

26 July 2021

Parliamentary Crime and Corruption Committee
Parliament House
BRISBANE QLD 4000

By email: pccc@parliament.qld.gov.au

To the PCCC Chair Mr Jon Krause

**INQUIRY INTO THE CRIME AND CORRUPTION COMMISSION'S INVESTIGATION OF FORMER
COUNCILLORS OF LOGAN CITY COUNCIL MATTER AND RELATED MATTERS**

CONCERNS CCC & COUNCILLOR CONDUCT

I am most appreciative of the Parliamentary Crime and Corruption Committee initiating the inquiry into the Queensland CCC's investigation of former Councillors of Logan City Council and related matters. I am further appreciative of the LGAQ and lodging of their complaint to the PCCC.

Unless otherwise stated my submission refers to the 7 former Councillors namely Jennie Breene, Cherie Dalley, Russell Lutton, Phil Pidgeon, Laurie Smith, Steve Swenson and myself and excludes commentary or opinion relating to the former Mayor Luke Smith.

CCC Actions

The CCC forwarded an email to all Councillors dated 5 February at 4.55pm.

The Chairperson Alan MacSporran articulated he strongly recommends any resolutions voted on by Council in relation to this, or an other motion, be carefully considered in light of the above matters and that you each seek independent advice as appropriate. The CCC investigators alleged no such legal advice was obtained by the aligned Cr's.

This email was received, 5 minutes before close of business, which accordingly allowed 1 business day before the vote to engage and receive independent advice.

Did the CCC not consider the multitude of legally privileged meetings some 16 in total that Councillors had with highly professional legal experts on this matter?

The vast majority of these meetings were with Tim Fynes-Clinton from King and Co who is highly considered in Local Government matters. Further, Council engaged Barrister Andrew Herbert recommended for his expertise and considered well versed in industrial law matters.

Did the CCC believe these highly renowned legal experts were not qualified or competent? Why did the CCC state such a recommendation with the knowledge that these persons were advising Councillors at such extensive meetings?

I considered as a reasonable person that this letter from the CCC dated 5 February and the letter from Minter Ellison on the 6 February stating Sharon Kelsey's intention for legal action against us personally if we were to dismiss her, to be a direct threat and intimidating. I feel the letters are inappropriate and unethical.

These letters were petrifying and forced me to anxiously choose between surrendering to intimidation and persecution or, consider the extensive legal advice and act on what I swore on oath and was elected to do.

The CCC Chair stated in his media release that this investigation namely, "Operation Front" is one of the most significant investigations the agency has ever carried out.

The evidence suggests on many occasions that the CCC's investigation was not objective and did not follow fair and unbiased investigation processes. Rather, the CCC executed their prosecution on mischievous hearsay and baseless allegations.

The CCC in their intensive investigation did not extend their duty to validate other parties' statements including Ms Kelsey and the 5 Councillors namely, Councillor Lisa Bradley, Councillor Laurie Koranski, Councillor Stacey McIntosh, Councillor Darren Power and Councillor Raven, to ensure their destructive accusations and unsubstantiated statements were factual and truthful.

From my reading of the CCC's own guidelines, the CCC have breached these guidelines and have not applied their own processes to this investigation.

Why would the most powerful and influential government body in Queensland not comply with their own guidelines and processes and ensure their investigation is performed thoroughly and without bias and partisan opinions.

The extraordinary efforts of the Chairperson of the CCC to approach the State Government on behalf of Ms Kelsey requesting financial support for a civil industrial relations action raises additional concerns.

The CCC has carried out an inequitable and prejudiced investigation resulting in very serious and life changing Criminal charges.

Inconsistent Treatment

It was alarming in the proceedings that it was revealed 5 Councillors namely, Councillor Lisa Bradley, Councillor Laurie Koranski, Councillor Stacey McIntosh, Councillor Darren Power and Councillor Jon Raven had engaged in the very same conduct or far worse conduct that we were accused of and wrongfully charged for by the CCC.

These self appointed "Whistleblowers" that the CCC used as star witnesses in their case admitted in the court to:

- formed alliances;
- lying;
- attempting to change votes;
- conducting secret meetings offsite and at personal residences; and
- using a private messenger application to communicate and deleted those messages.

Yet the CCC were on the one hand willfully blind to these Councillors' actions but on the other attempted to use this flawed premise to prosecute their case against us.

Why did the CCC not investigate the well known strong alliance formed between these 5 Councillors and the allegations of misconduct?

The CCC and the Chairperson has not acted impartially in this matter and has failed to investigate the validity of the allegations by Sharon Kelsey and the 5 Councillors.

Had they done so they would have uncovered that much of the allegations were fictitious and politically motivated for self promotion at the expense of innocent people.

Public Statements

The Chairperson, Alan MacSporran delivered a media release on the day we were charged namely, 26 April 2019. The Chairperson stated this would be the only occasion he would be speaking about the matters.

Contradicting his statement in this announcement that he would not comment on the Logan Matter before the courts, it was discovered the Chairman had publicly exploited our conduct as *disgraceful and dishonest* on 10 October 2019 at the Institute of Public Affairs and Administration conference among additional concerning commentary. These alarming public remarks displayed the Chairperson's very strong partisan stance.

How many other events has the Chairman directed public disparaging and defamatory comments towards the 7 Councillors?

The CCC's actions and intentional public commentary has not permitted the 7 Councillors to receive public fairness and natural justice.

On the day of the charges The Chairman, Alan MacSporran delivered an "unusual" media announcement followed by responding to questions from journalists.

Among some of the concerning commentary he stated, *"You deserve elected officials who put the needs of your community first."* and further said, *"The actions of four Councillors who had called out allegedly improper behavior were noted. They stood up and made public statements about what they perceived to be misconduct by others. They were themselves the subject of complaints, they were routinely criticised, publicly and privately, and it's a fact...that people in those positions have a public duty to stand up and report misconduct. In that light, those facts speak for themselves about the role played by those other Councillors"*.

Statements made at the very commencement of public commentary by the CCC Chair displayed a favourably biased position towards those he considered honorable and a negatively biased position towards those he considered criminal.

The comments regarding the 4 Councillors to a reasonable person would be perceived as congratulatory.

Was the same prejudice exerted by the CCC in their correspondence and discussions with the DPP, PCCC, Minister Hinchliffe and the State?

The Minister for Local Government, Stirling Hinchliffe announced in parliament the sacking of the Logan City Council, *that he has a CCC report for the move of supporting the 4 Councillors as a management committee,...that will allow me to then consider what the options are in order to ensure that the residents of Logan City get the Service delivery and, the representation that they deserve.*

The Minister established Logan's Interim Management Committee on 14 June 2019, the 4 former Councillors, Lisa Bradley, Laurie Koranski, Darren Power and Jon Raven were appointed. This

appointment positioned the 4 former Councillors for their campaign leading into the 2020 Local Government Elections.

Use of WhatsApp

Many organisations including government use WhatsApp as a communication tool. In March 2015 it was widely publicised that Former Prime Minister Malcolm Turnbull used applications such as Wickr and WhatsApp.

For a short time up to late December /early Jan I was engaged in WhatsApp. I did not delete the messages on WhatsApp, I removed the application from my phone and therefore to my understanding the messages can easily be recovered on that account. I felt I was much too busy to monitor another communication platform that I deemed unnecessary.

Although a minor portion of the messages aired concerns and frustrations about Sharon Kelsey it was proven there was absolutely no discussion of the PID.

The 5 Councillors declared they used a private messenger application to communicate with each other at this time and these Councillors admitted they deleted those messages.

The CCC Chairperson stated at a "Redlands Forum CCC Alan McSporran QC". *"Messaging applications, you know, if you're a Councillor, someone you've elected, why are they using encrypted messaging apps, unless its to avoid scrutiny of what they're talking about in the messages, and criminals do this routinely. ... so, people in council who are using those sort of methods of communication would, at the very least, create a perception that somethings not right, and that needs to be reported and avoided."*

The CCC's case significantly focused on the fact that 7 Councillors were communicating as a group in WhatsApp, yet the admission of the 5 Councillors stating they used a communication application tool during this time to plan their coordinated political response, and then deleted those messages, was never scrutinised by the CCC or investigated. Why?

Why did the CCC not produce a notice to discover for the 5 Councillors mobile phones?

My QP9 goes so far to state, *"the participants can be observed to utilise the covert communication medium to drive social engagement and favoritism with aligned Cr's only and create an exclusive culture of camaraderie and consultation"*. I believe the CCC's statements on opinions in this paragraph are very far reached and states assumptions that can be read in a way as fact, I completely disagree with these CCC statements. Additional lengthy paragraphs go further to reinforce the CCC's biased assumptions.

How is it that the CCC's opinions and findings by stark comparison are so strong surrounding the 7 Councillors' utilisation of WhatsApp yet the 5 Councillors engaged in the same activity using a closed private messenger application in which they deleted the messages and that is not considered of interest?

I received a letter from the CCC dated 13 May 2019, 11 business days after I was charged.

In relation to the allegation that you disposed of public records without appropriate authorisation, I am of the view there are sufficient grounds for consideration of criminal proceedings for contravention of section 13 of the PR Act. This allegation is substantiated.

However, a criminal prosecution for the offence under section 13 of the PR Act must be commenced within twelve months from the date the public records were disposed. The CCC has formed the view that a criminal prosecution would be unsuccessful in this case because the forensic examination of your mobile device could not ascertain the date when the WhatsApp communication was deleted.

CCC investigators also considered whether you knowingly damaged the WhatsApp messages/chats with intent to prevent them being used in evidence in the Queensland Industrial Relations Commission (QIRC) proceedings. I have considered the evidence gathered and am of the view there is insufficient evidence for consideration of criminal proceedings under 129 of the Criminal Code (Qld).

Despite this, I am of the view your conduct may amount to misconduct as defined in the Local Government Act 2009 (LG Act). I have forwarded a copy of our investigation report to the Office of the Independent Assessor (OIA) for their consideration and action.

A letter was received from my Solicitor Terry O'Gorman 21 May, 2019.

Ms Florian who is the Assessor has agreed that the CCC's recommendation to have you prosecuted for misconduct under the Local Government Act will be put to one side pending the resolution of the criminal matter and at that time a decision will be made whether it is in the public interest to proceed with the prosecution.

Ms Florian advised that the relevant criteria that she will apply at that time is if you are acquitted and you show an intention to return to local government by standing for the 2023 local government elections she will make a decision at that time as to whether misconduct proceedings will be brought against you.

These two letters alone articulate the vivid disproportion of judgment by the CCC and thereafter the Independent Assessor whom the CCC Chair states they work closely with.

CCC's intervention into Council Policy

Whilst I was Treasurer at Logan Council, it was advised that Logan Council was required to update the Council's policy for "Complaints received about the CEO". Unusually there was a requirement that this had to be approved by the CCC prior to Council adopting. A draft policy was presented to the City Treasury Committee for the Councillors' review and input.

As I together with Council was always striving to achieve best practice in the government industry we chose to insert a paragraph that if complaints are received surrounding the CEO they are to be provided to an external independent party to determine the process of the complaint.

The reason for this was to ensure that a subordinate staff member was not placed in the untenable position of making a decision or recommendation or verdict on their boss. This would also strengthen attempts to remove any avoidable influence intimidation or systemic corruption. As there were very minimal complaints in this regard the financial impost to Council was insignificant and did not require a budget amendment or enhancement.

This recommendation was accepted unanimously and was supported by the Acting CEO and Director. This addition to the policy was sent to the CCC for their approval which the CCC subsequently refused.

The policy was presented on a second occasion to City Treasury Committee with the advice of the CCC's decision. Councillors again strongly supported this inclusion and felt this was best practice and should be accepted as an industry standard for Councils across Queensland.

It was requested that the Acting CEO write directly to the CCC Chairperson Alan MacSporran requesting this inclusion. Once again the CCC denied the inclusion. I was advised that the CCC considered this was a waste of ratepayers' money and would not approve of this inclusion to limit potential corruption and protect staff.

I remain confused as to the CCC's stance in this instance and can only see this refusal as double standards.

At very strategic periods and on a number of occasions it appeared the CCC has improperly intervened and attempted to inappropriately and unjustly influence the QIRC proceedings. These attempts were not only executed at the court but records were delivered to legal representatives and Logan Council. These documents contained sensitive information obtained by CCC coercive investigation powers.

I was of the belief that information received by the coercive powers of the CCC was unable to be introduced for the benefit of civil legal proceedings however the CCC were repetitive in their determination to have this disclosed for the availability of assisting the civil proceeding.

Loss and destruction of mobile phones

Several Councillors were concerned with the odd activity surrounding the operation of mobile phones. This timing oddly occurred prior to receiving notices of discovery from the CCC.

Councillor Koranski claimed her council mobile was faulty and requested a replacement and the council mobile to be destroyed. I believe the council officers refused Councillor Koranski's request. She then demanded in a council committee meeting for council to destroy this mobile phone.

Councillor Stacey McIntosh claimed her vehicle was allegedly broken into and her laptop and council mobile phone was stolen.

Councillor Bradley said she was no longer contactable on her mobile number anymore as she will not be having it any longer.

Councillor Pidgeon and myself considered these actions collectively were bizarre and concerning. Together we engaged in a meeting with the former CEO Sharon Kelsey and requested that she investigate the sudden activities surrounding changes and requests of mobile phone replacements and furthermore the extraordinary demand for destruction.

As both Councillor Pidgeon and myself found Ms Kelsey to be non-interested and dismissive about this request Councillor Pidgeon followed up with Ms Kelsey via email. We did not receive any response for an investigation about these requests from Ms Kelsey.

Councillor Pidgeon also requested a response from the CCC into this activity at a later date. To my knowledge this too has not attracted a reply or investigation.

Misrepresentation of facts

Some of the other Councillors in their sworn affidavits deliberately cherry picked statements from their secret recordings in a deliberate attempt to contrive a wrong impression of what was said.

If one studies the full context it would be seen that this was a calculated and intentionally deceptive action.

These deceitful tactics were not only in the QIRC affidavits but also made their way into the CCC Prosecution Statements by these witnesses.

There are numerous occasions of this occurring. One instance of this is Councillor Power stating the budget was favourable to the 7 Councillors which is absolutely untrue. Yet Councillor Power voted in support of this budget. I am perturbed that such a serious and objectively false accusation was able to be made and used against us with a complete absence of any supporting facts and verification or investigation.

It became evident that this allegation was completely false and the evidence of proof was easily obtainable.

Rather than running a criminal case based on the 'feelings' of a disgruntled local government politician, why didn't the CCC take steps to review the budget and determine if the facts actually backed up Cr Power's feelings.

The Acting CEO Silvio Trinca and the Administrator Tamara O'Shea investigated this claim, which was also received by Council in the form of a complaint by The Logan Ratepayers Association and found there was absolutely no substance to support their vexatious claim.

Behaviour of other Councillors

The activities of the CCC's star witnesses included, but is not limited to; a Councillor admitted to lying in one or more meetings and he considered this to be acceptable; another Councillor caught lying in a meeting; covertly recording Council's legally privileged meetings and allowing persons not party to these discussions to hear the recordings; covertly recording conversations with Council staff; a Councillor refused to comply with a notice of discovery and would not hand over her notes or covert recordings unless she received \$10,000 for the release of the information, which I do not believe was ever provided to the QIRC.

The 5 Councillors took to multiple media avenues, social media platforms, community events and functions and community organisations to gain their public support. They made public accusations and defamatory statements both pre and post the charges of the 7 Councillors.

The Councillors in their capacity attended Council events and functions alongside the recently dismissed CEO Sharon Kelsey in a bold and brazen parade of their alliance. This was an intentional display to be both damaging and tormenting. These platforms were used to publicly defame and shame us.

The 5 Councillors' similar antics were engaged prior to the day of the CEO's dismissal.

All of this, whilst we were strictly required to remain silent as the other Councillors gloated and flaunted their accusations freely.

Some of these Councillors prior to the dismissal found an audience with the Logan Ratepayers Association. This group in its inception was largely made up of several historical disgruntled ratepayers known to Council and staff. The CEO upon her dismissal engaged with this community organisation as an avenue for a larger voice to publicly protest against her dismissal.

The 5 Councillors self proclaimed and presented themselves as “Whistleblowers” and, “Saving the City”. They used this tag line not only prior to the 7 Councillors been charged, but also during the time they were appointed on the Ministers Logan’s Management Committee. They held this tag into their successful election campaign in 2020.

I feel that regardless of our innocence the 5 Councillors were successful in their ultimate ploy in having the 7 Councillors dismissed and courtesy of the CCC’s favourable treatment of them in having them appointed to the Management Committee they were given a huge advantage for their eventual re-election while the 7 effectively acquitted Councillors have lost their careers, livelihoods and good reputation.

Kind regards



Trevina Schwarz

