sister during the search and asked her if she thought it was too early to phone police.

The accused said she told him to do so.

"I didn't want to panic, I still just thought Al must be on her walk somewhere and so I looked up the police number on my phone on the internet and there was a 13 number, rather than calling the emergency number, because it wasn't like a fire burning a house down or something like that and I didn't want to misuse the service," he said.

He said it went to an automated service and in the end he called 000.

Baden-Clay said he drove home and found his father at home with his daughters.

He said his sister was leaving to take his daughters to school when two police constables arrived at the Brookfield Rd home.

Baden-Clay said two more senior police arrived shortly afterwards.

"They started asking me pretty much all the same questions again," he said.

The accused said the first two constables asked him if he and his wife had any marital issues.

"I wanted to be incredibly open with them, I just wanted them to find Al and I assumed they were the professionals and asking questions they thought would help," he said.

“At that stage nobody was aware of the infidelity and I think I asked Dad to leave the room at that point, and I told them...

“I couldn’t understand how it might assist them but I was asked the question and told them the truth.”

He said he half expected his wife to walk in the door at any moment and that was why he didn’t call his wife’s parents straight away.

Baden-Clay said he spoke to Geoff Dickie (Allison’s father) on the mobile and told him his daughter was missing.

He said he greeted them when they arrived.

“I was my normal self, I was obviously very concerned about Allison and her whereabouts but I didn’t want to be hysterical or alarmist, I just assumed she would turn up,” he said.

The accused said his father called him and told him he was concerned about the line of questioning from police.

He said his father asked him for permission to ring a lawyer.

“I actually argued with him a little bit to start with... I said Dad, I don’t think there is any need to do that... he was quite persistent though and I think he actually asked for my permission, ‘Is it OK if I call someone?’, and I said, ‘OK’, ” he said.

Baden-Clay said the lawyer he spoke to told him not to give any statements to police and put him in touch with a criminal lawyer.

“A short while later he called me back with Darren Mahony’s details,” he said.

The accused said Mr Mahony told him not to speak to police.

Baden-Clay said he had already spoken to officers for three or four hours on April 20, 2012.

He said he gave police permission to search the house without warrants.

The accused said he was told he was not able to help in the search for his wife.

Baden-Clay said his home was declared a crime scene and he went to his parent’s house at Kenmore.

He told the jury he met with the lawyer, Mr Mahony, that evening, who advised him to see a couple of doctors about the cuts on his face.

The accused said he went to the Taringa 24-hour medical centre the next day and another clinic to have the marks examined.

Baden-Clay said he got a written report from each doctor on the advice of Mr Mahony.

He said he got up and went straight to the forward command post at the Brookfield Showgrounds on Saturday morning, April 21, 2012.

The accused said he continued to give statements to police, contrary to the advice of his lawyer.

Baden-Clay said he did not give a formal statement to police on the advice of his lawyer.

The jury was shown a record of phone calls.

Barrister Michael Byrne QC, for Baden-Clay, pointed out a phone call from the accused to Robert Cheesman made at 2.58pm on April 19, 2012.

“That would have been me calling Rob from his house probably. You can see the location is Pullenvale and I would have been calling him just to update him on how things were going with the final touches to his house... I suspect that may have just been a message for him,” he said.

Baden-Clay agreed the next call was from his mother, Elaine Baden-Clay.

He said he had to be back to Brookfield State School for a parent-teacher interview at 3.45pm that day and would have made a couple of phone calls on the journey.

***The trial will resume tomorrow at 10am Tuesday July 1<sup>st</sup> 2014***