



PARLIAMENTARY CRIME AND CORRUPTION COMMITTEE

Members present:

Mr JM Krause MP—Chair
Ms JM Bush MP
Mr MJ Crandon MP
Mrs MF McMahon MP
Dr MA Robinson MP
Mr JA Sullivan MP
Mr A Tantari MP

Counsel assisting:

Dr J Horton QC
Mr B McMillan

**Staff of the Office of the Parliamentary Crime and
Corruption Commissioner:**

Ms K Carmody—Commissioner
Mr M Kunde—Principal Legal Officer

Staff present:

Ms E Jameson—Committee Secretary
Ms M Salisbury—Inquiry Secretary
Ms M Cook—Evidence Officer
Mr S Finnimore—Principal Legal Officer

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

TRANSCRIPT OF PROCEEDINGS

TUESDAY, 17 AUGUST 2021

Brisbane

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The committee met at 9.30 am.

CHAIR: Good morning, everyone. I am Jon Krause, member for Scenic Rim and chair of the Parliamentary Crime and Corruption Committee. Joining me on the committee today are: Mr Jimmy Sullivan, member for Stafford and deputy chair; Mr Michael Crandon, member for Coomera; Mrs Melissa McMahon, member for Macalister; Ms Jonty Bush, member for Cooper, who is substituting today for Mr Barry O'Rourke, member for Rockhampton; Dr Mark Robinson, member for Oodgeroo; and Mr Adrian Tantari, member for Hervey Bay.

The committee's proceedings today are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. As parliamentary proceedings, under the standing orders any person may be excluded from the hearing or the gallery at the discretion of the chair or by order of the committee. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to my directions at all times. The media rules endorsed by the committee are available from committee staff if required.

All those present today should note that it is possible you may be filmed or photographed during the proceedings by media and images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobiles phones off or to silent mode. Before we begin, I call for any declarations of interest relevant to the inquiry and today's public hearing.

Mr SULLIVAN: As I have declared publicly on many occasions, particularly in public hearings of this committee, I have a standing declaration relating to my former employment. Considering the interest in this committee, I thought it would be prudent to remind the committee of that. In my role as chief of staff to the then attorney-general, the member for Redcliffe, I had a working relationship with many senior public servants, members of the judiciary, heads of jurisdiction, statutory bodies and portfolio stakeholders. Particularly relevant for this inquiry is obviously that that included the CCC, the Ombudsman, the Solicitor-General, the LGAQ and the DPP. As I have confirmed to the committee in the past, none of that precludes my involvement in this inquiry. Those relationships were professional and entirely appropriate for my role, and they do not impede my ability to participate in this inquiry in an unbiased and professional manner.

Mrs McMAHON: As a member of parliament representing the Logan area, I declare that I do have an interest in this matter. I have sought advice from the Integrity Commissioner in relation to the working relationships I have had with people who will be referred to throughout this inquiry, and I have tabled that advice in this committee. It determined that there is no conflict that would preclude me from participating in this inquiry.

Mr TANTARI: I would like to declare that, in my former role as an officer of the department of local government in the Queensland Public Service, I know of and did have limited professional departmental interactions with the LGAQ. At no time did I in any capacity as a regional officer deal in any way with the matter before the PCCC today or over the period of this inquiry. I believe that none of my previous interactions as a departmental officer conflict with my ability to sit on this matter before the PCCC today and over the length of this inquiry.

Ms BUSH: I would like to put on record that I have for the past 17 years worked within and across the public sector of Queensland. Accordingly, I have had extensive dealings with senior public servants, members of the judiciary and heads of jurisdiction, representatives of the legal profession, heads of statutory bodies and portfolio stakeholders. This includes members of the CCC as well as the Queensland Ombudsman, the ODPP and the LGAQ. Within this time frame I was also employed briefly by Brisbane City Council and Logan City Council in 2010 and, as such, have had professional interactions with a number of public servants and elected officials for these councils. I consider that those dealings were professional and entirely appropriate in conducting my role, and I undertake to committee members that it in no way impedes my role in contributing to the work of the committee in an unbiased and professional nature.

Dr ROBINSON: While my region that I serve in is the Redland City Council area, not the Logan City Council area, I do have working and professional relationships with at least one of the former councillors and know some of the current councillors at Logan City Council, but I do not consider that to be problematic in dispensing my duties on this committee in this hearing.

Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters

Mr CRANDON: Until late 2017, Eagleby was part of the Coomera electorate. That overlapped with the division represented by Jennie Breene up until that time. Always on a business basis, I had a working relationship with her. I have never socialised with her. I know councillors past and present from my work that overlapped in that area. I know two people who now work for the LGAQ, both of them through my role as an MP. Neither of them worked for the LGAQ during that time. Those two people are Alison Smith and Nathan Ruhle. I have received Integrity Commissioner advice which I have previously tabled. None of the above will impede my ability to consider the matters before the committee in an impartial way.

CHAIR: I declare that I have a professional and personal association with a number of current and former Logan City and Ipswich City councillors as I represent areas of both of those cities, and I am personally acquainted with Mr Nathan Ruhle, who is employed at LGAQ. I do not consider these matters to impact upon my ability to consider these matters.

I note for the public and for the record that all members at all times during the time that I have been chair of the PCCC have been very open and up-front about any potential conflict, in particular in relation to this matter. At every potential mention of the matter, we have gone to great lengths to ensure that all of those conflicts are appropriately dealt with.

Queensland needs an independent, impartial corruption watchdog and major crime fighting body, and this inquiry is aimed at answering extremely serious questions raised about the CCC carrying out this role. On 28 May 2021, this committee resolved to investigate issues raised by the Local Government Association of Queensland in its letter dated 5 May 2021, various other matters concerning the CCC's Logan City Council investigation and charging, and some other general matters. This letter from the LGAQ was accepted as a complaint about the Crime and Corruption Commission's investigation of former councillors of the Logan City Council.

That investigation led to seven of those councillors and the former mayor being charged with fraud, as a result of which they were immediately suspended from office. The council became unable to achieve a quorum owing to the suspensions, resulting in the dissolution of the council upon resolution of the parliament. An administrator was then appointed to the council. The seven councillors were arrested and charged on 26 April 2019. The charges were discontinued in the Magistrates Court about two years later, on 14 April this year.

The LGAQ complaint raised two main concerns: first, what is said to be inappropriate intervention by the CCC relating to the dismissal of the council's former CEO, Ms Sharon Kelsey, and in civil proceedings instituted by Ms Kelsey in the Queensland Industrial Relations Commission; and, second, inappropriate use of the CCC's power to charge councillors with fraud pursuant to section 408C of the Criminal Code. Underlying all of this is the complaint that the CCC failed to act independently, impartially and with fairness as required under section 57 of the Crime and Corruption Act—attributes vital to ensuring public confidence in the CCC.

This committee is established under the Crime and Corruption Act 2001, chapter 6, part 3. Our primary function is to monitor and review the performance of the CCC's functions. This committee has power under section 295 of the Crime and Corruption Act, if it receives a complaint about the conduct or activities of the CCC or a CCC officer, to take action as the committee considers appropriate. In this case, that step was establishing this inquiry and resolving, as we did on 28 May 2021, to publicly inquire into and report on certain matters. I will ask the committee secretary to read that resolution that was passed on 28 May 2021.

Ms Jameson: The resolution states—

On 28 May 2021 the Parliamentary Crime and Corruption Committee resolved to:

- investigate the issues raised by the Local Government Association of Queensland in its correspondence to the committee, dated 5 May 2021 (the '**complaint**'); and
- publicly inquire into and report on:
 - a. the Crime and Corruption Commission's (CCC's) investigation of former councillors of Logan City Council which led to the former councillors being charged with fraud (which charges have now been discontinued);
 - b. the decision and considerations of the CCC to charge these former councillors;
 - c. the evidence and submissions and other relevant documentation provided to the Director of Public Prosecutions (DPP) by the CCC in support of these charges;
 - d. the communications, whether oral or in writing, from the DPP to the CCC with respect to these charges;

Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters

- e. the CCC's involvement in related civil matters including those which were brought before the Queensland Industrial Relations Commission and Queensland Industrial Court, including the CCC's interaction with former councillors, the former CEO of Logan City Council and any other relevant officers of Logan City Council at relevant times;
- f. the CCC's use of coercive powers and matters relating to the dissemination of information obtained under coercion to parties in non-criminal proceedings;
- g. the process by which the CCC considers and determines whether to refer matters to the DPP;
- h. the CCC's interaction with the DPP more broadly, including existing information sharing and other processes that facilitate interaction, and whether the current processes and guidelines are appropriate;
- i. whether current provisions enabling the CCC to report on an investigation to particular entities under section 49 of the *Crime and Corruption Act 2001* is appropriate and sufficient;
- j. the CCC's role in charging persons with an offence arising from its investigations; and
- k. any other related matters.

CHAIR: As chair, I have avoided drawing conclusions prior to this inquiry running its course and have avoided public comments that would lead any party to consider that I had already made up my mind about the credit of any party we will hear from. I need to emphasise that the decision to launch this inquiry is one made with support of both government MPs and opposition MPs on the committee. This is required under the Crime and Corruption Act. It has not been, to this point, any form of a partisan exercise.

The committee is assisted by Dr Jonathan Horton QC and Mr Ben McMillan of counsel. They have been engaged to assist us, to ask questions of the witnesses and more generally. The decision to appoint independent counsel to assist the committee is not only about providing assistance to the committee but even more so about ensuring that this inquiry is, as far as is possible within the committee system, conducted independently. MPs may still ask questions, but counsel will generally be leading the way as we proceed—especially in these public hearings. Members of the public should be assured of the independence and competence of counsel assisting the inquiry.

That being said, the ultimate findings of this inquiry will be determined by the members of the committee. That is why it is vital that this inquiry be conducted in public so that, with most of the evidence from these hearings, documents published, the complaints and submissions from interested parties all being placed into the public domain, everybody will be able to draw their own conclusions as well as the committee members.

The fact is that actions taken that we are now reviewing saw the council in Australia's eighth largest local government area dissolved. Hindsight is always 20/20, but that action struck out the democratic choice made by the people of Logan City in 2016 when they elected their councillors. No matter what position one occupies in public life, in our system the democratic right to choose representatives should always have the highest respect shown to it. Part of this inquiry, therefore, must necessarily be to consider how decision-makers at the CCC weighed up this consideration against other considerations justifying the action they took.

The committee is concerned by the matters raised in the LGAQ's complaint. The LGAQ had made an earlier complaint on 9 February 2018 about matters which will also be considered in this inquiry, being matters which relate to the first of the two issues which the 5 May 2021 complaint has raised. The committee had inquired of the CCC about the matters raised in that first complaint and, on the basis of what it was told by the CCC at the time, took no further steps. More has since emerged about that matter.

A supplementary complaint was received from the LGAQ on 26 May 2021 which relates to the veracity of statements made by the CCC chair to the public meeting of this committee on 14 May 2021. The content of that complaint is of interest to this committee in its role of monitoring and reviewing the performance of the CCC's functions. This committee takes very seriously its function of reviewing and monitoring the functions of the CCC, an important body vested with far-reaching and often very invasive powers. As has been recognised for centuries, there is a need even for the watchdog to be accountable, and this committee is carrying out that role in this inquiry.

This committee has invited and received some 35 submissions from interested persons, including the LGAQ, former councillors and the CCC. The committee will be publishing submissions today. The committee, in the course of preparing for the public hearing, called for documents to be produced to it and for various witnesses to attend and answer questions. The committee will hear in the coming days from CCC witnesses starting with the chairperson, Mr MacSporran QC. Other witnesses will follow in due course and it is anticipated Mr MacSporran will be recalled at the conclusion of the public hearings to deal with any matters that have arisen in the course of these hearings and other matters that the committee may wish to put to him including through counsel assisting.

Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters

To the extent documents are to be formally placed before the committee, counsel assisting will undertake that task. Unless and until otherwise ordered, documents which are tabled will not be published. For the purpose of standing order 34, the tabling of a document should not be taken to be accompanied by an order that it be published or deemed to be published. The committee will consider at an appropriate time, in the interests of fairness and other legal considerations upon advice, which of the tabled documents are appropriate to be published and will make a separate order at that time.

I thank the committee secretariat for their work in reviewing over 15,000 documents produced under summons by the CCC and others for their work in distilling the key documents and for their other assistance along with that of the parliamentary commissioner, Ms Karen Carmody, who is here with us today and her staff, notably Mr Kunde, who does not seem to be known by his first name; he is just Mr Kunde because he is that famous in this building.

The committee has issued a guideline of these public hearings, a copy of which has been provided to witnesses. Meetings of the committee are generally held in public. That is the way in which we as a committee intend to proceed with this inquiry, an intention set forth in the resolution of the committee of 29 May 2021. The hearings will be broadcast live.

We may decide to go into private session if we consider it necessary to avoid the disclosure of confidential information, information about a complaint, about corrupt conduct dealt with or being dealt with by the CCC, or for some other clear reason. At present, the committee is scheduled to sit on Tuesday to Friday of this week to hear CCC witnesses and to resume next week on Wednesday and Thursday. In addition to witnesses from the CCC, the committee intends to hear the evidence of Mr Trinca, who was acting CEO of the council after the councillors were dismissed; Ms Tamara O'Shea, council's administrator appointed at the same time; and perhaps also one or more of the former councillors; and the Director of Public Prosecutions, Mr Carl Heaton QC. This witness list is indicative only and the timetabling of them will necessarily be adjusted as the schedule permits. We do hope, however, to conclude most of these public hearings in this fortnight.

Mr Horton, with those opening remarks as chair of the committee made, I would ask you to please proceed with your opening comments initiating the public hearing on this matter.

Dr HORTON: The resolution to which the chair has referred, that is section 295 of the Crime and Corruption Act, defines the scope of this inquiry. Mr McMillan and I have read all the submissions provided to you and a large volume of documents provided by the CCC. We would propose to focus on four topics: first, the nature, degree, lawfulness and appropriateness of the CCC's involvement in a civil proceeding in the Queensland Industrial Relations Commission commenced by Ms Sharon Kelsey, a private litigant. Ms Kelsey was then CEO of the Logan City Council. The action was against the council and the then mayor and later against seven other now former councillors. Second is the nature, appropriateness, lawfulness and circumstances of advocacy by the CCC for Ms Kelsey to obtain state funding for her action. Third is the steps, processes, decision-making by which the former mayor and seven councillors of the Logan City Council came to be charged with the serious criminal offence of fraud on 26 April 2019 that resulted in their removal from office. Fourth is the candour and adequacy of reporting by the CCC chair to this committee about the above and principally the basis upon which the fraud charges were dismissed by the Magistrates Court on 14 April 2021.

These are lines of inquiry open pursuant to your—the committee's—resolution having regard to the relevant documents and to the complaint made by the Local Government Association of Queensland, the research that has been done and submissions of interested persons. Although many documents have been produced, there do appear to us to be gaps insofar as what they record happened and why it happened. We propose to explore those gaps in oral evidence in these public hearings.

The complaint made by the LGAQ on 5 May 2021, which the resolution requires we investigate, directs attention to questions which are important, in our submission, in the context of this committee's functions and the proper, careful, impartial and accountable deployment by the CCC of its extraordinary powers and resources. Powers are granted to that body by parliament subject to the oversight and scrutiny of this committee. This is against the background of longstanding principles which bound the exercise of such powers which have the potential, indeed the likelihood, to affect people so greatly. This inquiry is part of that scrutiny and, in our submission, that background justifies the substantial work to be undertaken in this inquiry given the important matters that have been raised. The CCC holds powers which no other arm of government possesses, so the proper, careful and accountable use of them becomes of great importance to all Queenslanders.

It may assist at this stage, committee, if we offer a brief overview of some of the essential facts.

Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters

Logan City Council appointed a new CEO, Ms Kelsey, in June 2017. Her employment contract provided for a six-month probationary period. Not long after she started, Ms Kelsey met with the CCC chair, Mr Alan MacSporran QC. That was on 11 September 2017. We do not have a record of what was said during that meeting. We do know it was a purely introductory meet-and-greet.

The CCC was about to publish its report at that time into Operation Belcarra, which concerned allegations of corruption in local government. A probationary review of Ms Kelsey was commenced on or before 10 October 2017. On that date, the then mayor and other councillors met with Ms Kelsey to discuss concerns about her performance. Two days after that—that chronology we will suggest is important—on 12 October 2017, Ms Kelsey made what is said to have been a public interest disclosure, or PID, to the CCC. A PID is a disclosure about wrongdoing in the public sector, and it raised concerns about the alleged conduct of the mayor and some councillors. It was a function of the CCC to receive and consider complaints such as this including, of course, disclosures about potential corruption.

On 1 December 2017 Ms Kelsey started proceedings in the Queensland Industrial Relations Commission to restrain the taking of further steps in the probationary process. She claimed that process was a reprisal for her public interest disclosure and that it was adverse action for the purposes of the Industrial Relations Act. This means that action taken against her by the council and the mayor were alleged to have been for prohibited reasons.

On 5 February 2018 the CCC wrote to the council and informed councillors that it would be an offence against the Public Interest Disclosure Act and potentially corrupt conduct to terminate Ms Kelsey's employment in reprisal for her making a PID. Ms Kelsey's employment was terminated by a majority vote of council on 8 February 2018. By that time the mayor had been restrained from taking part in the vote, seven councillors voted in favour of terminating Ms Kelsey's employment and five against. The mayor did not vote in obedience to the restraint order that had been made against him.

Ms Kelsey then amended her application in the QIRC by adding each of the seven councillors who had voted for her termination. She sought reinstatement as CEO, and Ms Kelsey attempted to be reinstated on an interim basis until her action was finally decided. That action failed. Ms Kelsey's whole action in the QIRC failed and it was dismissed on 1 April 2021. There are reports that Ms Kelsey has applied to the Industrial Court of Queensland for leave to appeal that decision, which is now an appeal that would be out of time if it were able to be brought.

The CCC was never a party to the industrial proceeding of Ms Kelsey. It was a civil action between Ms Kelsey and those that she had named as respondents. There were steps open to the CCC if it had wished to commence proceedings before the QIRC to protect Ms Kelsey from the alleged reprisal against her. The CCC decided not to commence any action of its own.

The CCC, however, it will be seen, closely monitored the progress of Ms Kelsey's action. It had regular and close dealings with Ms Kelsey and her lawyers. It met with them. There were repeated expressions of sympathy and partisanship for her. Some senior people within the CCC told Ms Kelsey's lawyers that the CCC was 'motivated to assist' and that the CCC had a 'common interest' in protecting Ms Kelsey. The CCC chair instructed, for example, senior staff to do 'whatever we legitimately can to support her' on 5 September 2019.

The chair asked the state government to use taxpayers' money to fund Ms Kelsey's action. The local government minister refused the request. Ms Kelsey's legal fees in the action were in the order of \$2.5 million. The council, the mayor and the former seven councillors were separately represented and their legal expenses were, we think, largely met by the council's insurer. We will explore that proposition more in evidence.

The CCC assisted the industrial proceeding from the outside, as it were. It engaged closely with Ms Kelsey's lawyers about a request to the QIRC to issue a notice to produce documents to the CCC. The CCC chose to respond to that notice that the Industrial Relations Commission had issued to it even though it could lawfully have declined to do so. The documents it produced had been obtained using the CCC's extraordinary coercive powers. It is unusual that evidence obtained in those circumstances could be before a court on another matter and more unusual perhaps the CCC would help bring about a situation where that could occur.

The QIRC ruled that evidence inadmissible and on a number of grounds. One of those was that the material had been obtained under compulsion and the general law prohibited its use for a purpose other than that for which it had been obtained. The notice to produce that had been issued at the request of Ms Kelsey's lawyers was later set aside by the QIRC.

Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters

After that decision was made, the CCC later delivered substantially the same material to the council's then acting CEO, Mr Trinca. It seems to have done so—I stress 'seems'—without the necessary internal authorities having been given for the dissemination of such material. The CCC asked Mr Trinca for the documents back some short time later only to deliver some of them back again for ostensibly some other purpose. The second delivery of the documents was said by the CCC to be for the purpose of seeing if they were public records that should have been retained by council as, in effect, official records of that council's business.

There is evidence upon which this committee could conclude that there was another motive for doing these things. Putting the documents, the ones the QIRC had said should not and could not be before it, into the hands of council meant that council could be required to disclose them in the QIRC proceeding. Were these documents delivered to council twice for this purpose? Was the CCC doing so to avoid the ruling by the QIRC? Was the purpose of the CCC or one of them to assist Ms Kelsey in her action and her claim for reinstatement? The witnesses from the CCC will be asked about this.

As the QIRC proceeding was nearing the stage of closing submissions, there was discussion within the CCC about possibly charging the mayor and the seven councillors who had voted in favour of Ms Kelsey's termination with some more criminal offences. The mayor had already been charged in March 2018. Senior CCC officers, including the chair, met on 6 August 2018, and it was said at that meeting that if Ms Kelsey could be reinstated it would be make things 'feasible'. Shortly after, about 8 August 2018, research was done by the CCC into what offences would cause the councillors to be sacked and, in effect, an administrator appointed. Amendments to the Local Government Act which had been made in May 2018 meant that if fraud was charged—not proved, simply charged—those councillors would be removed from office, and if a majority of councillors were removed the council is left without a quorum and an administrator then, by operation of law and so forth, would be appointed.

The effect of the dissolution of the council and appointment of administrator was a potential gift to Ms Kelsey in her quest for reinstatement. Submissions made on behalf of the council, mayor and former councillors in the QIRC were to the effect that, even if Ms Kelsey succeeded in her action, she should not be reinstated because there was a complete loss of trust between her and the council. If the council were removed, so, too, might that impediment to her reinstatement.

The mayor and former councillors were each arrested and charged with fraud under section 408C of the Criminal Code on 26 April 2019. That course of action was considered and appears to have been endorsed by the CCC chair. Who made the decision to charge and when that decision was made is not entirely clear to us from the documents. Such an important decision should only be properly and carefully considered but should also be punctiliously recorded. It is something there should be no doubt about. The chair approved the charging of fraud in a meeting on 30 January 2019. He approved that charging again on 24 April 2019, again as a part of or during a meeting of senior CCC staff.

The charges were ultimately laid by a police officer seconded to the CCC, Detective Sergeant Francis, a couple of days later, on 26 April 2021. This is a means by which the CCC can cause or influence a charge to be made, because police officers seconded to the CCC retain their capacity to lay charges. It is not entirely clear why the chair approved the charging twice or at all. The Crime and Corruption Act gives the CCC no express authority to charge criminal offences. The terms of the chair's approval tend to suggest he approved the decision to charge when he had no power and had not been asked, at least the second time, to do so.

The material before the chair and Detective Sergeant Francis when they made their respective decisions does not appear to have had regard to all the facts and the important material for the making of a proper decision of this kind. For example, both seem to have considered final written submissions made on behalf of Ms Kelsey in the QIRC but not the final submissions made by council, the mayor or the former councillors. There does not appear to have been a proper, if any, consideration of the evidence given by the parties in the QIRC proceedings relevant to the facts said to form the basis of the charges. Some of the material from CCC officers is, on its face, highly emotive and seems to lack balance.

The main memorandum underpinning the decision to charge praised Ms Kelsey and demonised the potential accused. Ms Kelsey was portrayed as a person of integrity of the highest calibre—that is the word that is used—and the mayor, by contrast, is accused of living a 'Jekyll and Hyde' existence. The CCC witnesses will be asked about this. Was the material skewed in a way so that any reasons for not charging fraud would not be taken into account?

Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters

The mayor and councillors were arrested and charged. The elected council was disbanded. An administrator, Ms Tamara O'Shea, was appointed. The fraud charges failed. They had been handed over to the Director of Public Prosecutions, who decided before the committal was complete that there was insufficient evidence to warrant their continuation. The CCC disagreed with that decision then, and it seems continues, as we understand it now, to do so.

The CCC chair told this committee on 14 April 2021 that the charges were discontinued because the DPP considered the evidence was 'no longer' sufficient. That is not what the DPP told the court. The CCC chair said he was disappointed in the DPP for telling him the words 'no longer' would be used when saying this to the court. The DPP, Mr Heaton QC, will appear before this committee to address this difference and to speak more generally about the interaction between the CCC and the DPP about prosecution processes.

On 14 May 2021 and on the eleventh of this month, the chair told this committee that the charges had been discontinued by the DPP because the evidence was 'no longer' sufficient. The chair's focus on the words 'no longer' seems to be intended to suggest that the charges were supported by sufficient evidence when they were laid and that the DPP's view was about things that occurred or became known only after the laying of the charges and particularly during the committal hearing which the DPP had conducted.

The real problem for the fraud charge seemed to be that the probation process, the alleged reprisal for Ms Kelsey's PID, was started before she had made the public interest disclosure. That was always known. Mr Alsbury within the CCC expressed just that view on 3 April 2019. We will ask Mr Alsbury about that view and what currency, if any, or traction it achieved within the CCC. There was also evidence that the councillors who voted for Ms Kelsey's termination might have had lawful reasons for doing so. We will explore this with Mr Alsbury and with other CCC witnesses, including the chair of the CCC.

Reference should now be made to the issues arising from the matters outlined which we intend to further explore in questioning witnesses. As to the QIRC proceeding: one, was the CCC's involvement in that proceeding appropriate; two, why did the CCC so closely collaborate with Ms Kelsey and her lawyers including about the notice to produce; three, why did the CCC produce in a private civil proceeding material that it had obtained in an investigation under compulsion and which was always likely to be inadmissible; four, was the stated purpose of the delivery, twice, of substantially the same material to the council the real or only purpose of doing so—was it truly to put council in a position so it would be obliged to disclose those documents, even though the QIRC had ruled clearly on the issue so as to assist Ms Kelsey generally and specifically in relation to reinstatement; five, what part of the CCC's function was it that authorised it to act in these ways; six, is it appropriate for a public body with the powers the CCC has to act in this way; seven, what is the effect of the CCC having found a common interest with Ms Kelsey; and, eight, was the conduct of the CCC in all of the circumstances an appropriate and proper use of its publicly funded resources?

As to the fraud charge, the questions which we respectfully suggest that arise are these. Who actually decided to charge fraud and when? Was it the chair on 30 January or 26 March 2019? Was it Detective Sergeant Francis on 26 April 2019? What drove or influenced that decision? Was it a desire to see Ms Kelsey reinstated and to facilitate that? Did the CCC have a proper interest in that outcome? Three, what material was before the person or persons deciding to charge? In particular, did it include material which showed factors that might weigh against the charging? What consideration, if any, was given to the fact that the mayor and councillors had been elected democratically and were accountable to their constituents, or was the fact that the probationary process had been begun and concerns raised about Ms Kelsey's performance before she had made the PID the real or one impulse for the charging? Four, were the prosecution guidelines given any consideration in the CCC? These are the well-established guidelines by which prosecutions in Queensland are commenced and maintained. Five, was the fraud charge made for a proper purpose, free of bias or personal feelings of the prosecutor—a requirement of the guidelines—and having regard to all material considerations on both sides of that equation?

As to the disclosure by the CCC chair to this committee, the questions are these. Have you the committee been told candidly, accurately and fully, being informed in your role as monitor of the CCC? Did the CCC make proper disclosure to you and the parliamentary commissioner, as required by section 329 of the Crime and Corruption Act, about, in particular, improper conduct in connection with the delivery of documents to council on 3 October 2018?

Chair, Deputy Chair and members, it is submitted that these are the issues of fundamental importance to your work and that of the CCC. It is a body vested with great powers and, to a large extent, ones that are unchecked by others. It will be for you, however, to weigh what you hear from Brisbane

witnesses and what you will read in the documents, having regard to these considerations: the important role of the CCC in investigating corruption; its statutory command to focus on the more serious such cases; its statutory duty to act impartially; the nature and scope of its powers, in part investigative, educational, preventive, quasi-judicial and, through seconded police officers, prosecutorial—the agglomeration of these powers may make it difficult properly to discharge each and keep balance and detachment; and, finally, the need for those with extraordinary public power who demand high standards of others themselves to act to at least those standards.

Members, Mr McMillan and I, in this opening, have attempted to identify where information is missing or is of concern and to show why the issues we have outlined arise on the material we have seen to date. There is an available perception that is submitted that the CCC may have taken sides in private litigation in favour of Ms Kelsey and against the elected mayor and seven councillors and to have used public power in a way which at the very least pushed the legal boundaries. Questions of appropriateness in the use of that power will be for you within the matters raised by the resolution. They warrant, it is respectfully submitted, thorough exposure so that this committee and the people of Queensland can see and understand how the body they fund and clothe with these far-reaching powers in this important instance used them. When the whole of the evidence has been adduced and considered, it will be for the committee to answer these questions referred to and such others as the committee reasonably think relevant to them. Chair, is that a convenient time to call the CCC chair, Mr MacSporran?

CHAIR: Yes. Thank you, Mr Horton. We will proceed to the opening of witness examination. Mr MacSporran, would you rise, please, and come to the front of the table?

Mr Alan MacSPORRAN QC (accompanied by Mr Peter Dunning QC and Mr Matthew Wilkinson)

Witness was sworn—

Dr HORTON: Mr MacSporran, the chair has indicated that you are likely to be called twice before the committee, once now and once later. My questions today will be largely focused on trying to understand some of the gaps which I have opened about and generally an explanation of where those gaps exist and where documents appear to be missing and your explanation or context in that regard.

Mr MacSporran: Mr Horton, thank you. That, I suspect, will raise some difficulties, only in the sense that as the chair of the commission I have a role to play, obviously. That role does not include the day-to-day knowledge of and supervision of activity, so I may not ultimately be able to help you with some of those questions you are talking about. I can certainly talk about the overview of the matter and certainly about things such as the decision to charge—the basis for it, the appropriateness or otherwise of it—and the dealings with the DPP in that context, but I am certainly happy to answer any of your questions as best I can and help the committee as best I can.

Dr HORTON: Thank you. Let us see how we go, Mr MacSporran. Where you are not able to assist, would you just make that clear?

Mr MacSporran: Certainly.

Dr HORTON: But I will take you as we go to documents, which I think are in front of you, many of which were documents that were clearly before you.

Mr MacSporran: Certainly.

Dr HORTON: I will start generally with this topic: who reports to you directly in the CCC on matters to do with corruption? Who are your direct reports beneath you?

Mr MacSporran: Mr Alsbury, who is the head of corruption. He is the only one, basically. Others report to him and he to me.

Dr HORTON: Yes; and the director of legal services reports from time to time directly to you as well or informs you and advises you?

Mr MacSporran: That is so, yes.

Dr HORTON: And that is Mr Rob Hutchings?

Mr MacSporran: Yes.

Dr HORTON: Thank you. You met Ms Kelsey personally I think in your office on a number of occasions?

Mr MacSporran: 11 September 2017, yes.

Dr HORTON: Yes, and on two other occasions after; is that correct?

Mr MacSporran: 15 February and 6 August, yes.

Dr HORTON: Of 2018?

Mr MacSporran: 2018, yes.

Dr HORTON: Right. The first meeting occurred on 11 September 2017; correct?

Mr MacSporran: I think so.

Dr HORTON: And that contact was initiated by Ms Kelsey?

Mr MacSporran: It was, yes.

Dr HORTON: And that meeting was about an hour's duration?

Mr MacSporran: That is about right from my memory, yes.

Dr HORTON: And no-one else but you and Ms Kelsey were present?

Mr MacSporran: That is so.

Dr HORTON: Is it common for you to have a meeting such as that with only you and the visitor present?

Mr MacSporran: That sort of meeting, yes. There was nothing contentious about it. It was a simple meet and greet. I understood she was the new CEO at Logan. I was delighted that she had made contact and wanted to come and see me proactively and I saw that as being a very encouraging sign for a relationship with a large council and its CEO, bearing in mind our focus on local government and matters of that kind, yes.

Dr HORTON: Yes, and this was in the context that the commission had been conducting Operation Belcarra?

Mr MacSporran: That is so, yes.

Dr HORTON: I see. And did you take any notes of that meeting?

Mr MacSporran: No, I did not.

Dr HORTON: Did anyone to your knowledge take any notes during that meeting?

Mr MacSporran: There was just the two of us. Ms Kelsey did not, as I recall, no, and nor would there be any basis for her to do so.

Dr HORTON: When you say it was a meet and greet, that I think is the explanation Ms Kelsey gave to your personal assistant for wishing to see you?

Mr MacSporran: Yes, I have seen the email or the calendar appointment—whatever we call it—that reflects just that contact from her to my EA—her EA to my EA—with just a summary of what the meeting proposed was—meet and greet and so forth.

Dr HORTON: Yes, and that was her description of her intention about the meeting and was true to the meeting's content; is that correct?

Mr MacSporran: That is so, yes.

Dr HORTON: Now your next meeting—is this right; there were three—occurred on 15 February 2018?

Mr MacSporran: That is so.

Dr HORTON: And you were there with Ms Kelsey?

Mr MacSporran: Yes.

Dr HORTON: She came to you; is that correct?

Mr MacSporran: Yes.

Dr HORTON: And was anyone else present?

Mr MacSporran: Yes, Mr Forbes Smith, who was my then CEO.

Dr HORTON: Yes, and are there notes taken by you or anyone else, to your knowledge, of that meeting?

Mr MacSporran: No, there were not.

Dr HORTON: Right, and can you tell us the purpose of that meeting?

Mr MacSporran: She requested, through my EA, and I suspect it was through her EA—I am not sure of the exact detail of that—but she requested on that day an urgent meeting. My EA, from looking at the calendar entry or the email trail, queried whether it was needed in person or whether it

could be done by phone, given the urgency of it, and the response came back that she wanted to come in person and that was arranged at short notice—I think for all the afternoon—and then I requested or my CEO offered, or a combination of both of those, to be present during the meeting, and he was.

Dr HORTON: Yes, and why did you request his presence at that meeting?

Mr MacSporran: Because by that stage I was aware that things had developed, to put it bluntly. In particular I was aware after I had sent the letter of 5 February 2018 to alert the council to the inappropriateness of or the danger in acting against a CEO who was a public interest discloser. Once I had written that letter on 5 February, the same day—I think almost as soon as the letter hit the deck at Logan with the councillors—I got a highly irregular, abusive, bullying and disgraceful phone call from Greg Hallam, the then CEO of the LGAQ. Frankly, I was absolutely astounded. I thought I had a reasonably good relationship with Greg Hallam. He and I had been to lunch—

Dr HORTON: Mr MacSporran, is this related to what transpires at the meeting, because that is the question at the moment? Did anyone take notes at the meeting that you attended?

Mr MacSporran: No, Mr Horton. I am setting the scene for the context in which this meeting took place and what the discussions at that meeting were about and what I understood to be the situation. It all relates back to this event of 5 February and the abusive call from Greg Hallam. I was shocked, frankly, because, as I say, he had been to lunch with me. He had joined with me, very helpfully, to give a joint press conference at the CCC premises before the 2016 election cycle to promote integrity in the election cycle campaigning—that is, do not make allegations against candidates who are your opponents without good cause and simply behave yourself during the campaign. I was delighted to have him on board. Later in 2016 he had sought my help to deal with a matter of the Fraser Coast council where there was some activity to terminate a CEO. I wrote a letter, almost in identical terms to the one I wrote in February to Logan—no complaint from Mr Hallam at all. I assumed he was supportive and then on 5 February I get this abusive call. I did not work out until 14 February—the day before I met with Ms Kelsey—what the reason for that bullying call was. We had Luke Smith's phone intercepted throughout the whole period because he is under investigation.

Dr HORTON: I am going to stop you here. I have asked about notes at the meeting on 15 February and you want to provide context about an abusive call from Mr Hallam, which I have let you explain. So you would wish the committee to know about what you say—what you are alleging here—against him as abuse of you; is that correct?

Mr MacSporran: I want to refer to a TI summary of what the call was, and the call audio is available for the committee to hear where Mr Hallam's voice is heard recounting to Luke Smith his call to me. He called it a 'headbanging call'. He is abusive about me. He talks about his connections to Jim Soorley and others and how he is very upset about what Ms Kelsey has done and if—

Dr HORTON: Mr MacSporran, are you coming to the answer to my question—

Mr MacSporran: Let me finish, Mr Horton, please.

Dr HORTON: I am sorry, no—

Mr MacSporran: Please.

Dr HORTON: No, I am sorry. Are you coming to the answer to my question, which is a very simple one? I have very many questions for you today. I would wish not to have you here for many days if I can avoid it, but at the moment the question is: did anyone take notes, to your knowledge, at the 15 February 2018 meeting which you had with Ms Kelsey and Mr Forbes Smith?

Mr MacSporran: I have already said no and I am just providing relevant context, Mr Horton, with respect. This is critically—

Dr HORTON: You will have more than one opportunity to provide context, but for the moment I am going to keep moving because we are at two of three meetings of my very first topic, Mr MacSporran. I have given you a chance to explain that the meeting came out of what you said or was in the context of abuse by someone else. Understand that. What was discussed at the 15 February 2018 meeting?

Mr MacSporran: The situation that Ms Kelsey found herself in.

Dr HORTON: And that situation being?

Mr MacSporran: Being that she had made a public interest disclosure and she had retraced the history, I think, of what had happened in the Industrial Relations Commission, which I think we may well have known by that stage, and how things were progressing.

Dr HORTON: And did she seek the CCC's support in her QIRC action?

Mr MacSporran: She did. She wanted to know whether we were supportive of what she was seeking to achieve in the commission and how we would be able to, if at all, help her, yes.

Dr HORTON: Yes, and did you agree to give that support?

Mr MacSporran: After that meeting I put in train two things: one is to instruct through the CEO and ultimately to Mr Hutchings, the director of legal services, to assess the PID issue as a separate piece of work and I then formulated in the period following a decision as to what I would direct should happen and how we would manage that whole affair.

Dr HORTON: Thank you. Would it be usual or good practice for you or someone to take notes of such a meeting which from your description is not now merely a meet and greet?

Mr MacSporran: No, I accept that, Mr Horton. I must say one of the lessons I have learnt from this exercise is the need to keep some sort of file note. I usually work on the basis that if it is an important meeting and someone else is present with me they would take the notes and I would not be distracted by that fact. I would be listening. I would be engaging with the person I am meeting. Unfortunately on this occasion, I did not notice that Mr Forbes Smith apparently did not take notes either, so we had no record. I accept that is less than satisfactory, but of course the events that occurred later were largely very well documented so we can see what actually came out of that meeting.

Dr HORTON: Thank you, and the third meeting occurs on 6 August 2018; is that correct?

Mr MacSporran: That is so, yes.

Dr HORTON: And present at that meeting or—

Mr MacSporran: Mr Alsbury and myself and Ms Kelsey, I think.

Dr HORTON: Yes, and we have Mr Alsbury's notes of that meeting?

Mr MacSporran: Yes.

Dr HORTON: And he has conveniently, I think, typed them for us so that we have a clearer picture.

Mr MacSporran: Yes. I have seen those notes and I generally, I think, accept the accuracy of those as a record of what was said and done and by whom.

Dr HORTON: Yes. At that meeting there is reference to Ms Kelsey, I take it, looking at another reinstatement application?

Mr MacSporran: Yes.

Dr HORTON: And it is said—who was it said by, these words: 'If gets reinstated—makes feasible'?

Mr MacSporran: I do not recall those words. I heard you open those words earlier and I made a note because I have no recollection of those words being said at all. In fact, I do not even remember seeing them in the notes, but they are obviously there. I accept that they are there. So I suspect it was Kelsey herself who said that and being feasible I think it means—I would take it to mean—if she gets reinstated she can carry on. She was having extreme difficulty of funding the action, meeting the various arguments that were thrown their way by various legal teams, so I take it that they were her words but I do not know that for a fact. I do not remember that.

Dr HORTON: Yes. At the outset you seemed to agree the meeting notes were an accurate representation. I take it you are not saying that the words which Mr Alsbury records as having been said were not said?

Mr MacSporran: No, I am not suggesting they are inaccurate; I just do not remember that particular part of them.

Dr HORTON: Yes; thank you. So there are the three meetings I think and the only three you had with Ms Kelsey?

Mr MacSporran: That is so, yes.

Dr HORTON: I understand. In terms of meetings then between your office and Ms Kelsey and your involvement between your office and her solicitors, do I take it from what you have said that you were involved in none of those?

Mr MacSporran: I certainly did not meet her on any other occasion and I certainly did not meet her lawyers on any occasion. I may have been briefed by my officers in one form or another about some of the outcomes from the meetings. I would need to be shown perhaps some documentation about that, but I certainly did not meet again with either her and I never, ever met her lawyers.

Dr HORTON: I see.

Mr MacSporran: I was getting updates from Mr Hutchings about any contact he had with either—it would have been through her lawyers, the contact he had I think. I do not think Rob ever met Ms Kelsey himself.

Dr HORTON: Thank you, and we will come to that, but you are not suggesting ever that you had even a telephone conversation with Ms Kelsey's lawyers directly yourself?

Mr MacSporran: No, not at all.

Dr HORTON: I understand.

Mr MacSporran: No contact.

Dr HORTON: And we will go through in due course, but there was reporting from you, as you say, from Mr Hutchings to you about some of the dealings he had had with Ms Kelsey's lawyers?

Mr MacSporran: Yes.

Dr HORTON: Chair, I notice the time. It is 10.30. Is that a convenient point?

CHAIR: Mr Horton, if you would like to carry on for a little bit longer, if that is okay. We have only just got started, but we are in your hands if you would like to take a break.

Dr HORTON: No, I am able to carry on; thank you.

CHAIR: Okay.

Dr HORTON: Mr MacSporran, would you open the largest of the volumes, volume 1 I think it is called. Turn to page 89. You are not said to be yourself present for any of what I am about to take you to. The point I want to focus on is this: each of the notes there and on the successive pages, to about page 93, seem to relate to a meeting that occurred on 31 May 2018 with Ms Kelsey's lawyers and between Rob Hutchings and Detective Sergeant Francis. Detective Sergeant Francis is the case officer; is that correct?

Mr MacSporran: That is so, yes.

Dr HORTON: And Rob Hutchings is your director of Legal Services?

Mr MacSporran: That is so.

Dr HORTON: These notes refer to the CCC being motivated to assist Sharon Kelsey. You will see that at page 90, on the fifth line.

Mr MacSporran: Highlighted, yes; and that is correct.

Dr HORTON: You will see on page 91, on the fourth last line of text, 'CCC v. motivated to assist'.

Mr MacSporran: Yes. I take it these are the diary notes of different officers relating to the same meeting?

Dr HORTON: Yes. That is my understanding.

Mr MacSporran: And what is being said is consistent, that we were motivated to assist her.

Dr HORTON: Yes, I see. That was my question really. What is reflected in these notes as having taken place at the meeting, to your knowledge as CCC chair, is an accurate reflection of the institutional view of the CCC about this matter?

Mr MacSporran: Absolutely, yes. Whilst I was not present, I think I would have become aware possibly at some point, but that is generally consistent with the attitude that we had taken to assist her but in the context of not taking the action available to us under the PID Act, which was seeking injunctive relief or joining the proceedings, but to step back from that, do what we could to assist lawfully and appropriately. But the main emphasis of our activity was on the investigation into corrupt conduct, which I viewed as a much more serious aspect to be pursued as far as we could to its conclusion.

Dr HORTON: Let us speak briefly—very briefly—and touch upon a topic that you just raised: the CCC's ability to be a party to the QIRC proceeding or otherwise take its own action. That would have been an action, is this right, for an injunction?

Mr MacSporran: Yes, under the section of the PID Act. Yes.

Dr HORTON: That right is not as wide as the rights that Ms Kelsey held; is that correct?

Mr MacSporran: I think that is probably right.

Dr HORTON: It might be limited; the CCC could only have requested an injunction?

Mr MacSporran: The actual terms that are set out in the PID Act itself—I think it is section 40- something. The terms of it are set out quite clearly.

Dr HORTON: Going back to the context of the meetings between your office and Ms Kelsey's solicitors, to which you were not party, is it also a correct description of your position as at 23 February 2018—so bearing in mind this is after your second meeting with Ms Kelsey—that you had some considerable sympathy for her position?

Mr MacSporran: That is fair comment, yes.

Dr HORTON: I ask you that just for completeness. You do not have to go to it, but page 57 of that same bundle contains Mr Hutchings's assertions of that—record of that—and having informed Ms Kelsey's solicitors of that.

Mr MacSporran: Yes, absolutely. Did you want me to explain why I had sympathy for her?

Dr HORTON: Yes. It will not be the last opportunity you have but if you think it is a convenient time to do so.

Mr MacSporran: I think it might be, Mr Horton. She was a PID and we had then—and have now and ongoing—a statutory responsibility to provide what assistance we could to a PID. I carefully considered, after getting advice internally, about exactly what we would do. A lot of factors came into play. She had no funding. She was funding the action herself. She was up against the mayor and councillors who, as you have correctly noted, were funded entirely by insurance. It was not a level playing field.

No matter what you thought of her, she was a PID. There is a tendency sometimes to forget how important it is in the public sector generally—and I am sure in the private sector as well, frankly—to do whatever can be done to protect PIDs. If you are not seen to be protecting PIDs, you undermine the entire ability to have corruption reported and properly dealt with by agencies such as ourselves. That is such an important principle it was recognised in a joint communique by all of us, all the heads of anti-corruption agencies around Australia, in October 2019. The principles we signed up to in the joint communique and we published at that time are not novel. They are basic principles, but they are so important.

That is why, whilst we could have ignored Ms Kelsey—and I would be sitting here now if we had ignored her and there would be an inquiry into why I was not taking some action to protect someone who was a public interest discloser. We did not join the action through sympathy for her and I have termed it one of the hardest decisions I have ever made in this role not to join in her action because I did have sympathy for her in her situation. But we decided not to do that but to do what we could whilst we did what we should do, more importantly, which was to pursue the corrupt conduct investigation.

Dr HORTON: Can I go through a few of those propositions and unpack them a bit?

Mr MacSporran: Certainly.

Dr HORTON: First of all, you had decided conclusively, had you, that what Ms Kelsey had in her lawyer's letter of 12 October was a public interest disclosure?

Mr MacSporran: Pretty much, yes.

Dr HORTON: There was no doubt in your mind that it was definitely a public interest disclosure?

Mr MacSporran: We assessed it as best we could. You have to necessarily take pretty much at face value initially a discloser because to do otherwise you are second-guessing the content and you are not really doing what you should be doing, which is to protect the PID.

Dr HORTON: So you do not, with PIDs, apply a detached healthy scepticism in making the initial assessment whether they are, in fact, a good PID?

Mr MacSporran: You cannot, Mr Horton. You cannot be doing that, frankly. You need to be objective, obviously. We are not going to be accepting at face value everything you are given. But a person who comes to you and says, 'Look, I'm concerned about corrupt conduct of the mayor; he appears to be taking action against me because I have met privately with you'—that is a matter you have to take seriously.

Dr HORTON: You said you took internal advice on these matters. Did you at any stage of these matters before the committee take external advice?

Mr MacSporran: I do not think so, no.

Dr HORTON: With respect to funding, we see many times in the documents—and I will come back to it—your assertion that Ms Kelsey is in effect funding her entire action herself, on the one hand.

Mr MacSporran: Yes.

Dr HORTON: And that on the other hand the councillors are entirely covered by insurance.

Mr MacSporran: Yes.

Dr HORTON: I did not deliberately open, as you attributed to me—I understand you are hearing the words for the first time, but I did not say they were funded entirely by insurance. I do not know the fact.

Mr MacSporran: My apologies.

Dr HORTON: I understand. It is a debate I am interested in having with you for this reason: what analysis did you undertake to see whether the councillors were in fact funded entirely by insurance?

Mr MacSporran: I cannot recall, but it certainly was my impression from all I knew that that was the case. Whether she told me that or others told me that I cannot recall now, but that was certainly my firm impression.

Dr HORTON: I understand it might be the general course for office holders of bodies such as this, and corporations of course. But did you assume that the action in the QIRC was coming at no cost—leave aside personal costs for a minute but at no financial costs to the councillors?

Mr MacSporran: Yes.

Dr HORTON: Is it the same answer as before: what inquiries did you take to see whether it was at no cost financially to—

Mr MacSporran: I made no particular inquiries as such, no.

Dr HORTON: Did you rely on Ms Kelsey's assertions about that?

Mr MacSporran: As I said before, I cannot recall what my sources of information were. Part of it was certainly the way the proceedings appear to be running with multiple legal teams, multiple applications and so on, but I cannot be any more specific about where the information came from. It might be revealed in some documentation. I am happy to look at that if you have some. I have not seen some myself. I do not have any memory, Mr Horton, is the simple answer.

Dr HORTON: Thank you. We have time to come back to it if need be. You said you regarded yourself as having a function to do what you did with respect to this PID. What is the source of that power or that function? Where do we find that?

Mr MacSporran: The PID Act.

Dr HORTON: The PID Act?

Mr MacSporran: Yes.

Dr HORTON: We do not find it in your act, do we? It is a question: do we find the power for you to act as you did with respect to this PID, as you have said you did, in your act, the Crime and Corruption Act?

Mr MacSporran: I cannot recall if there is or not in our act. There is certainly an obligation more generally in our position to take protective action for a PID.

Dr HORTON: It is a very basic question, Mr MacSporran, but a very important one because you can only do what you are statutorily authorised to do; correct?

Mr MacSporran: Yes.

Dr HORTON: So we do not find it in the Crime and Corruption Act for the minute, but you say we do find it in the Public Interest Disclosure Act.

Mr MacSporran: We have the ability to join the action to protect.

Dr HORTON: Does that state the bounds, then, of your functional power with respect to PIDs?

Mr MacSporran: In that act it does, yes. That is the source of power.

Dr HORTON: I see. When this committee is looking at the extent to which the CCC acted lawfully and appropriately with respect to Ms Kelsey's PID, it is that power to which you point as founding all that you did in respect of the PID?

Mr MacSporran: I have to refresh my memory from the advice that I got internally to ascertain the accuracy of that.

Dr HORTON: I understand. We will come to more documents over the course of questioning.

Mr MacSporran: Certainly.

Dr HORTON: Finally on the point, which was really unpacking your propositions, and it goes back really to the first one I asked you: if one has an approach to PIDs that does not try to delineate a legitimate purpose of disclosure from an ulterior one, that would be a problem, yes, for assessing when the CCC ought exercise its functions to assist a public interest discloser?

Mr MacSporran: Yes.

Dr HORTON: From what I understood from you earlier, none of that analysis, you say, was here brought to bear?

Mr MacSporran: Not to my memory, no. But as I say, I would like to refresh my memory from the documents that pertain to those assessments being done at the time, because I had sought to have that assessed by Rob Hutchings, which he did. I cannot now recall, without reference to his documents to me or to others, what that assessment concluded, what considerations he took into account, but they will be there for all to see.

Dr HORTON: Thank you. We are calling Mr Hutchings, of course, so we can inquire of others. I would like to move to another point, which is the involvement of the CCC in the QIRC proceeding. You accept just these general propositions and then we will come to the detail: the CCC responded to a notice to produce from the QIRC when it could have lawfully declined?

Mr MacSporran: Yes.

Dr HORTON: You accept that on 3 October 2018 documents were delivered to the Logan City Council by CCC staff?

Mr MacSporran: I know that now, yes. I did not know at the time.

Dr HORTON: Understood. We will come back to these as we find these things out. Thirdly, the documents came back to the CCC at the CCC's request but were redelivered to the council in November again?

Mr MacSporran: Yes.

Dr HORTON: I am going to take you through a series of documents. This is one example where you do not appear on all the documents I am going to take you through and it may be that you say to me you have no knowledge of the specifics, but I want to put something to you about the generality of them and occasionally your name is mentioned. Can I have you start, please, again with that large bundle which is in front of you, at about page 63. You will see at page 63 it is a letter from MinterEllison to Rob Hutchings, not to you.

Mr MacSporran: Yes.

Dr HORTON: An alternative is given in the first paragraph No. 2. There is a suggestion there that some relevant information about the QIRC matter might be given directly to it?

Mr MacSporran: Yes.

Dr HORTON: Over the page, the third last substantive paragraph on page 64, there is an assertion by MinterEllison—

... the Council and all individual respondents ... are not funding their own defence ...

to come back to an earlier topic.

Mr MacSporran: Yes.

Dr HORTON: The point of this is that on 12 April 2018, Minter is discussing with your office ways in which Ms Kelsey might have your body's assistance; is that correct?

Mr MacSporran: That appears to be the case, yes.

Dr HORTON: And it requests that you utilise powers to assist in that?

Mr MacSporran: Yes.

Dr HORTON: You were not privy, I take it, to these letters?

Mr MacSporran: No.

Dr HORTON: Would you just continue on a little—bear with me—page 79? If you feel I need to stop to explain anything in between, Mr MacSporran, by reference to a document here, please do so. Page 79, MinterEllison again, 15 May 2018—

We are in the process of preparing Ms Kelsey's substantive evidence in the proceedings. It would be of great assistance if the CCC could provide to us:

and then certain documents are referred to.

Mr MacSporran: That is so, yes.

Dr HORTON: Then page 81, more dealings within your office now about a call from Dan Williams, who is the solicitor for Ms Kelsey at MinterEllison, about one method being to assist is to have the QIRC issue a notice to produce; correct?

Mr MacSporran: Yes.

Dr HORTON: This time Mr Alsbury, your 2IC, I think, for Corruption is copied on the email. Do you see that at the top?

Mr MacSporran: I see that, yes.

Dr HORTON: Then there is this record: 'Dan understood that'—I am sorry, I will not read that because it is unnecessary. He asked—Dan Williams asked—

... if there was a particular time he could issue the notice which might result in us not objecting to it. In other words, if we were to indicate that any notice issued next week would likely be objected to, he would wait and issue it later.

Then Mr Alsbury is asked—

Are you able to assist with any information ... which would guide when such a notice would best be issued?

I paraphrase that in saying that, but you have the terms there. Were you involved at this stage, or were these dealings brought to your attention at this time?

Mr MacSporran: I was not involved and this has not been brought to my attention. I have never seen this document before. I do know what actually transpired later when the documents were provided to the registrar of the QIRC. After careful consideration and process managed by Mr Alsbury, I became aware of that. I might have been aware of that at the time—that is, that the documents were not given as they could have been to the party; they were given to the registrar for all parties to have access and for the commission to rule on the relevance and admissibility, if any, of the documents.

Dr HORTON: I understand, and we will come to those documents certainly. Bear with me for a moment longer. Then page 84, more dealings between Minters and your office about speaking with counsel, presumably Ms Kelsey's counsel, and then setting up a meeting?

Mr MacSporran: Yes.

Dr HORTON: That meeting seems to occur, Mr MacSporran, on 31 May 2018. The note of that seems to be at page 89?

Mr MacSporran: That is the one we saw before.

Dr HORTON: Saw it before, yes, exactly. You accept here—I know you were not involved at the time, were not party to this, but you will see at the bottom of page 89 'best course would be receive summons and'—I cannot read that last word.

Mr MacSporran: I cannot either, but what you have read so far is right.

Dr HORTON: Over the page on page 90, just below halfway down, 'scope and time need discussing'?

Mr MacSporran: Yes.

Dr HORTON: Then page 95 next, Mr MacSporran, you seem to be given an update by Mr Hutchings on 6 June 2018. Do you recall if this is the first update he gave you on this particular issue?

Mr MacSporran: Look, I do not recall, but it looks as though it might have been, but the simple answer is I do not recall. I do note he concludes in the last sentence—

We will need to give the same material to the other parties to the litigation if they ask for it, so we cannot be accused of favouring one side over the other.

Dr HORTON: Yes. You can be confident, at least so far as I am concerned, when I am putting these questions, the proposition you have just said emerges clearly—that is, was given to both sides.

Mr MacSporran: Yes. I think it is important. It was certainly important, from my understanding, of how it was all managed.

Dr HORTON: Further, page 97, the dissemination is then planned for a certain date—'tomorrow'. In fact, it occurs much later, Mr MacSporran, as you know, but paragraph 2 there—

... the overriding concern is one of urgency for Sharon Kelsey's sake.

Were you aware of what the urgency was that was important for Ms Kelsey?

Mr MacSporran: Not offhand, no.

Dr HORTON: I see again that Mr Alsbury is a recipient of that email but, of course, you are not. Then on page 99, the concern seems to be, in the second paragraph, 'the court having all the available evidence'?

Mr MacSporran: Yes, I know there was a concern. It might have been at this stage certainly, but generally speaking there was concern that the QIRC proceedings, the way they were proceeding, was in a way that we had concerns about the commission being denied relevant evidence to properly assess what they were doing, and that is why we had no objection to providing documents to the commission for its information and use if it thought appropriate, as opposed to a party as such.

Dr HORTON: We will come back, maybe on the next occasion, as to whether that is an appropriate disposition to have, but we will come back to that. Page 103, please, Mr MacSporran.—

Ultimately, the decision on if and when material is provided, and what is to be provided, will be a matter for the SEO Corruption—

Mr Alsbury; is that correct?

Mr MacSporran: That is so, yes.

Dr HORTON: And—

in conjunction with the Chairperson.

That is you?

Mr MacSporran: Yes.

Dr HORTON: Was that a true statement of organisational responsibilities?

Mr MacSporran: I think that is fair comment, yes. I had overall management of both streams of the issue—corrupt conduct investigation and the PID management—from a high level which necessarily did not have me understanding the day-to-day activity, but I relied upon, as I am sure I was entitled to and I was very happy to, Rob Hutchings and Paul Alsbury to manage those streams, consulting with me when necessary or desirable, and the documents will reveal, I think, when that occurred.

Dr HORTON: I see. In any event, what is being provided and when is something that should be done in conjunction with you?

Mr MacSporran: As I say, I would like to see the documents reflect if that was done as such.

Dr HORTON: Yes.

Mr MacSporran: I would not necessarily expect to be consulted about this dissemination. I had every confidence in Mr Alsbury to manage that appropriately. I cannot recall whether he consulted me. I think ultimately I was aware of what was proposed, and now that I know what was done, I have no issue with it. I cannot tell you I was consulted at the time or whether it was appropriate for me to be consulted at the time. It may not have been, the way things were being managed.

Dr HORTON: You say that, even knowing what you know now about this issue, you have no problems?

Mr MacSporran: Not at all. This issue of dissemination on the—was it June, I think—June, July 2018 were processed—

Dr HORTON: We are in June at the moment, yes.

Mr MacSporran: The whole process of deciding to give the documents across to the commission but not to the parties—not to an individual party—was to give it to the commission in response to a notice issued by the commission on the application of Kelsey, I understand, to let the commission decide whether the document should be released and be able to be used in the commission proceedings.

Dr HORTON: Let me get to the bottom a little more of page 103, because I am unclear on what the position is. Is Mr Hutchings, your director of Legal Services, correct when he asserts here that the decision on if and when material is provided, and what is to be provided, will be a matter for Mr Alsbury in conjunction with you as the chair?

Mr MacSporran: Rob clearly was keeping me informed from time to time. He was dealing with Paul Alsbury necessarily because Paul was managing the corrupt conduct investigation and there was material that the investigators in the corruption investigation were seeking to obtain. At the same time we were trying to manage, through Rob Hutchings with my oversight of both streams, what could legitimately be used to assist Ms Kelsey and the QIRC.

Dr HORTON: My question is a little bit more pointed than that. Is this to state the correct rule, for want of a better word, about organisational responsibilities, that is that this is something which should come to you in the sense of being in conjunction with you?

Mr MacSporran: I think it is true to say ultimately I have responsibility for it. I do not know that it is correct to say that it would be on every occasion necessary for Mr Alsbury to consult me about individual decisions like this. If we are saying I had overall responsibility for the entire management of both, yes, there is no doubt about that and I accept that. If that is what that phrase from Mr Hutchings means, I am happy to accept it. I do not know what he means by that, frankly.

Dr HORTON: It is quite clear, with respect; he spells it out—'decision on if and when material is provided, and what is to be provided'. If, when and what is a matter for Alsbury in conjunction with you. I am not, for the moment, seeing a lack of clarity; it is general, but I do not think it is unclear. I am just trying to work out do you say 'yes' or 'no', organisationally speaking, that that was something which should be done in conjunction with you. You seem unclear on it.

Mr MacSporran: I am unclear on it, frankly, simply because I accept, as I keep saying, that it is my responsibility. Whether Mr Alsbury thought that he needed to consult me on those occasions like this, I do not think he did. I am happy when he did and I am happy to have been involved. I do not think it is mandated is what I am saying, other than my overall responsibility which I am very happy to accept.

Dr HORTON: In any event, on this topic—that is, of the issuing and response to the notice to produce, the QIRC—that was not done in conjunction with you at the time?

Mr MacSporran: Not that I remember, but as I said before, I would need to review the documents. I do not remember being directly involved in that. I think I became aware of it afterwards and was happy with the process. I may have been involved early; I just do not recall seeing any documents to reflect that.

Dr HORTON: Thank you. I understand you will see more documents. Is that a convenient time, Chair?

CHAIR: Thank you, Mr Horton. We will take a break for 15 minutes until 11.15.

Proceedings suspended from 10.59 am to 11.15 am.

CHAIR: We will resume the hearing. I call Mr Horton.

Dr HORTON: Mr MacSporran, would you turn to page 105, just after where we were looking. Mr Hutchings tells others in the organisation—

... at the end of the day this will be Paul Alsbury's call ...

A little different from the last one: Paul Alsbury's call in conjunction with you.

Mr MacSporran: I suspect they are different issues, but, again, it is not my document and I really cannot say more than I agree that this is written here. I do not know what more I can say about it.

Dr HORTON: I understand. Page 107, letter from MinterEllison to your director of Legal Services, Rob Hutchings—... it is imperative that all relevant materials are provided to the parties promptly.

Could you please advise whether the CCC is able to provide any relevant documents to the QIRC or our firm.

You were not involved at this stage?

Mr MacSporran: Not on the face of this, and I do know from other documents what my involvement was.

Dr HORTON: Page 109, 20 June 2018: this seems to be a discussion which is now involving you in email but which seems to set up a meeting. Have we understood that correctly?

Mr MacSporran: I think that is right, yes. I am just looking at it.

Dr HORTON: The topic seems to be 'we could benefit from a discussion about another option—a summons issued by the court'.

Mr MacSporran: That is Mr Hutchings to Mr Alsbury, yes.

Dr HORTON: It is. And then you indicate at 2.22 that day 'Me too'. You seem to say you are free also for a meeting?

Mr MacSporran: For a meeting, yes.

Dr HORTON: Did that meeting take place?

Mr MacSporran: I cannot say yes or no. If it did, it will be in my diary that will be in the documents.

Dr HORTON: Page 113 might be the file note of that—20 June 2018. It seems to say that the chair, Rob and maybe Makeeta McIntyre were present.

Mr MacSporran: Makeeta was the lawyer and that is Mr Alsbury's writing, so it looks as though we did meet on 20 June.

Dr HORTON: Are these the only notes that you are aware of which were taken at that meeting?

Mr MacSporran: I did not take any—Mr Alsbury did. I do not know whether Makeeta McIntyre did. She is the lawyer in charge of that investigation team.

Dr HORTON: Yes. You have the benefit there of some kind of note. To the best of your recollection, what occurred at the meeting on 20 June 2018?

Mr MacSporran: I do not recall. I see—it looks like 'Whatsapp'. I know that relates to the WhatsApp material recovered from the phones seized from the councillors. I cannot read the next line, unless you can help me. The last line is, 'Give all to everyone', which seems to have been what happened. The middle line, I do not know—

Dr HORTON: The third dot point may be 'hearing material'.

Mr MacSporran: 'Hearing material' would make sense. That would be the CCC hearing material. CCC hearings were, I think, occurring around this time—May/June or June/July; around that time anyway.

Dr HORTON: I think it is fair to say, is it not, that ultimately some of the material you have just described goes to the QIRC in response to the summons along with some or all of the WhatsApp material?

Mr MacSporran: Yes, to the registrar.

Dr HORTON: Is this meeting on 20 June 2018 an example, then, of this matter being managed in conjunction with you?

Mr MacSporran: Yes.

Dr HORTON: I see.

Mr MacSporran: I should just expand, if I may, a little on that, Mr Horton. This is an example where I actually met, in this case, with Mr Hutchings, is it, and Makeeta McIntyre and Mr Alsbury, obviously, who was taking the note, I assume. I was present for this meeting and received the update as to what was happening and what was intended at that time. That did not always happen. It just happened irregularly because of my position in the management of both streams of these issues, and the documents hopefully will reflect when it was that I had meetings such as this.

Dr HORTON: On page 115 is an email from Mr Alsbury to Ms McIntyre at the head, but underneath you were mentioned in it. At the third full paragraph of text in the email string of 21 June 2018 you will see the words—

I believe you and Legal will prepare the dissemination for the chairman's signature with various conditions placed upon the release—

and so forth. Is this part of this decision being made in conjunction with you?

Mr MacSporran: Yes, and it said here, as you have noted, that Legal will prepare the dissemination for my signature. The dissemination is the authority to release information from the CCC to the QIRC in this case. There is a whole series of documents that reveal the reasons for it. Consideration is taken into account, countervailing consideration is taken into account and then it is signed off—ultimately, I think, by me it seems in this case, or it might have been. The document will reveal that.

Dr HORTON: Yes, and we have it. The next paragraph down states—

... if we do not start disseminating the requested information in a timely manner then the hearing will proceed without all the relevant evidence available and we will be the partly responsible for not submitting it for consideration.

Is that correct?

Mr MacSporran: That is that point I mentioned before about our concern about the QIRC acting and making decisions ultimately, potentially, on incomplete material, and in particular material that might have been relevant to assist Ms Kelsey in her action in the proceedings.

Dr HORTON: The next sentence there, Mr MacSporran—I know it is not your sentence—is it a truism so far as you are concerned? It states—

... there is no obligation upon us—
the CCC—

to provide the information at this stage.

Mr MacSporran: No, that is so.

Dr HORTON: And nor was there an obligation at law to comply with any summons?

Mr MacSporran: No. We effectively have immunity, for good reason, if we think we should not provide information, but we chose after due and careful consideration—for some of the reasons I have expressed already—to provide it not to the individual party but to the registrar.

Dr HORTON: That consideration you are referring to appears on page 116. I want to suggest to you, again not your words but the same sentiment—

I don't believe holding back this information is natural justice for a PID related matter and we should be doing everything within our power to support this hearing.

Mr MacSporran: Exactly. I agree entirely with that sentiment. That was my intended management of the way these things would be dealt with. I think it is entirely appropriate, frankly, and still do.

Dr HORTON: Page 117—

Mr MacSporran: Yes.

Dr HORTON: I am not suggesting you are copied on this email, but Mr Alsbury appears there. It seems to be an email from Mr Hutchings.

Mr MacSporran: Yes.

Dr HORTON: I want to draw your attention to the last paragraph on page 117. He advises—

... the preferable course in my view would be to invite the parties/Ms Kelsey to issue a Subpoena/Notice to Produce/Discover. The admissibility of the information can then be debated in the QIRC between those parties.

Mr MacSporran: Yes, that is consistent with what I was saying earlier, Mr Horton. That is what happened.

Dr HORTON: Then at the bottom of the page 118 there is reference to the need for a certificate or a letter signed by you or a delegate to enable material to leave the building. This is the dissemination authority?

Mr MacSporran: Yes.

Dr HORTON: Is it correct, albeit a layperson's view, that dissemination authority is needed whenever material of any sensitive kind is to 'leave the building'?

Mr MacSporran: I think it is basically right in the sense that there needs to be an authority of some sort. The form that that takes is dictated by the provisions in the act, which I get advice on. They are presented to me and I sign them if I am happy with what is set out in them. That is effectively it, yes. There needs to be an authority.

Dr HORTON: Page 119: Mr Hutchings expresses the view in about the middle of the page—

... our preference would be to be required to give the material to QIRC direct. Dan—
I want you to assume that is Mr Dan Williams of MinterEllison—
is going to explore the ways we can do that and come back to me.

Mr MacSporran: And he says there, particularly and relevantly, in that same email—

I indicated that given our obligation under s.57 our preference would be to be required to give the material to QIRC direct.

And that is reflected in 57 which, as you know, Mr Horton, is our obligation to act independently and fairly—

Dr HORTON: And impartially.

Mr MacSporran: And impartially. We could do that by not providing information to a party upon request but providing it to the registry, notifying all parties, and then the commission would decide how it dealt with that material.

Dr HORTON: For you the discharge of the obligation to act impartially was fulfilled by doing what is being considered here, by giving it to the QIRC rather than to just one of the parties?

Mr MacSporran: Absolutely, and additionally, I might add—as is reflected in the decision itself—that no parties knew what the documents were. They knew generally the categories but did not know what the documents contained.

Dr HORTON: We are going to come to that question because, I think, the CCC is challenged on that very question. There are some documents in here where Mr Alsbury responds and gives certain assurances about what did and did not happen. I will come to that.

Mr MacSporran: Certainly.

Dr HORTON: Then at page 119 Mr Hutchings says it becomes relevant—

I don't have any particular concern about the width of the subpoena ...

Mr MacSporran: I am sorry, I missed part of that.

Dr HORTON: It is the same page, the second last paragraph of Mr Hutchings' email beginning, 'I don't have any particular concern about the width'. To your knowledge, was there any discussion taking place within the CCC about the width of the subpoena and what might best be requested by Ms Kelsey's lawyers on her behalf in that document?

Mr MacSporran: I think so. I have a memory that one of the difficulties was—I assume because there was no knowledge of what our holdings actually were—they made their subpoena very broad and the issue became what material you can provide that satisfies that and where you stop, I suppose. That is my memory. There may well have been more detailed discussions and assessments of the categories and so forth. That is my overall memory of the issue.

Dr HORTON: Are you talking about an internal consideration or consideration in conjunction with Ms Kelsey's lawyers?

Mr MacSporran: I am talking about internal consideration, from my point of view. That is my memory, that there was consideration given to the breadth of the subpoena and so forth.

Dr HORTON: Yes, but the CCC was not the issuer of that summons, that subpoena, notice of attendance to produce. Were you aware of what relevance those discussions you had on a notice of attendance to produce were which the CCC is not issuing itself?

Mr MacSporran: No. I have exhausted my memory, Mr Horton. I cannot take that any further, I am sorry.

Dr HORTON: Page 120: Mr Alsbury's view in the last paragraph of the first email at the head of the page beginning 'Thanks Rob'—

... from a risk mitigation perspective, we should, if possible, ask for a subpoena ...

Mr MacSporran: Yes.

Dr HORTON: Is that 'ask'—do I understand that correctly?—the request that would have to be made to Ms Kelsey's lawyers because the QIRC issues notices of attendance to produce at the request of a party?

Mr MacSporran: I am not exactly sure what the mechanics of that were. I did not have any part to play directly in that. I cannot now remember whether I was briefed about that at the time or since. If there are documents that reveal that, I am happy to comment upon them, but I do not have any recollection of that detail being given to me.

Dr HORTON: Page 121, Mr MacSporran—

Mr MacSporran: Yes.

Dr HORTON: I am sorry. Would you turn back to page 120 briefly?

Mr MacSporran: Yes.

Dr HORTON: On this topic of the scope of the subpoena, the last sentence of Mr Alsbury's email says—

So I am interested on how much guidance we can and should give them to get the subpoena that we want.

Again, I know this is not your email. It is the direct report down from you. Were you involved or was this done in conjunction with you?

Mr MacSporran: No, no. I do not have any memory of anything like this being discussed with me. What I can say is that this would seem to me to be discussion to finalise how this transaction was to be completed consistently with the approach we had taken from day one, which was to assist her but only in the way to protect her as a PID and so forth and not become directly involved.

Dr HORTON: Yes, although there Mr Alsbury is suggesting 'guidance' be given to MinterEllison. Do you agree?

Mr MacSporran: I think you would have to ask Mr Alsbury, Mr Horton.

Dr HORTON: I will and he is up next, but I want to give you the chance here because I want to understand it better. Then—

... how much guidance we can and should give them to get the subpoena that we want.

Do you know who the plural 'we' is there?

Mr MacSporran: No, I do not. I assume he is referring to the commission.

Dr HORTON: Yes. Page 121, paragraph numbered 8: email from Mr Hutchings to Mr Alsbury and others—

... preferable course ... would be to invite the parties/Ms Kelsey to issue a Subpoena/Notice to Produce/Discover.

We have seen Mr Hutchings' advice before on that topic.

Mr MacSporran: Yes.

Dr HORTON: Then, Mr MacSporran, at page 125, we see a file note from Ms Zora Valeska—26 June 2018.

Mr MacSporran: Yes.

Dr HORTON: Ms Valeska seems to be a principal lawyer in the CCC; is that correct?

Mr MacSporran: That is so, yes.

Dr HORTON: She expresses some views, legal advice—to summarise—about some difficulty about giving the intercept information in evidence in the QIRC proceeding; is that correct?

Mr MacSporran: Yes. I see on page 125 in the third last paragraph—the part you have highlighted—she expresses some reservations.

Dr HORTON: Yes. Did you see this advice at the time?

Mr MacSporran: No, I did not.

Dr HORTON: Did anyone draw this advice or the sentiment it conveys to you at the time?

Mr MacSporran: No. I may be wrong about this, but I assume that the difficulty Ms Valeska flagged was, in fact, properly considered by those in their position to do so and resolved to ultimately provide the documents, as happened, to the QIRC—but I do not know that for a fact.

Dr HORTON: Understand. You are saying you did not see the advice at the time. In fact, I think you are saying you have only seen it now or in recent days—

Mr MacSporran: Yes.

Dr HORTON:—and that you assume that those above Ms Valeska but under you—and there are lawyers between you and her—

Mr MacSporran: Yes.

Dr HORTON:—had dealt adequately with the concerns she had raised?

Mr MacSporran: Yes.

Dr HORTON: Then, Mr MacSporran—we can go more quickly through the next few documents—the subpoena is asked to be issued by MinterEllison to the QIRC. The registry issues that notice of attendance to produce to the CCC. The CCC sets about collating the documents I think even before the notice of attendance to produce is received by your organisation.

Mr MacSporran: I do not know that for a fact, but I accept that if that is what the documents reveal that would have happened.

Dr HORTON: Page 139 is the example of that.

Mr MacSporran: Yes—

We are preparing our material now.

28 June.

Brisbane

Dr HORTON: Yes. It follows from the email below. Some half an hour earlier MinterEllison tells Mr Hutchings—

... we have asked the QIRC to issue [it] ...

Mr Hutchings writes back in about half an hour saying—

We are preparing our material now.

Mr MacSporran: Yes.

Dr HORTON: Understand. Then, Mr MacSporran, there are concerns raised by McInnes Wilson Lawyers about what involvement there was between the CCC and Ms Kelsey's lawyers in terms of bringing about the issue of the notice of attendance to produce. Do you remember that?

Mr MacSporran: Not directly. I know now of course. I may have known at the time—probably did but I am not sure. McInnes Wilson—remind me. They are the lawyers for the seven councillors, aren't they?

Dr HORTON: Yes.

Mr MacSporran: Yes, both in the QIRC proceedings and in the submission made to this inquiry, I think.

Dr HORTON: Correct.

Mr MacSporran: Yes.

Dr HORTON: I will just take you to the end of this equation. Page 239: it is a letter of 9 July 2018 from McInnes Wilson to Mr Alsbury seeking clarification regarding whether, prior to the service of the attendance notice, the CCC had voluntarily advised Ms Kelsey of the existence of the documents which are the subject of the attendance notice.

Mr MacSporran: Yes.

Dr HORTON: Do you have any knowledge of whether the correct answer to that question is: yes, there was contact—I am sorry. Do you have any knowledge yourself, sitting as you do now—

Mr MacSporran: No. As I said before, though, as I understand it from the actual decision of the QIRC—one of those interim decisions—it might have been Commissioner Black's decision in August, I think, 2018—it is common ground. He finds that no-one—no party outside the CCC—knew what those documents were other than by category. That was, as I understand it, done deliberately by our commission in providing the documents to the QIRC for their assessment.

You would not have to be a rocket scientist, when you know that the CCC is investigating corrupt conduct using its coercive powers to seize evidence, to understand that there would be relevant documents that might have assisted Ms Kelsey in her QIRC action.

Dr HORTON: Understand.

Mr MacSporran: That is the tenor of the contact between Ms Kelsey's lawyers and the commission, as I understand it. Appropriately, safeguards were put in place so that there was no unfairness favouring one side over the other and leading up to the commission, as the correspondence that I have seen reveals, to decide what use, if any, could be made of those documents in the action.

Dr HORTON: Just so the committee is clear, you do not even, reading what you have just read, suggest there was any unfairness or partiality in the exchanges you have seen between your organisation and MinterEllison to do with the issue and perhaps scope, as we have seen in a meeting note, of the notice of attendance to produce or such process?

Mr MacSporran: Not at all in the context of our decision to assist Ms Kelsey as much as we could without compromising our parallel and more important corrupt conduct investigation. The way we managed all of that, Mr Horton, can I say, there is a context to that. I have made a couple of attempts to explain it. Perhaps prematurely before the break but at some convenient time I would like to explain more fully, if I could, why I made the decision—a very difficult decision—to run the PID assessment and issue quite separately but in the way you see here to the, in parallel, important corruption investigation.

Dr HORTON: I will come back to the substantive thing that I know you want to say and you have given us a flavour of.

Mr MacSporran: I say it is important for context because it covers everything I did from the time I made the decision throughout this entire issue.

Dr HORTON: Can I reverse back into it, so to speak?

Mr MacSporran: Certainly.

Dr HORTON: First of all, you have said you made a decision 'to assist Ms Kelsey as much as we could'—full stop. You say that decision is made fairly early on. In response to these things, you would like to explain more fully by way of context in due course.

Mr MacSporran: Yes.

Dr HORTON: But that decision set the course, so to speak, for—

Mr MacSporran: What followed.

Dr HORTON:—everything that follows.

Mr MacSporran: Pretty much, yes.

Dr HORTON: Both, as we will come to in a moment, with respect to the involvement of the CCC in the QIRC proceeding and in respect of the charges later laid against the mayor and former councillors.

Mr MacSporran: Yes.

Dr HORTON: I see. So that decision then you would wish to say, I think, is extremely important?

Mr MacSporran: Yes.

Dr HORTON: But that decision is the touchstone and it seems to be your decision?

Mr MacSporran: Yes.

Dr HORTON: Can we come back just briefly for a moment to this letter which was at page 237. The request is not about classes of documents. It is voluntarily advised 'of the existence of the documents'. That is the specific request. You have seen in a meeting note—we do not know what occurred but scope is mentioned. You see timing is mentioned. Do you still say, knowing what you know now, the appropriate answer to this letter at page 237 from McInnes Wilson was: 'No, the CCC did not'?

Mr MacSporran: Well, that is what Mr Alsbury said, wasn't it?

Dr HORTON: It is. That is at page—

Mr MacSporran: I would be prepared to accept him at his word, knowing him well. What is more, it is the point I made before, with respect. The CCC is investigating corrupt conduct exercising its coercive powers. Ms Kelsey was a former employee of IBAC in Victoria and a lawyer. It would not be hard for her to have worked out the sorts of documents we may have in our possession which may be of assistance to her.

CHAIR: Mr Horton, which page were you referring to in the documents just then?

Dr HORTON: Page 237 is McInnes Wilson's request of the CCC to seek clarification for those matters. Mr MacSporran, again, that probably does not answer McInnes Wilson's critique, I want to suggest to you for a moment. To say the person could have worked it out—let's accept for a moment what you say. The question is a little different. The question says: did your organisation voluntarily advise Ms Kelsey of the existence of documents? It may mitigate what was done, perhaps, on your view, but the question is a little bit different that McInnes Wilson is asking.

Mr MacSporran: I suppose the simple answer, Mr Horton, as I gave before, is that I would accept Mr Alsbury when he says he did not, and I know no different to that proposition.

Dr HORTON: We will go to that. It is page 249 to 251. The conclusion Mr Alsbury gives is at page 251. It is not a question to Mr Alsbury whether he did, of course. It is the CCC. That is the question McInnes Wilson asks. The answer Mr Alsbury gives at page 251 is—

The CCC did not advise Ms Kelsey, or her representatives, of the existence of the documents which are the subject of the Notice.

He answers the question directly.

Mr MacSporran: Yes.

Dr HORTON: You say you accept what Mr Alsbury said, given your knowledge of him?

Mr MacSporran: Yes, my knowledge of him and a lack of knowledge that I have that that is not right. I know of no evidence that I have seen that that is not right.

Dr HORTON: I understand. Nothing that I have shown you in the course of this morning, including the file note which talks about 'scope' of a summons or the dealings that occurred between your office and MinterEllison, on the face of the documents, gives you any reason now to have concerns for the accuracy of what is said at page 251?

Mr MacSporran: On the brief look I have had this morning, no. I might be proved wrong, but my brief assessment of it is what he says there is right.

Dr HORTON: We will explore that with Mr Alsbury in due course.

Mr MacSporran: I am sure.

Dr HORTON: Did you see this document, Mr MacSporran—page 249: the letter of 10 July 2018 from the CCC to McInnes Wilson—at or about the time it was sent?

Mr MacSporran: I do not recall. I do not think so, but I may have.

Dr HORTON: Given what we have seen before where Mr Alsbury is making certain decisions in conjunction with you, is this—

Mr MacSporran: I do not know that is necessarily correct. I have seen Mr Hutchings' reference to it being a matter for Mr Alsbury 'in conjunction with the chair'. That is the one you showed me before the break.

Dr HORTON: Yes, and we have covered this topic.

Mr MacSporran: I am sorry?

Dr HORTON: Yes, and we have covered this topic. I pressed you a little on—

Mr MacSporran: Yes. I do not know that that translates to what you are now suggesting, frankly. Look, if the documents reveal it I am happy to accept it, but I just do not know.

Dr HORTON: I am just trying to explore for a minute. I do not know the answer; that is why I am asking you. From what I understand, you have no recollection of this letter being shared with you at or about the time it was sent.

Mr MacSporran: No, that is so. Yes, as far as I can recall.

Dr HORTON: I am asking this in an open way: do you say it is something you should have seen if this was being done in conjunction with you?

Mr MacSporran: I do not accept it was being done in conjunction with me. I think that whole premise is a misguided one, but we will see what the documents reveal and what the evidence is from other witnesses.

Dr HORTON: I thought I had pressed this very clearly so it was beyond doubt. When we went to the document that said this is to be done by Paul Alsbury 'in conjunction with you', I am asking you whether organisationally speaking—not what the documents reveal but whether as a rule of the organisation—good management, regular reporting, orderly, structured, clear lines of authority are things which ought be done in conjunction with you?

Mr MacSporran: Mr Horton, I am the chair of the commission. I take ultimate responsibility, yes. I do not think that translates to the proposition you are putting—

Dr HORTON: I see.

Mr MacSporran:—these things should be done in conjunction directly with me personally. The reality is: that is not the way things are done. I am responsible, yes. I am consulted if it is deemed to be appropriate and necessary or desirable. Not every decision that is made by the head of my corruption division is carried out in conjunction with me in the sense that I think you are meaning. I might be mistaken.

Dr HORTON: I am trying to work out what you mean. I understand for the moment you wish to say that what Mr Hutchings says—that these things are done by Mr Paul Alsbury in conjunction with you—is not a correct statement of organisational rule.

Mr MacSporran: I do not think it is. I do not know that I can add any further clarification on the point, frankly.

Dr HORTON: I understand. One more question on this: when I asked you whether the meeting in which you were involved on this topic was part of doing something in conjunction with you, I understood you to have agreed with me.

Mr MacSporran: Which meeting is this?

Dr HORTON: The meeting of which you say 'Me too'. I took you to that note.

Mr MacSporran: I was involved.

Dr HORTON: Yes.

Mr MacSporran: The note records me being present and discussing the matter, so that decision was taken in conjunction with me.

Dr HORTON: Yes, we are at one on this, Mr MacSporran. What we do not seem to be at one on is: you had said earlier—as I understood it—that that was an example of this being done 'in conjunction with you'.

Mr MacSporran: My apologies if I misunderstood your question.

Dr HORTON: Do you wish to change that evidence now?

Mr MacSporran: No, not that evidence, no. That meeting records, as we said at the time—the note has me present and I am party to the decision.

Dr HORTON: I see. So as an organisational rule, it need not be done in conjunction with you; is that correct?

Mr MacSporran: That is so.

Dr HORTON: But we have a meeting where it is done in conjunction.

Mr MacSporran: Exactly, and I am happy to acknowledge it.

Dr HORTON: Understood.

Mr MacSporran: And I have overall responsibility for all those decisions.

Dr HORTON: Moving onto a slightly different topic, the QIRC rules that the material that has been produced in answer to the notice of attendance to produce is inadmissible; correct?

Mr MacSporran: I am sorry; I did not catch that question.

Dr HORTON: The CCC produces the documents in answer to the notice to produce; correct?

Mr MacSporran: Yes.

Dr HORTON: And the QIRC in due course rules that material inadmissible?

Mr MacSporran: Yes, that is Mr Black's decision.

Dr HORTON: Yes.

Mr MacSporran: Is that so? Yes.

Dr HORTON: In part on the basis that it contained or included compulsorily obtained evidence.

Mr MacSporran: That is so, yes.

Dr HORTON: Not evidence that could on any view be adduced in that proceeding?

Mr MacSporran: That is what Mr Black decided, yes.

Dr HORTON: And there was no challenge to that ruling by either of the parties to that ruling?

Mr MacSporran: By the parties, no. There was no challenge by any of the parties to it, no.

Dr HORTON: I see. I will take you to where this begins in the documents, so you can follow. We will go back for a moment: page 265, which is 30 July 2018. This is just before that ruling has occurred, as I understand it. The ruling is 28 August 2018; this is occurring in July 2018.

Mr MacSporran: Yes.

Dr HORTON: There is mention in an email from Ms McIntyre to Mr Alsbury about concerns with respect to the CCC's conduct in relation to the production of documents under the notice of attendance to produce?

Mr MacSporran: Yes.

Dr HORTON: Do you recall what that debate was about?

Mr MacSporran: No, I do not really. I know that there was some debate about it. I know that we had some issues about how that matter had progressed and been decided ultimately and the reasons for it, but we were not a party and, clearly, for that reason alone, we could not do anything about that. I was not directly involved, no. That is a matter of detail that I was not involved in.

Dr HORTON: The email above asks for a response 'under the hand of the Chair please'. You will see that on page 265.

Mr MacSporran: Yes.

Dr HORTON: That is your second in charge on this issue, Mr Alsbury?

Mr MacSporran: Yes.

Dr HORTON: Was a draft prepared for your signature?

Mr MacSporran: I do not recall, but I suspect it was, given the email terms.

Dr HORTON: It is a matter of detail but one which ultimately came to you for some official correspondence?

Mr MacSporran: It may have, yes.

Dr HORTON: I understand. You said that you had an issue or issues in connection with the ruling by the QIRC. Does that mean that you disagree with it—respectfully, no doubt?

Mr MacSporran: Yes. My lawyers as I understood it disagreed with the ruling, yes.

Dr HORTON: How about you?

Mr MacSporran: I cannot remember the detail now of what I was told about their view of why the ruling was incorrect, but my memory is that I agreed with their analysis of it. I cannot tell you the detail of that—what the points were.

Dr HORTON: The ordinary course is: with a ruling like that, particularly if one is not a party to the proceeding, one acts as if it is—as it is in legal theory at least—the determination of that question.

Mr MacSporran: Yes. Regardless of our view, that is the case. It sets a ruling that is necessarily to be abided by. It has that effect.

Dr HORTON: Then a meeting occurs on 6 August, Mr MacSporran, at which you are present—page 271 and following. We have been here before. The typed notes appear, for ease of reference, at 277 and 278.

Mr MacSporran: Yes.

Dr HORTON: Now, you mentioned earlier about Ms Kelsey's asserted funding constraints.

Mr MacSporran: Yes.

Dr HORTON: She says—

Unless there is another circuit-breaker, in dire straits.

Correct?

Mr MacSporran: That would be financially, I presume.

Dr HORTON: And—

Need support to go through this process.

Mr MacSporran: Yes.

Dr HORTON: That was I think a very consistent message from her to your organisation?

Mr MacSporran: Yes.

Dr HORTON: I see. Then you are recorded as having asked whether Ms Kelsey has requested an ex gratia payment from government. Is that an accurate reflection of what took place?

Mr MacSporran: It is, yes.

Dr HORTON: There is a reference there in the fifth last dot point—

Every day that goes by, case gets stronger.

Whose assessment is that?

Mr MacSporran: I think that was hers.

Dr HORTON: I see.

Mr MacSporran: She would be the only one that I expect would know that.

Dr HORTON: Yes.

Mr MacSporran: That is my assessment of it.

Dr HORTON: Tell me if I am wrong—I am going to put a proposition to you about the effect of this. I was not at the meeting, obviously. There seems to be a sense of conveying to you, one, desperation about financial strictures. I think you nodded at that.

Mr MacSporran: Yes, sorry, I should have answered. Yes, I agree with that assessment.

Dr HORTON: And second, her assertions to your organisation that the case was (a) a good one; correct?

Mr MacSporran: Yes, that is her assessment.

Dr HORTON: And (b) getting stronger every day?

Mr MacSporran: Yes.

Dr HORTON: Then at page 283 there is an email from your executive assistant—

Mr MacSporran: Yes.

Dr HORTON:—making sure others were present at the meeting to which we have just referred.

Mr MacSporran: Yes.

Dr HORTON: Then you decide, as I understand it, shortly after that meeting to write to the minister seeking taxpayer funding for Ms Kelsey proceeding?

Mr MacSporran: Yes.

Dr HORTON: We see that letter of 7 August 2018 at page 291.

Mr MacSporran: Yes.

Dr HORTON: There is a draft in the preceding pages, Mr MacSporran, and there are handwritten notes on it in two places, one on 289 and one on 290. Are they your handwritten notes for change?

Mr MacSporran: Sorry, are they my notes?

Dr HORTON: Yes.

Mr MacSporran: No. They are legible!

Dr HORTON: I have the same problem!

Mr MacSporran: I have never seen the draft.

Dr HORTON: I understand. There is an assertion made there at 290, I think, which is a point you have made in other places, that CEOs on average in Queensland local government stay only for 2.6 years and that was of concern to you.

Mr MacSporran: Yes.

Dr HORTON: We will come back to that as part of the wider context. Going to the letter to the minister, in the third paragraph it states—

... the legislature has evidenced an intention to give the CCC a role to play in reprisal matters ...

Does this go back to your evidence earlier that it is under the PID Act that you find that expression?

Mr MacSporran: Yes.

Dr HORTON: I take it to be something you are saying is not expressed but implicit, hence the reference to intention?

Mr MacSporran: Yes.

Dr HORTON: Then, in the next paragraph, you thought it was inappropriate for the CCC to become involved 'whilst simultaneously investigating alleged criminal behaviour'.

Mr MacSporran: Yes.

Dr HORTON: But you accept there I think you have had some involvement because you provided documents in response to the notice to produce?

Mr MacSporran: It appears to be, from what you have shown me, consistent with the sequence of events leading up to the provision of the documents.

Dr HORTON: It does not say that, and I wanted to ask you whether you thought it should, having perhaps now seen what you have seen. On page 292, at the end of the sentence, 'request of Ms Kelsey's lawyers': was it material, do you think, to have drawn the minister's attention to the fact that your organisation participated in the issuing of that notice of attendance to produce—if it did?

Mr MacSporran: No, not necessarily.

Dr HORTON: Thank you. The next paragraph

... she may well be prevented from pursuing through lack of resources.

Mr MacSporran: Yes.

Dr HORTON: What was the source of that belief?

Mr MacSporran: That was her—what she said.

Dr HORTON: I see, and only her?

Mr MacSporran: Look, from memory, yes. There may have been other sources. I know there is a reference to the withdrawal of community support for her at some point. I am not sure if it was at this time or after. I think at this time—7 August, the day after the meeting on the 6th—she was clearly, if I remember, on the 6th desperate. She was in desperate straits in terms of her financial capability to continue on. That was not surprising to me because of the way the proceedings had been conducted and the drawn-out nature of the interlocutory applications and so forth. I think, by and large at that time, in August, it was what she had said.

Dr HORTON: I see. In the third last paragraph of your letter on page 292—

Mr MacSporran: Could I just clarify one thing? Also in that context, I was getting reports back from Rob Hutchings that that was to some extent confirmed by her solicitor, Dan Williams, to him—to Rob Hutchings. I do not know what the arrangement was between Kelsey and her lawyers about the funding arrangement. Whether it was partly pro bono or whether it was reduced rates, I am not sure. I think there was some confirmation information about the dire straits she was in financially and her ability to continue to run the action.

Dr HORTON: When you say 'confirmation', we are only talking about sourcing information from Ms Kelsey and/or her lawyers?

Mr MacSporran: I think so, although I would not like to be completely definitive about that. That is my memory at the moment.

Dr HORTON: You go on in the letter to say—

... councillors), however, have not had to concern themselves with resourcing their legal representation. ... their unfettered ability to pursue litigation at no personal cost.

What is the source of this belief?

Mr MacSporran: I cannot tell you now, but that was my belief. I cannot tell you what the source of that was directly. I have no memory of where I got that information from.

Dr HORTON: It is a very important assertion, because you are drawing to this minister's attention that there is a stark imbalance between these two players in the litigation.

Mr MacSporran: I think there clearly was a stark imbalance. That is how I understood it.

Dr HORTON: I see, and one that came at no personal cost to the councillors and mayor.

Mr MacSporran: That was my understanding, yes.

Dr HORTON: And then you make an unusual request, but that request is declined; is that correct?

Mr MacSporran: Yes.

Dr HORTON: I understand.

Mr MacSporran: But the request was seriously considered. The minister was, I might say—I was grateful for his interest in what could be done, if anything, but ultimately nothing could be done.

Dr HORTON: At page 331—we are now going to move to this topic. Mr MacSporran, you are aware no doubt, at least now, that documents were delivered by CCC staff to the Logan City Council on two occasions, once in October 2018 and once in November 2018; correct?

Mr MacSporran: I now know that, yes.

Dr HORTON: Yes, and so 331 is the first page I would like to draw your attention to. Mr MacSporran, again, many of these documents are documents on which your name does not appear.

Mr MacSporran: I understand.

Dr HORTON: I am trying to get, as the head of the organisation, the impact upon you of them, the extent to which they were drawn to your attention, and I will come back, particularly when you come back the second time, to what your view of them is, now having seen the complete—at least so far as we are concerned—documents. Page 331: MinterEllison asks your organisation, Rob Hutchings, to 'consider providing the documents to the Logan City Council and/or to the Individual Councillors'; correct?

Mr MacSporran: Yes.

Dr HORTON: And that is just after the commissioner has set aside the attendance notice.

Mr MacSporran: Just remind me again of the date. Was it late—24 August 2018?

Dr HORTON: It is. That is the date upon which Commissioner—

Mr MacSporran: So it is four days later. I understand what you are saying, yes.

Dr HORTON: And I think there is a weekend in between, so this is—

Mr MacSporran: Very soon after.

Dr HORTON: Yes. And Minters asks your organisation to provide the documents back to Logan City Council?

Mr MacSporran: Yes.

Dr HORTON: And asks you to consider appealing the decision? Do not answer that; it does not need to be answered. It is really an observation. Page 333: Mr Alsbury expresses uncertainty or lack of clarity about the last line of Dan's email, which seems to be the line I just read to you—

... the CCC consider providing the documents back to Logan City Council ...

Mr MacSporran: Yes.

Dr HORTON: Then at page 335: I am going to suggest because of its very neat handwriting it is a file note of Mr Hutchings, questions asked to himself: 'What evidence is admissible in the QIRC proceedings.'

Mr MacSporran: Mm-hmm.

Dr HORTON: Now, on 3 October more or less the same documents which were given in response to the notice to produce were delivered by Detective Sergeant Francis to the Logan City Council?

Mr MacSporran: Yes.

Dr HORTON: I am being told to speak up.

Mr MacSporran: I am sorry: yes.

Dr HORTON: Sorry, I am being told to speak up.

Mr MacSporran: Right. I agree with that sentiment!

Dr HORTON: Thank you. You were not aware at the time of that happening?

Mr MacSporran: No, I was not.

Dr HORTON: And there does not appear to be, correct me if I am wrong, a dissemination authority—

Mr MacSporran: No, there is not, as far as we can tell. I can probably shortcut this a little bit by saying: I have been made aware of this event, October/November 2018 and the topic you are now covering, since this happened obviously, in preparation for the hearings. I simply cannot, frankly, work out what happened and why. There is no dissemination authority. One option—I understand the lawyer, Makeeta McIntyre, was away on leave. Whether that has some bearing upon this, I am not sure. Then the events in November, where they were taken away from the council then taken back to the council—it just does not make sense to me, frankly. I cannot make head nor tail of it. I was not involved, but I am sure there are others who are coming along later this week that might be able to hopefully shed some light on it for you, Mr Horton.

Dr HORTON: Thank you. We will pursue it with them. I do want to pursue it a little bit further with you, but not in absolute detail. The 3 October delivery, which you now know occurs, occurs with Detective Sergeant Francis delivering them to Mr Trinca, the acting CEO of the council; is that correct?

Mr MacSporran: Yes.

Dr HORTON: Ordinarily Ms McIntyre would be involved in some way in the creation and formalisation of a dissemination authority to allow the documents to 'leave the building'?

Mr MacSporran: I think that is probably right in that circumstance, given that she was the team lawyer, yes.

Dr HORTON: The ostensible basis—I know you are looking back at this in reverse now rather than at the time—for that delivery is said to be one that is related to the Public Records Act?

Mr MacSporran: Yes.

Dr HORTON: That is the stated purpose; is that your understanding?

Mr MacSporran: I think so, yes.

Dr HORTON: Does the CCC have a role in connection with the Public Records Act?

Mr MacSporran: We do in the sense that we had an area of focus—and you might remember this in the public eye—on the question of the breach of the Public Records Act generally across the sector—the public sector more than just local government. Part of that arose out of the investigation we conducted into Minister Bailey's use of a private email account. We are all familiar with that, I think. It has been going on for some years now. So that involved the State Archivist giving reports about that issue. We issued a—it is not a public report; that is not the right word—conclusion statement about it not being corrupt conduct, for the reasons we said, but it was undesirable for people in positions of power to be using private email accounts and not retaining the record of it, as required by the Public Records Act.

So that matter was going along, and after this investigation we actually issued a corruption prevention advisory, I think it is called, to again highlight, to local government in particular, the issue about the need to retain public records, because this arose in the context here of the seven councillors, and perhaps even the other five, using WhatsApp communication messaging and then destroying the record of that, in breach of the Public Records Act. So a serious aspect to it in that sense and something we had a focus on throughout the period and beyond, and frankly still do.

Dr HORTON: Could you assist: where do we find your statutory authority to have that role you have just described?

Mr MacSporran: I suspect it comes down to simply our corruption prevention function, our ability and statutory obligation to investigate corrupt behaviour. The Minister Bailey matter kicked off as an assessment as to whether the behaviour in operating, as a minister, the private email account was potentially corrupt behaviour. So various aspects of our jurisdiction would enable us to carry out that sort of assessment and investigation if necessary.

Dr HORTON: So here the delivery, as you now know, to Mr Trinca was on the ostensible basis to make an assessment with respect to the Public Records Act; correct?

Mr MacSporran: Well, maybe.

Dr HORTON: If you do not know or do not agree—

Mr MacSporran: Well, I do not know, frankly. It appears on the records to have been generated for that purpose, but I have no knowledge of it. It is a bit hard to sit back and comment upon the ins and outs of that and how it was configured, especially in light of what I now know, that the lawyer who was in charge of that issue was not there at the time it was done, as I understand it.

Dr HORTON: Yes, and which lawyer is that?

Mr MacSporran: That is Makeeta McIntyre, I think, who is the team lawyer.

Dr HORTON: I see.

Mr MacSporran: I do not know that I can usefully add to the resolution of that issue. As I say, it confuses me when I have looked at it since. I would be just speculating to try to provide an explanation for what actually happened or indeed what should have happened, because I had no understanding of the purpose of it at the time.

Dr HORTON: I see. And it is not something subsequently that you thought amounted to improper conduct in your organisation that needed to be drawn to the attention of the parliamentary commissioner or this committee?

Mr MacSporran: No, not at all, because I simply do not know what happened. I have seen documentation that purports to reveal a process, but I am not in a position to make a call on the appropriateness of that process or to question it. That is what this inquiry is for.

Dr HORTON: I see. So you disclaim or you state that as chair you do not have the role now or any time since it occurred to apply your mind to things and investigate internally what happened?

Mr MacSporran: Well, I will eventually, after this is over. There will be a need to review what comes out of this inquiry—its findings about various aspects of this investigation. Of course I am open to that, as I necessarily should be, but I cannot pre-empt that by making a determination of what may be improper conduct prematurely.

Dr HORTON: The conduct of which I am speaking you accept occurred in October 2018?

Mr MacSporran: Yes.

Dr HORTON: And the resolution of this committee was 28 May 2021?

Mr MacSporran: Yes.

Dr HORTON: So there was some time in between that you would have had an opportunity to look into this matter?

Mr MacSporran: Not at all. I found out about the October/November issue in preparation for this, after this committee called the inquiry. I am as puzzled as you are about it, Mr Horton. I am not going to step in now and start an inquiry and report what might be on your view misconduct while this inquiry's job is to do just that and to find out what actually happened and why. I will be very happy to have the committee's findings about this particular topic, and more particularly I will be interested to hear the explanation in the evidence about what happened here.

Dr HORTON: Good. We are going to pursue it.

Mr MacSporran: Thank you.

Dr HORTON: Mr MacSporran, can I just be sure about this? You say you did not have facts and circumstances of the 3 October 2018 delivery of documents by Detective Sergeant Francis to the Logan City Council before 28 May 2021?

Mr MacSporran: That is a big statement. That is my memory, but it is a long period. By all means, if you have a document that says I did, I am happy to talk to it. My memory is, when I looked in preparation for this inquiry at many, many documents, as you would appreciate, and came across the sequence of October/November 2018 as we are now talking about, I firstly had no memory of it. I looked at it very carefully—all the documents I could find that related to it—and I could not see any evidence inconsistent with my memory of having no knowledge of it. But, as I say, I am only human and, whilst I have a good memory, it is not infallible.

Dr HORTON: I am not suggesting to you that I have, at the moment, some hidden document which proves to the contrary. I am really just testing this because we will return to it when you return before this committee.

Mr MacSporran: Absolutely. I welcome the opportunity. Once I come back, I might have had a chance to look more thoroughly through the thousands of documents that I am provided with.

Dr HORTON: No-one, that you can presently recall even, in your organisation drew to your attention at any time between 3 October 2018 and 28 May 2021 the facts and circumstances of the delivery of the documents in October such as to cause you concern as the chair of your organisation?

Mr MacSporran: I do not recall it, no, Mr Horton, thank you.

Dr HORTON: The documents, you might recall, are taken back to the council at your organisation's request, as you now know?

Mr MacSporran: Yes.

Dr HORTON: Not too long after they were delivered?

Mr MacSporran: 9 November, I think.

Dr HORTON: Yes. And then, Mr MacSporran, could I take you to page 424 of the volume?

Mr MacSporran: Yes.

Dr HORTON: Which is a phone message from Ms Kelsey's lawyer for Mr Rob Hutchings, and it is 19 November 2018.

Mr MacSporran: Yes.

Dr HORTON: So I think it is fair to say to you: these documents have only recently come back, as you now know, to your organisation; is that correct?

Mr MacSporran: That timing I think is right, yes.

Dr HORTON: And so Mr Williams there says to Mr Hutchings on his message bank—

We've got this issue that the council are resisting disclosure of those WhatsApp documents ... now because they say they've handed them back to you.

Now, as a matter of fact, they had handed them back to you; is that correct?

Mr MacSporran: That is so, yes, as I understand it.

Dr HORTON: Then?

Mr MacSporran: I cannot for the life of me work out why the documents were taken from Logan back to the CCC.

Dr HORTON: I will speak for myself only; I will ask questions of witnesses about that and I will put those matters to you on your return.

Mr MacSporran: Certainly.

Dr HORTON: Would you flick back please to page 415, the third last paragraph of the letter from MinterEllison to Mr Alsbury and Mr Hutchings of 15 November 2018?

Mr MacSporran: Yes.

Dr HORTON: There is a request made there and the request is this—

So that the First Respondent can if ordered comply with its disclosure obligations and so that Ms Kelsey's application is not defeated by the divestment of relevant documents by the First Respondent in the face of an unresolved disclosure application, our client requests that the CCC please return the documents, or copies of the documents, to the First Respondent.

Mr MacSporran: It is refreshing my memory now from what I saw in preparation for the inquiry in this correspondence that the documents go to Logan on 3 October from the CCC under the topic of 'a Public Records Act issue', as you have said. They are then taken back on 9 November or delivered back to the CCC by the solicitor for the council I think, Mr Fynes-Clinton, to the CCC on 9 November. In between those two dates, as I understand it, Ms Kelsey had through her solicitors issued a notice to produce, or a summons or whatever the term is in the commission, on 24 October 2018. If her application is on foot on 24 October 2018, which is after the documents have gone to Logan, I cannot see how—if we are setting out to help her, we have taken them away from where they were discoverable potentially back to our premises. Then MinterEllison on behalf of Ms Kelsey write to us and say, 'Hang on, we understand the documents have gone to you. That is going to defeat our application for discovery' or whatever the term is. 'Will you send them back to Logan where you delivered them in the first place?', because they are the Logan council's records. That is how they go back there, as I understand it, just looking at the correspondence here on 19 November 2018, and then the thing proceeds from there. I am reconstructing that simply from the records I have seen. None of that sequence makes particular sense to me; that is what I was saying earlier. That is the sequence, I think.

Dr HORTON: On 8 November Detective Sergeant Francis emails the council to seek recovery of the documents and they are delivered back to the CCC, I want to ask you to assume, on 9 November.

Mr MacSporran: Yes, I understand that happened. They were delivered to our reception area—a bundle.

Dr HORTON: On 15 November Minters writes—page 415 I have taken you to—requesting that you deliver them back, your organisation. A message is left for Mr Hutchings, page 423, on 19 November and—

Mr MacSporran: I think before we go on, on 417 I see—I do not mean to interrupt, Mr Horton, but I see in part of the sequence Mr Alsbury says to Mr Hutchings—

I have no problem sending them back—

which is from CCC to Logan, I assume—

Dr HORTON: And they go back?

Mr MacSporran: But I think we would need to make sure there was a proper written dissemination authority. That is the authority to leave the building, as you mentioned before.

Dr HORTON: And this time there is?

Mr MacSporran: There is this time, and that is properly documented as to reasons why, considerations and whether there should be conditions placed on the dissemination authority to go back to Logan potentially for the purpose of allowing Ms Kelsey's notice to be not frustrated by the absence of the documents.

Dr HORTON: I see, and by that you mean notice to produce?

Mr MacSporran: Yes.

Dr HORTON: Or notice—I think it might be application for disclosure or something.

Mr MacSporran: Yes. The other condition Mr Alsbury is worried about, it seems, is point 2, the versions that go back. We need to make sure that 'potential LPP'—legal professional privilege—'material redacted'.

Dr HORTON: Yes, but to be clear, your understanding of what is happening is to assist Ms Kelsey with respect to her application for disclosure in the QIRC proceedings, so far as the CCC is concerned?

Mr MacSporran: Well, on 15 and 16 November I think yes. I do not know about the earlier, because the earlier is linked to the Public Records Act issue. As I say, generally that is confusing to me, but that will be explained, I am sure, by others that follow me. But it is clear the 15, 16, 19 November area is all about not frustrating the 24 October notice to produce issued by Ms Kelsey.

Dr HORTON: Thank you. And then page 431 is the letter of 19 November 2018, as you have referenced in your chronology—a letter from Mr Alsbury to Mr Trinca.

Mr MacSporran: Yes.

Dr HORTON: I will draw your attention to page 432, the last paragraph.

Mr MacSporran: Yes.

Dr HORTON: 'I enclose the documents requested.'

Mr MacSporran: Yes.

Dr HORTON: That, I want to suggest to you, can only be a reference to MinterEllison's request; correct?

Mr MacSporran: Yes, it would have to be, yes.

Dr HORTON: Because I do not know of any. Do you know of any now where the council had requested the documents be delivered back to it?

Mr MacSporran: I do not think so, no, not personally.

Dr HORTON: Mr MacSporran, were these exchanges we have just been through raised with you at any time or immediately after they took place?

Mr MacSporran: Not to my recollection, no.

Dr HORTON: Should they have been?

Mr MacSporran: Probably. Probably. I say 'probably' because it is difficult to get a sense of exactly what was happening around this time. But I say probably. I would like to have been aware of this sequence, but it really is a matter of detail, I suppose.

Dr HORTON: Do you know why these matters were not drawn to your attention at the time or immediately afterwards?

Mr MacSporran: I do not, but I am assuming it was because they did not see any need to involve me in this exercise.

Dr HORTON: I see.

Mr MacSporran: I do not know is the simple answer.

Dr HORTON: I understand. If a decision like that was made knowing what you know now, you would disagree with that? Is that what I understand your evidence to be?

Mr MacSporran: No, not necessarily. I just do not know. Their decision on 19 November to send them back I agree with. I think there is nothing irregular about that in the circumstances as I understand them. What I do not understand is the October delivery back and the taking them back. I do not quite understand that sequence, but that is a separate issue in part.

Dr HORTON: In terms of your agreement with the November delivery, to be clear, is it on the sole understanding that those documents are being delivered in order to assist Ms Kelsey in her application for disclosure or like process as against the council?

Mr MacSporran: Yes, in the context of her having issued a notice to produce at a time when the documents were at the council.

Dr HORTON: I see. On 12 February 2019, page 465, letter from Mr Alsbury to the council—

Mr MacSporran: I am sorry, I missed that page number, Mr Horton.

Dr HORTON: Page 465, Mr MacSporran. It is the 12 February 2019 letter, in effect telling Mr Trinca that the CCC is closely monitoring the matter in the first paragraph.

Mr MacSporran: Yes.

Dr HORTON: The second last paragraph on that page, reminding him of the obligation of disclosure under the QIRC rules.

Mr MacSporran: Yes.

Dr HORTON: Then asking on the next page in the final paragraph does the council intend to make disclosure in this proceeding.

Mr MacSporran: Yes.

Dr HORTON: Was this a correspondence in which you were involved or about which you were consulted before it was sent?

Mr MacSporran: Again, I do not think so, but that is subject to a review of the documents.

Dr HORTON: Should you have been?

Mr MacSporran: Not necessarily, for the same reasons I mentioned earlier.

Dr HORTON: Do you now, knowing what you now know, suggest you should have been?

Mr MacSporran: I think I can say I would like to have been consulted just to see how this was progressing.

Dr HORTON: But not 'should'? You are not agreeing with my 'should' proposition?

Mr MacSporran: Well, without knowing the full detail of it, it is a bit hard to make that assessment.

Dr HORTON: I see, but on what you presently know, and having the bundles before you—and having had them for some little time I admit, but they are your organisation's documents ultimately—you cannot say today giving evidence that you should have been consulted about the matters?

Mr MacSporran: I do not think so. I will say no, but I may well change that view once I appreciate the full gambit of the documents, which I have not seen yet.

Dr HORTON: Mr MacSporran, on 4 December 2018 Ms Kelsey had withdrawn her application for disclosure in the QIRC.

Mr MacSporran: Yes.

Dr HORTON: To your knowledge. Have I understood that correctly?

Mr MacSporran: I must have missed something, I am sorry.

Dr HORTON: Nothing, I am sorry. On 4 December 2018 Ms Kelsey had withdrawn her application for disclosure in the QIRC?

Mr MacSporran: I do not know that I was aware of that. I may have been; I do not know.

Dr HORTON: I just point this out. At page 469, King & Company writes to Mr Alsbury and makes that clear.

Mr MacSporran: Okay.

Dr HORTON: On the second page, 470, in about the middle of the page.

CHAIR: Recollection, too, Mr Horton. It is also on the public record as a part of the LGAQ complaint.

Dr HORTON: Yes. Thank you, Chair. Were you not aware of this fact, Mr MacSporran?

Mr MacSporran: I do not think I was. I have become aware of it since in reviewing some of these documents.

Dr HORTON: You can see the difficulty, Mr MacSporran, that there seems to be the desire to assist Ms Kelsey in her proceeding but after Ms Kelsey has ceased her request for what the CCC wishes to assist with.

Mr MacSporran: Yes, I simply do not understand that, frankly.

Dr HORTON: Okay. Is it a topic which you can see we will explore further when you—

Mr MacSporran: Certainly.

CHAIR: Mr Horton, we intend to break at 12.30 for lunch. So if you come to the end of a segment, now might be the appropriate time, or else—

Dr HORTON: Thank you, Chair, I have. After the break I would explore the question of the decision to charge. That is a convenient time in that respect.

CHAIR: Mr MacSporran and others in the room, we will take a break now and resume at 1.30 pm.

Proceedings suspended from 12.26 pm to 1.32 pm.

CHAIR: We will resume the hearing now. Apologies for being a couple of minutes late. Sometimes committee has to consult with counsel as well. We will pick up where we left off. Mr Horton?

Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters

Dr HORTON: Mr MacSporran, I am about to move to the topic of the decision to charge, but there was a short topic before it. If I can take you to two documents. One is the large volume at page 633 which I had mentioned or adverted to in the opening. You say to Rob Hutchings and copy Paul Alsbury and others—

I am on leave from today but think we should do whatever we legitimately can to support Kelsey.

Mr MacSporran: Yes.

Dr HORTON: Did that reflect your thinking at the time about supporting a person who was making a PID in the context you have described?

Mr MacSporran: Yes.

Dr HORTON: Then, if you turn a few more pages, 649 and 650 I would like to ask you about. Mr Beattie sends you an email on 23 October 2019. What position does Mr Beattie occupy?

Mr MacSporran: He is a detective sergeant, I think, of police, seconded to the CCC. He has now finished his secondment. He is now at the fraud squad I think, back at the QPS.

Dr HORTON: In Mr Beattie's email he speaks about various things. I will focus on a few with you. One is a concern that the CCC has left itself exposed to being sued by Ms Kelsey to recover the cost of her private legal actions in the QIRC. That appears on the fourth last paragraph on page 650.

Mr MacSporran: Yes.

Dr HORTON: Do you know about what in particular Mr Beattie was talking to you—this email is to you—about the way in which the CCC had left itself exposed?

Mr MacSporran: I have no idea. It did not make sense to me. In fact, my reply, as you will see, best reflects my state of mind and my thinking on the issue—

I am sympathetic to these issues, particularly in light of the Kelsey matter which I talk about as an outrage whenever I present publicly in this area. The complication of course is in ensuring that nothing we do in any way prejudices the fair trial of the Fab 7 and Smith or otherwise impermissibly interferes with the IRC matter of Kelsey. We did in the initial stages of Front, as you are aware, seriously consider the injunctive powers in relation to the Kelsey matter but in the end thought a better approach was to expedite the criminal investigation.

In any event let me give some thought to all of this and then I will come back to you and we can get together to further discuss where to from here.

Have you heard how Kelsey's matter is progressing (or not)?

That sentiment by me in reply really reflects the approach we had taken from day one when I made the initial decision that I have talked about and the context in which that occurred. I did not understand, frankly, or agree with the concerns that Sergeant Beattie was expressing.

Dr HORTON: Were they the subject later of discussion between you and Detective Sergeant Beattie?

Mr MacSporran: Not that I recall, no. In fact, I did not, until I received this paperwork, actually remember that exchange at all. But, as I say, my reply really does reflect the sentiment and my current thinking even.

Dr HORTON: I see. Including your description of the Kelsey matter being an 'outrage', to use your word?

Mr MacSporran: Yes, the way she was treated—given her situation and what actually transpired, yes. It sends a very powerful deterrent, frankly, to anyone who is minded to ever put their head up over the parapet and report misconduct and take their chances.

Dr HORTON: Then at page 650, back to Detective Sergeant Beattie's email, in the third last paragraph there is mention of Detective Sergeant Andrew Francis having 'built a strong relationship with' Ms Kelsey. Did that cause you concern at the time?

Mr MacSporran: Not at all. At the end of the day, we are investigating a serious case of corrupt behaviour which resulted, appropriately in my view, in charges being laid. There is nothing inappropriate or improper with an investigating officer forming a strong relationship necessarily to gather material and further the investigation, which is what, as I understand it, was happening in this case.

Dr HORTON: When you are investigating a case of corrupt conduct, how do you know when you are investigating it whether it is properly described as a serious case of corrupt conduct?

Mr MacSporran: Well, you just assess it as you go. You see what the evidence reveals and you take all of that on board during the course of the inquiries.

Dr HORTON: But isn't the whole purpose of an investigation in fact to arrive at that maybe as a conclusion but not as the inevitable destination along the way?

Mr MacSporran: No. It enlivens our jurisdiction that it may be corrupt conduct. That is the starting point, Mr Horton. Then we investigate to see whether it is corrupt conduct. If so, and the evidence is sufficient, we lay the charges, as we did in this case. Ordinarily, we would expect them to go to a jury for ultimate determination.

Dr HORTON: Yes, I see. Are you saying that as at 23 October 2019 you had been able to conclude that this was a serious case of corrupt conduct?

Mr MacSporran: Yes, because the entire investigation had proceeded. We had laid charges in April 2019 and they were proceeding in the ordinary way after the DPP had carriage of it.

Dr HORTON: Did you take action against these people for serious corrupt conduct in terms?

Mr MacSporran: I am sorry?

Dr HORTON: What action did you take against the councillors and the mayor for what you say is serious corrupt conduct in those terms?

Mr MacSporran: They were charged with criminal offences.

Dr HORTON: Right. And you say that those criminal offences are serious corrupt conduct?

Mr MacSporran: Well, I am trying to think of the definition but, yes, I think so. A charge of fraud which involves allegations of dishonestly causing a detriment of the magnitude alleged would be serious corrupt conduct.

Dr HORTON: Let's turn to the decision to charge, Mr MacSporran.

Mr MacSporran: Yes.

Dr HORTON: From the documents it would seem that you made at least one decision in respect of charging with fraud, on 30 January 2019.

Mr MacSporran: No. I think you need to understand the process, Mr Horton. I had been an employed prosecutor in the office of—it was not called the DPP; it was that long ago when I was there. I left in 1984. In that office I had a commission to prosecute, which enabled me to present indictments in court, but that is different to charging someone. I never had any ability to charge anyone, nor do I currently.

When I left the Crown in 1984 and was at the bar until I took this role on 1 September 2015, I think I retained my commission to prosecute. I am not sure, but I certainly had it for the few first years at the bar, and I did some prosecuting on behalf of the state. Again, that has entitled me to present—and withdraw, for that matter—indictments in the courts, but at no stage when I have prosecuted or been involved in any matters, including in my current position, have I ever charged anyone, made a decision to charge anyone, altered any charges or had any impact in that way.

All I do in my current role, as per the normal procedure is: I assess the material as it comes up the line. It goes through Paul Alsbury and to me. I then act, if you like, as an assessor of the material, to make sure it is adequate to enable it to be given to a police officer who then exercises his or her independent discretion to charge or not. The decision to charge is the police officer's. It is just a quirk of circumstance that we have actual police officers seconded to the commission. We have currently about 85 or so of them. They come on rotation. When they come over, they retain their usual powers of arrest and, hence, charging. That is where the decision to charge is made, albeit having gone through the loop, as it were, through the hands of the lawyers and others to go back to the police officer.

Dr HORTON: You would describe your role, as you just have, with the word or label 'assessor'?

Mr MacSporran: Whatever word you use, it is a word to reflect the procedure to make sure the evidence that is available should be sufficient to enable a police officer to exercise their discretion. I do not make any decision to charge anyone, nor could I.

Dr HORTON: I understand. So there is no express power, obviously, under the Crime and Corruption Act for anyone in the CCC to charge, but you rely upon the power of seconded police officers to charge in the time-honoured way?

Mr MacSporran: Yes. The CCC is an investigative agency, not a charging agency.

Dr HORTON: I understand. And those police officers are obliged under the operational procedures manual issued by the Police Commissioner, for example, to comply with the Director of Public Prosecutions state guidelines in the exercise of that discretion?

Mr MacSporran: Yes.

Dr HORTON: Going back to your role as assessor to make sure the evidence should be sufficient to enable a police officer to exercise their discretion, I think you say that you reviewed material which was relevant to the decision whether or not to charge?

Mr MacSporran: Yes. The material comes to me with a covering note—you have seen it in the documents—that sets out from Mr Alsbury a memo to me—a briefing note—with a recommendation and attachments and then I look over that material and make my assessment, or whatever terminology we want to use, and then if I am favourably disposed towards it, as I was in this case, it goes to the police officer to then make the decision.

Dr HORTON: Okay. I want to go back a little bit to 30 January 2019—page 70 of the smaller of the two larger bundles you have.

Mr MacSporran: Yes.

Dr HORTON: There is a meeting which has as present you, among others.

Mr MacSporran: Yes.

Dr HORTON: And includes Andrew Francis, the case officer.

Mr MacSporran: Yes.

Dr HORTON: It records you as being happy with the evidence explained, in the second dot point on those meeting notes.

Mr MacSporran: Yes, I am sorry. I see it there—reference to 'chair'.

Dr HORTON: Is that a correct explanation of your state of mind?

Mr MacSporran: I think so.

Dr HORTON: And what, in a documentary sense, was before you at that meeting to explain the evidence?

Mr MacSporran: I cannot recall directly, Mr Horton.

Dr HORTON: Could I suggest you turn to page 77? There is a 16-page document: 'Memorandum: In confidence: Sharon Kelsey Public Interest Disclosure'.

Mr MacSporran: Yes.

Dr HORTON: It has a number at the top right-hand side—19/016561.

Mr MacSporran: Yes.

Dr HORTON: I am going to suggest to you this is a document—and I will show you where in a moment why I think that—that you might have had before you for the purpose of the 30 January meeting.

Mr MacSporran: Okay. I cannot recall is the simple answer, but it may well have been.

Dr HORTON: Yes; thank you.

Mr MacSporran: It is the sort of material that would have been, I think.

Dr HORTON: Thank you. You do not need to go to it now—I will come back to it later—but if those assisting you look at page 316 of the same volume there is a reference to that document being the original memo submitted on January 2019 regarding charges against mayor Luke Smith.

Mr MacSporran: Did you say 360?

Dr HORTON: 316.

Mr MacSporran: 316; sorry.

Dr HORTON: I do not need to trouble you to go there for the moment; it does not much turn on that for this second. I am inferring that that is the document. In any event, there is discussion, as you can see, at page 72 of the charge selection—I think this might be a police officer's notebook—and the next dot point down on that page says 'settled on 1x Fraud'.

Mr MacSporran: Yes.

Dr HORTON: Which is one count of fraud against an accused?

Mr MacSporran: Yes.

Dr HORTON: And then at 73 someone else at the meeting apparently, one on one with you—'briefing paper for misconduct charge' and then 'Frawley charge already approved to commence'. Is that the way you read that line?

Mr MacSporran: Just bear with me for a moment. This is 73, is it?

Dr HORTON: Page 73, Mr MacSporran, the fourth and fifth line down on that note.

Mr MacSporran: Yes, 'Frawley charge already approved to commence'.

Dr HORTON: Yes.

Mr MacSporran: Yes. That is the misconduct in public office charge, I think, in respect of Smith.

Dr HORTON: Thank you, and then over the page on 74—AF + DP—Chair approve 1x Misconduct (Frawley) x 1 x Fraud (Kelsey) ...

Mr MacSporran: Yes.

Dr HORTON: Is that a correct description of what you did at the meeting—you approved one charge, one count of fraud, in respect of the Kelsey matter against Smith?

Mr MacSporran: I am approving the consideration of it by a police officer to charge fraud and misconduct in public office on the condition—it says—

... against Smith pending AMS—

that is, Andrea Millberry-Smith—

signing statement. Chair—

that is me—

directed PA—

Paul Alsbury—

to sort out POC—

that is, proceeds of crime—

issued with \$40K and—

looks like—

sealing settlement.

I know there was an outstanding matter between Andrea Millberry-Smith, who was Mr Smith's partner.

Dr HORTON: Yes; those initials are not yours?

Mr MacSporran: Sorry?

Dr HORTON: Those initials are not yours?

Mr MacSporran: No.

Dr HORTON: Not a reference to you?

Mr MacSporran: Andrea Millberry-Smith.

Dr HORTON: I understand. Nowhere in these documents we are looking at is the distinction made that you just made—that is, approving the charge versus the referral to another for the exercise of their discretion.

Mr MacSporran: I understand that and I understand exactly what your concern is, and it is reflected also in my briefing—my endorsement in my handwriting, which I can actually read, as I am sure you can, on page 317—the charging of the seven councillors. I have recorded the endorsement in a shorthand form, if you like. Rather than say, 'I recommend or agree with the recommendation to refer it to a police officer to consider charging or not,' which in fact is what Mr Alsbury had said to me on the briefing note—

To remove any doubt, the request is for you to approve the matter being referred to a police officer seconded to the CCC so that officer can consider whether or not to charge the relevant councillors (including Luke Smith). Also, this cover sheet and my attached observations constitute legal advice to aid you in making a decision in relation to the request for approval.

I am guilty in not following his recommendation in my endorsement, but that is what happens every time. It comes through the chain of command up to me and goes back down to the police officer, who then exercises their independent discretion.

Dr HORTON: Yes. Every time—

Mr MacSporran: It cannot happen any other way. There is no power that I have to charge anyone.

Dr HORTON: These two acts—approving the referral of and approving the charge—are in public law completely separate decisions—correct—separate discretions?

Mr MacSporran: Yes, that is right.

Dr HORTON: And so rigour should be applied in their framing and in the answering of them?

Mr MacSporran: Yes. Mr Horton, I concede immediately I should have been more careful in the wording I used in my own handwriting on these briefing papers and how the decision that I had made to refer it to a police officer for charging should have been recorded. I agree entirely.

Dr HORTON: And the reason the two need to be kept separate, I want to suggest to you, is this: that person who is ultimately to exercise the discretion needs to do so without being dictated to by a person he has perceived has made the decision already.

Mr MacSporran: Absolutely, and you would need to ask Andrew Francis, who laid the charges in this case, whether he felt he was being dictated to by me or any other lawyer or any other person in the commission.

Dr HORTON: And someone who he might think was dictating to him because of their position of seniority—that is, there is a greater risk.

Mr MacSporran: I do not accept that any police officer would view my endorsement of a recommendation for that police officer to assess whether the evidence is sufficient would be a direction from me.

Dr HORTON: Would you go to page 97, please, of the same volume, to the paragraph numbered 7. The first sentence is the one I would like to draw your attention to. This is a memo of now 25 March. Things have moved on.

Mr MacSporran: Yes.

Dr HORTON: It has DS Francis's name at the bottom right-hand corner and you will see in 7 the understanding there is, at least in what is written, that you have approved commencing proceedings with respect to two charges.

Mr MacSporran: I have in the sense that I have approved it to go to the police officer who, if satisfied, will lay a charge.

Dr HORTON: That is not what these words say, Mr MacSporran.

Mr MacSporran: I agree it is not as fulsome as it might have been, but that is the fact. The fact is the police officer exercised a discretion to charge or not, and in this case it was to charge.

Dr HORTON: And we will come to that, and there is no doubt that on 26 April DS Francis, as the case officer, charges in the sense that you are describing.

Mr MacSporran: Yes, after having assessed himself the adequacy of the evidence.

Dr HORTON: I would like to focus for a moment on your role as assessor.

Mr MacSporran: Yes.

Dr HORTON: You have said that you reviewed material as part of conducting that assessment.

Mr MacSporran: Yes.

Dr HORTON: So far as 30 January is concerned, do you recall the material that you reviewed in order to make the assessment that you did?

Mr MacSporran: As we were saying before, I do not, but you have shown me some documents that may well have been part of that process. That is the Preston memo, I think from memory, you showed me before?

Dr HORTON: Yes; that is what I am suggesting to you, by my inference, is the one that must have been before you.

Mr MacSporran: Yes. I am not in a position to say it was not or it was, but I accept what you have shown me is likely to be what was, yes.

Dr HORTON: I would like you just to look at that memo. If that is the memo, what is it in that—I am sorry, Mr MacSporran: 77.

Mr MacSporran: Thank you.

Dr HORTON: It commences at 77. What is it which satisfied you in your role of assessor that there was sufficient material in order to be referred to a police officer the exercise of discretion on the fraud charge?

Mr MacSporran: Do you want me to go through this document here as a witness and talk about what the aspects were?

Dr HORTON: No. What I am exploring is this: you mentioned before that you have experience both in the prosecution service and then at the bar in a prosecutorial capacity; correct?

Mr MacSporran: Yes.

Dr HORTON: When one has those functions, one has regard to what the elements are of the possible offence; correct?

Mr MacSporran: Yes.

Dr HORTON: And one would also have close regard to the prosecution guidelines?

Mr MacSporran: Yes.

Dr HORTON: Did you have regard to the prosecution guidelines in undertaking your assessment?

Mr MacSporran: Yes, I would have. It is the standard way we approach these things: is the evidence sufficient and, if so, additionally, is it in the public interest to proceed, which means an assessment of whether there are reasonable prospects of successfully prosecuting?

Dr HORTON: Yes, and they are two things that the guidelines mention, but, Mr MacSporran, those guidelines of course contain a great deal more—some 69 pages. What else from the guidelines did you consider in your assessment?

Mr MacSporran: I cannot give you chapter and verse. We do not have a checklist that we run through and tick boxes. It is a matter of experience over a long period of time, as I have said, assessing what the quality of the evidence is, and we are talking at this stage, I think, aren't we, of Mr Smith and the charges that might relate to him?

Dr HORTON: Yes. Well, I am talking about the section 408C charges which are against more than the mayor, but you can use him as an example if you wish for present purposes.

Mr MacSporran: Well, it would be an assessment of whether there is evidence of the elements of the offence, which is their conduct, that can be established as dishonest conduct and, if so, did that dishonesty cause a detriment? They are the elements on the offence of 408C and the aggravating factor is the value of the detriment, which essentially was in excess of \$100,000.

Dr HORTON: That is the accusation. Mr MacSporran, is there a document that was before you on 30 January which analyses in a systematic way the elements of the alleged offence of section 408C?

Mr MacSporran: I cannot say yes or no in the sense that I do not know whether this document at page 77 was the only document I had before me, but what I do know is that I had knowledge of the progress of this investigation at one point or another throughout the process. I was generally familiar with the evidence that was being gathered for the corrupt conduct investigation and at the point where I made the decision—the assessment—to allow it to go to a police officer I was very comfortable that the evidence was sufficient to enable a police officer to make that decision.

Dr HORTON: Are the reasons for your comfortableness anywhere recorded?

Mr MacSporran: No, other than I endorsed the—or the notes refer to my—the notes taken by others refer to my agreement to have them referred to the police officer.

Dr HORTON: Yes; this is in January?

Mr MacSporran: Yes.

Dr HORTON: Yes. I want to suggest to you from your experience that one would expect to see, in any assessment of whether evidence is sufficient, even of the kind of assessment you are doing, some reasoned, systematic treatment of the elements of the offence in a reasonably disciplined way.

Mr MacSporran: I do not necessarily agree with that at all.

Dr HORTON: And on particularly a prima facie case, and a balanced consideration of public interest considerations one way and the other.

Mr MacSporran: Mr Horton, I do not see that there can be any suggestion in this case, about Smith in particular at this stage, that there was no prima facie case or reasonable prospects.

Dr HORTON: You are putting something to me that I am not putting to you. I have not suggested to you—and if I am going to I would do it directly—

Mr MacSporran: All right, I understand.

Dr HORTON:—that there was no prima facie case.

Mr MacSporran: I understand. Record keeping is your point, and I agree: the record keeping about it could have been more fulsome. Accepted.

Dr HORTON: Should have.

Mr MacSporran: Ideally, yes. I will agree with that: should have.

Dr HORTON: And not 'ideally'; should in the routine proper course of things have been better.

Mr MacSporran: Yes. Agreed.

Dr HORTON: This matter again comes before you, as you have mentioned, in April. You might turn to your cover sheet—as you have mentioned—at page 317. At page 318, Mr MacSporran, is the recommendation that is made to you and you have quoted from that. You have made the point that the writer seems to be stressing to you, by removing any doubt, that you are being asked—

... to approve the matter being referred to a police officer seconded to the CCC so that officer can consider whether or not to charge the relevant councillors ...

Correct?

Mr MacSporran: Yes.

Dr HORTON: Your approval is noted at 317 as being to—

... agree with the recommendations to charge Smith x3 and the 7 relevant councillors with 1 count of fraud as suggested.

Mr MacSporran: Yes.

Dr HORTON: I understand. You seem to accept, one, there was no such recommendation.

Mr MacSporran: Yes.

Dr HORTON: The recommendation was: referral to another to decide—

Mr MacSporran: Yes. The recommendation I have written is a shorthand form and inadequate in terms of what the decision I made actually was. My decision was in accordance with the recommendation on the rear of the briefing note and I did not express it adequately as such.

Dr HORTON: No, and a problem in public law, I want to suggest to you, because a decision-maker needs to be very clear in public law on what is and is not being decided in the reasons and statement one gives; correct?

Mr MacSporran: Yes, except we all knew what we had decided. But it should have been expressed more clearly, I agree.

Dr HORTON: That is, with respect, not the purpose of writing things down.

Mr MacSporran: I accept that, Mr Horton. I accept that absolutely, yes.

Dr HORTON: Then the material that is before you on this occasion, we seem to know from these documents—is that right?—you would be confident about what was and was not before you—

Mr MacSporran: If they are listed.

Dr HORTON:—and you have some memos that are on either side of the ones I am showing you now, and you had an assessment here of some public interest considerations by, it seems, Mr Alsbury and perhaps Detective Sergeant Francis?

Mr MacSporran: Yes.

Dr HORTON: Can you point to any material that was before you on this occasion that indicated to you the public interest considerations that might weigh—and only 'weigh' for a minute, I am talking about—in favour of not charging section 108C fraud in these circumstances? I am sorry: 408C.

Mr MacSporran: I understood what you meant. I cannot immediately think of it, no. The charge was chosen—I should backtrack slightly. The charges that were in play were two. What is traditionally looked at in situations like this is the charge of misconduct in public office. That is a charge in the code that is notionally designed to cover this sort of behaviour. The other charge that was in play was fraud.

The fraud charge was more appropriate because the evidence that we assessed and looked at and gathered was clearly appropriate to the elements of that offence. It was easier to prove because it concentrated on the element of dishonesty and this case was all about dishonesty: the

councillors colluding with Smith, Smith being excluded from the vote, the continuing to collude with him, the WhatsApp communications to facilitate that, the destruction of evidence. All of this cover-up and continuum of conduct to the disadvantage of Ms Kelsey was all dishonest and clearly caused a detriment to her, and the aggravating circumstance charged was reflective of the value of the detriment. I thought the evidence that had been gathered was entirely appropriate to proof of those elements and, given the level of criminality in the conduct, I thought entirely appropriate.

Dr HORTON: Can we return to public interest, which is really the focus of the question for a minute. You are talking, prima facie case, sufficiency of evidence as I understand it.

Mr MacSporran: Yes.

Dr HORTON: But public interest under the guidelines are criteria, not a binary one-eyed approach to that question; correct?

Mr MacSporran: Yes.

Dr HORTON: It is the public interest factors that favour charging but also to bear in mind those that do not favour charging; correct?

Mr MacSporran: Yes.

Dr HORTON: So it is not a simplistic equation in every case to ask, 'Is it in the public interest to charge this crime?'

Mr MacSporran: No. There is a consideration given to all relevant factors and that is just a matter of assessing the material, the situation that these people found themselves in and making a decision.

Dr HORTON: Not the availability and efficacy of alternatives to prosecution?

Mr MacSporran: Well, there were none here.

Dr HORTON: Not the prevalence of the alleged offence and the need for deterrence, either personal or general?

Mr MacSporran: This was a case where we had a focus on the local government sector, the integrity of the entire sector. We had just finished Belcarra. The report had been handed down, from memory, in October 2017. The entire transparency and accountability of the local government sector depended upon people being able to complain about misconduct, to be listened to and action taken to support them. For all those reasons I was not able to see any basis in anything you have mentioned that would say it is not in the public interest to prosecute these people.

Dr HORTON: Is that right? You can sit there today and you can say that there was no public interest—a fact that you can identify—that would have weighed against prosecution?

Mr MacSporran: No, I cannot say that. I can say that there was no consideration that came into play that would have led me to disincline the decision to give it to a police officer to charge.

Dr HORTON: How do you know that if you have not considered it?

Mr MacSporran: I considered everything. I just cannot tell you exactly what I—

Dr HORTON: Where is it that you show us in writing of the time what you considered?

Dr MacSporran: I cannot.

Dr HORTON: Where is it that you can show us in the material that was before you, produced by others, where the factors that weigh—that is all I am talking about for the moment—against prosecution were put to you for your consideration?

Mr MacSporran: I cannot point to anything that major.

Dr HORTON: To what extent did you take into account the need not to be influenced by the personal feelings of the prosecutor concerning the offender or the victim?

Mr MacSporran: Mr Horton, that is done on every occasion you assess a case like this or any other.

Dr HORTON: I see. Did you detect in the memoranda that came to you for assessment in your assessor role any personal feelings intruding of the putative prosecutor?

Mr MacSporran: There are always personal feelings that come into play. My role in assessing those considerations is to take account of whether those personal feelings have skewed the view of the investigator or the evidence that has been gathered. But ultimately, this was a case where the evidence spoke for itself.

Dr HORTON: I am not talking about sufficiency of evidence. I am trying to elicit from you these considerations that, I think to be square with you, I am suggesting are much more important and nuanced than you are presently prepared to accept.

Mr MacSporran: No, I accept entirely that these decisions are very nuanced. All I can assure you of, Mr Horton, is that I have had a long, long period of experience both prosecuting and defending, assessing evidence—circumstantial or otherwise—making value judgements about whether the evidence is sufficient, taking into account the impact on people who are being charged. I appeared regularly as defence counsel in high-profile serious difficult cases, some of which I won but many of which, unfortunately, I lost. I understood very poignantly the impact of charging people and the devastating consequences on occasions to not only them personally but their families. I have taken many a client down to the cells after a verdict of guilty and a prison sentence, spoken to them personally, had to console them and then had to leave them and tell their family and explain the consequences to them. I was acutely aware, as anyone responsibly would be, of the huge impact of any decision to charge anyone with a criminal offence.

Dr HORTON: If any of the—

Mr MacSporran: Do not for a moment think I did not take into account everything within my power to make sure, as I was, that the decision to allow a police officer to charge was entirely the right decision. In my long career I have never, ever let extraneous irrelevant considerations enter my thinking about such a decision.

Dr HORTON: So I am clear, I am suggesting that your consideration was not complete in the sense of taking into account the material factors—

Mr MacSporran: I do not accept that, Mr Horton.

Dr HORTON: Could you just let me finish so you know what I am suggesting.

Mr MacSporran: Sorry.

Dr HORTON:—material considerations with respect to the public interest that weighed against prosecution. I will come to that. Just so that we are not at odds. Second, that the long experience that you undoubtedly have is more of a reason why your thinking on these things ought to be reduced to writing of some kind, to demonstrate that you have undertaken the requisite exercise required by the type of decision that you are undertaking, recognising it is not the charging itself?

Mr MacSporran: I am very happy to take on board your suggestion that there should be better record keeping. But I can assure you that the decision itself to allow it to be referred to a police officer was done not only in good faith but it was the right decision. I thought so then and my view has not changed. Indeed, the Director of Public Prosecutions who received the brief, as they do in the procedure we have, clearly agreed with the appropriateness of the charge that was laid because he proceeded with it. He had the perfect opportunity and right, if not obligation, if it had not been the right decision to charge, to stop the prosecution there and then. Instead, the matter went to a committal and it was only after nine days of committal—and bearing in mind, the committal is the venue where evidence gathered that results in charges is tested for its reliability, its accuracy and its substance—that the Director of Public Prosecutions, who was then Mr Heaton, decided that the case no longer had any reasonable prospect of success and determined to discontinue the matter.

Dr HORTON: I want to take up two things in that. The first is that you assert here today, do you, that the basis upon which Mr Heaton in fact discontinued the fraud charges in the Magistrates Court on 14 April 2021 was that the evidence was—and these words are important—‘no longer’ sufficient?

Mr MacSporran: No. I am saying his decision was reflected on the front page of his memo that the—we should look at the document, I think, to make sure of the words.

Dr HORTON: Mr MacSporran, I am picking your words up. You said, on the basis that the evidence was ‘no longer’—they are your words a moment ago on the transcript—sufficient. I am saying to you, is that—

Mr MacSporran: No, I said there were no longer sufficient prospects to successfully prosecute the case.

Dr HORTON: But you wish to assert that that is the basis upon which Mr Heaton actually discontinued the matter on 14 April—

Mr MacSporran: Yes. It is reflected, as I understand it—and if we look at the document, it is available. If we could please clarify it. It might be important to have these words correctly established.

Dr HORTON: Let us come back. I will address that as the last topic today. We will come back to the 'no longer' sufficient.

Mr MacSporran: I am just talking about the endorsement, which was the memo from Mr Heaton—

Dr HORTON: Yes, we have it and the committee has it. Mr MacSporran, we will get to that.

Mr MacSporran: I thought you were suggesting that I said something that was incorrect.

Dr HORTON: We will come to that. Next, you wanted to characterise what I put to you as suggesting that there ought to be better record keeping. I am suggesting more than that, Mr MacSporran. Better record keeping is certainly administratively important. I am putting to you something of substance; that is, what one considers ought be recorded for scrutiny where it so closely affects those who are subject to the invasive consequences of such a decision. It is not merely a record keeping problem. I am going to take you through a few issues now to do with that. Could you turn, please, to page 146 of your bundle. It is an email from Mr Alsbury to Mr Mark Reid, an internal email. I am not suggesting you are a party to it. Mr Alsbury expresses doubts about the charge we are discussing; correct?

Mr MacSporran: Yes, certainly.

Dr HORTON: Were you aware of the doubts Mr Alsbury is here expressing at the time it came before you for decision on 24 April?

Mr MacSporran: I was aware that Mr Alsbury had had doubts prior to 24 April but that whatever doubts he had he had resolved in his own mind and, as his memo to me reflects, he was satisfied that there was a prima facie case and reasonable prospects. Mr Horton, what you see here in these documents is healthy, extensive consideration of all factors, including those that reveal the difficulty of proof, the complexity of the case, the nuances that might arise, how a jury might view these aspects. This is all healthy, transparent consideration of all of the relevant features before a charge is laid by a police officer.

Dr HORTON: How had you known that Mr Alsbury, before 24 April, had doubts about the charge?

Mr MacSporran: I cannot remember whether I saw documentation—I probably did, but I am not sure. I have not had the chance to view the entirety of the documentary bundle, but I certainly remember speaking with him at some stage and his words were that he had conducted some of the—he might have even done all of the coercive hearings in respect of the councillors who were called and his comment was some of them, I think, seemed to present reasonably well and the reasons they gave seemed, at face value, to be cogent and not absurd. I was thinking when I heard this that this investigation may not lead ultimately to anything by way of charges, because at that stage—and I must say, I have the greatest respect for Mr Alsbury as a lawyer. I respect his judgement and I rely heavily upon it, as I should and can, and he obviously changed his mind. He was supportive at the time he gave me the memo.

Dr HORTON: Did he or anyone else draw your attention before 24 April to the fact that the probation process had started before the PID had been made?

Mr MacSporran: I think we had. We were aware of that; I am sure we were. It was simply a matter of timing.

Dr HORTON: Good. Where do we see that?

Mr MacSporran: I cannot tell you. I have not seen all of these documents yet. I will have an opportunity, I gather, when I come back perhaps, to point to anything that might clarify that. But I cannot at the moment point to any particular point.

Dr HORTON: Mr MacSporran, you have had these documents for a few days. I—

Mr MacSporran: Mr Horton, I also have to run the commission and I, to my discredit, have not had the ability to access our record system personally, just through technical incompetence, so I have had to rely upon others who are otherwise engaged answering this summons which was a huge undertaking. I am not complaining; it is just a necessary part of the exercise. I simply have not had an opportunity to view these documents. There are 1,200 in your bundle. There are thousands and thousands in mine. All I was able to do in the time I had, working as hard as I could, frankly, was to assess records that involved me personally, and even then I was not able to get through them all. So I have done the best I can. I will do better when I come back because I will have had more time.

Dr HORTON: I understand. I want to take you a bit further. You have not had the documents for very long. Through your own technical incompetence, I think as you described—

Mr MacSporran: Yes, accurate description.

Dr HORTON:—or inadequacies, you cannot access your own document management system. As a matter of recollection, do you recall where or when it was drawn to your attention that the probation process had been started before Ms Kelsey had made her PID?

Mr MacSporran: Mr Horton, I do not. Can I just say that there are so many moving parts to this investigation and the evidence gathered over a long period of time. It is very hard, frankly, even for someone like me, who has a reasonably good memory, to place events in time. I have a recollection of knowing that. At what point, I simply cannot tell you currently. I might be able to see something in a document subsequently or if you can point me to one, but I cannot at the moment on my recollection pinpoint the time I knew.

Dr HORTON: The document to which you sought to refer me earlier, the director's memorandum of 6 April 2021, for example, makes a point, does it not, of saying why the charges, in the director's view, lacked sufficiency of evidence, one of them being, I suggest to you the major one, the PID came after the probationary process had been commenced?

Mr MacSporran: I do not accept what you say about the director's memo, for a start, in their decision-making process. Are you saying that that reference is in the briefing note to me?

Dr HORTON: I am saying to you: this whole issue of whether the PID came before or after the probationary process is a fundamental point which was in play throughout the course of this prosecution. It does not feature in the material before you on 24 April, and since then you should have knowledge of it because it has been front and centre of the debate about whether these charges were properly brought and the base upon which they were dismissed.

Mr MacSporran: Firstly, I have acknowledged, I thought a moment ago, that at some point I did know. I am simply saying: when it was, I cannot pinpoint. I might be able to do it subsequently when I come back. Currently I cannot.

Dr HORTON: You have the memos before you, but you cannot presently assist the committee today about where you say it was drawn to your attention that the PID was made after the probationary process had commenced?

Mr MacSporran: When you say the memo in front of me, which memo are you referring to?

Dr HORTON: The memos to which I have been taking you.

Mr MacSporran: Well, it can go again. Tell me which memo you are referring to so I can look at it again, please.

Dr HORTON: The memos written by DS Francis that were—

Mr MacSporran: Page, please? Can I have the page?

Dr HORTON: Sorry, you have to let me finish.

Mr MacSporran: Sorry.

Dr HORTON: That were before you when you made the decision on 24 April 2019. You have to tell me this, Mr MacSporran, because you are the decision-maker here; do you understand? I did not make this decision. I am inquiring from you what was before you and the base upon which you made a recommendation which you have accepted does not properly frame what you were asked to decide.

Mr MacSporran: So as a short question the memo you are referring to is a memo from Mr Alsbury to me, the briefing note, with his recommendation, which attaches, amongst other matters, Mr Francis' summary of the evidence?

Dr HORTON: Let's go to the public considerations with which you were presented in these memos and let's analyse, if you like, and try to discover where this might have been revealed to you. Would you go to page 308, please: memo of DS Francis, 25 March 2019, page 52.

Mr MacSporran: Yes.

Dr HORTON: On page 308, page 52 of the memo, under 'Standard of Proof considerations' it states—

- a. Robust consideration is certainly warranted. The risk of reputational harm to persons of interest and the CCC is acknowledged.

Mr MacSporran: Yes.

Dr HORTON: So that is a potential public interest consideration why one would not charge?

Mr MacSporran: Yes, and that was considered in the material that I was given.

Dr HORTON: So is the extent of this that the charge might cause reputational harm to the accused? Is that the extent of the consideration?

Mr MacSporran: That is one consideration.

Dr HORTON: Good. We will come to the others.

Mr MacSporran: Look, would you mind just for a moment settling down and just taking me through what you want to ask?

Dr HORTON: I am taking you through it, Mr MacSporran. That is exactly what we are doing.

Mr MacSporran: All right. What is your next point?

CHAIR: Mr MacSporran.

Mr MacSporran: I apologise.

Dr HORTON: That memo, Mr MacSporran, I suggest to you—this was for your consideration—equates reputational harm to persons of interest with reputational harm to the CCC.

Mr MacSporran: Of course it is a consideration.

Dr HORTON: Do you think they are two things that can and should be equated when deciding whether to charge in a public interest sense?

Mr MacSporran: It is not a matter of setting off one against the other. They are both relevant considerations.

Dr HORTON: I see.

Mr MacSporran: If you overstep, as you allege has happened here, the reputation of the CCC is in danger. Clearly, that is a factor we always consider when we are determining whether a police officer will be allowed to make the decision.

Dr HORTON: I see.

Mr MacSporran: It is equally important to take under consideration the enormous impact it has on people who are charged, reputationally.

Dr HORTON: Where do you find in the prosecution guidelines that it is proper to take into account the reputational risk to the charging authority or the body associated with the charge?

Mr MacSporran: Whether it is there or not, it is a relevant feature in the way we operate.

Dr HORTON: Do you accept it is not in the prosecution guidelines?

Mr MacSporran: I accept it if you telling me it is not. I assume it is not.

Dr HORTON: Do you accept it is not something which one can properly equate, which seems to be the case in this sentence, with the reputational harm to those who are accused?

Mr MacSporran: I do not know that you can say it is being equated as you suggest. It is in the same sentence, but it is just a factor. They are put in the same sentence; it does not mean that one is set off against the other or that they are of equal standing. It is just a factor or two factors worth considering.

Dr HORTON: So you did not read them as being equated in the memo that came to you?

Mr MacSporran: I did not, no.

Dr HORTON: Then there is a heading 'Public interest test', Mr MacSporran, on page 309. Are these, from your recollection, the public interest questions or issues that came to your attention in deciding the matter on 24 April 2019? They go over the page, for your information.

Mr MacSporran: I think so, yes.

Dr HORTON: Do you recall reading public interest submissions to you on this point at the time you decided the matter on 24 April?

Mr MacSporran: Do you mean do I recall reading this here, at page 53 and page 54?

Dr HORTON: Yes, or anything like it.

Mr MacSporran: I think so. I think I would have.

Dr HORTON: I just want to go through these with you.

Mr MacSporran: Yes.

Dr HORTON: The first sentence—

The need for the CCC to protect whistle blowers cannot be overstated.

Mr MacSporran: Yes.

Dr HORTON: Is that a proposition you agree with?

Mr MacSporran: I think so.

Dr HORTON: Then three paragraphs down—

Operation Front asserts the practice of 'burying' corruption and misconduct in non-disclosure financial settlements is a cancer within LG—

local government—

and stands opposed to the PID Act.

Do you agree with that?

Mr MacSporran: Yes, that is the question of the average tenure of a CEO being 2.6 years and many of them being terminated and their contracts being paid out with confidentiality clauses being imposed.

Dr HORTON: Did you find the terminology here to in any way reveal the risk of influence by personal feelings of the prosecutor concerning the offender or the victim?

Mr MacSporran: Mr Horton, I was not going to be second-guessing the police officer because they used somewhat emotive language in referring to these things. The way it is referred to, it is a police officer's assessment of the evidence they had gathered and what feelings they have about it, but it is an objective fact. I mean, I was well aware of what he calls a cancerous practice of paying off CEOs.

Dr HORTON: I see.

Mr MacSporran: It had happened at Logan. I think three or four CEOs had gone through the process and been paid out—ratepayers' money and confidentiality clauses imposed.

Dr HORTON: So the "burying" of corruption and misconduct in non-disclosure financial settlements is a cancer' is an objective fact in your view?

Mr MacSporran: I think what is an objective fact is that it is a serious corruption risk in that what you are doing is preventing CEOs exercising a proper function in an administrative sense in councils where they do not align with the political arm of the council and do what they are told.

Dr HORTON: Two paragraphs on—

Ms Kelsey responded to the Mayor's corruption as she was legally obliged to do.

It goes on. Then it says—

Ms Kelsey is a person who, until the Mayor alleged she had otherwise, had an outstanding reputation as a public sector administrator.

Is that a statement of fact, to your knowledge?

Mr MacSporran: That was Andrew Francis's assessment of her. I know now from evidence that emerged, I think at the committal if not at the commission proceedings, about aspects in her background—employment with other councils and so forth—that would suggest that that is not a completely accurate statement, yes.

Dr HORTON: It goes on—

Her integrity is of the highest calibre.

When you read this, were you concerned that this might be revealing personal feelings of the prosecutor having influenced or being at risk of influencing the prosecutorial discretion?

Mr MacSporran: No, I did not think so. I knew enough about Andrew Francis and his character and his dedication to the job that I was not concerned that he would let personal feelings get in the way of properly assessing the evidence and making an appropriate call in relation to it.

Dr HORTON: On the point of properly assessing the evidence, do we see him here in this memo, to your knowledge, drawing your attention to the fact that the PID was made after the probationary process was underway?

Mr MacSporran: No, I do not see that here.

Dr HORTON: Is that not something which you would expect from Mr Francis—what you now know about this matter?

Mr MacSporran: I think that is a valid point. I agree with that.

Dr HORTON: Is that not something that Mr Alsbury, in the email I showed you of 3 April 2019, had said in his first substantive sentence, that being—

... the problem I have always had with this is that the dodgy probation process was started before the PID.

Mr MacSporran: Yes.

Dr HORTON: You express confidence in Mr Francis, but I want to suggest to you that if that confidence was well placed one would expect to see that basic proposition raised for your consideration as assessor at this stage?

Mr MacSporran: It was one of the factors I would take into account, that he had not articulated that, but it is not in any way determinative at all because the evidence was, as I say, more than sufficient.

Dr HORTON: We will come to that. Then it said in the memo, going back to page 309—

Mrs Kelsey credibility stands in contrast to the Mayor. The Mayor does not take notes, commit matters to writing, has not provided the CCC with an interview and lives with ease as a person living a Jekyll and Hyde existence.

Did that raise concerns that the prosecutor might be being influenced by personal feelings concerning the offender or the victim?

Mr MacSporran: I actually thought, just bear with me for a moment, certainly that the mayor does not take notes. I did not, for obvious reasons, think that was fairly significant.

Dr HORTON: I understand why.

Mr MacSporran: Yes, but a Jekyll and Hyde existence I thought was pretty accurate, given what I knew about the telephone intercept evidence and other matters in the brief of evidence. Luke Smith appeared in public as someone of good character and the best motives, where the evidence we gathered suggested very much the opposite. Of course, Ms Kelsey alleged that he had interfered with the probation process of a woman who Ms Kelsey believed was in a personal relationship with Mr Smith. That is a matter that has been committed for trial.

Dr HORTON: This description—a Jekyll and Hyde existence—is not one you would use if you were—

Mr MacSporran: No, I agree with that. The language is—

Dr HORTON: Sorry, let me finish; otherwise, the recorders will not know what I asked. This description, Jekyll and Hyde, is not one you would use if you wished to be dispassionate and were showing that you were not influenced by your personal feelings about the victim or the offender?

Mr MacSporran: That is so.

Dr HORTON: In fact, this public interest section I am showing to you has many emotive statements.

Mr MacSporran: Yes. Sergeant Francis is a passionate investigator. That is why he is so good at his job.

Dr HORTON: Maybe not a good characteristic for a prosecutor.

Mr MacSporran: I think his assessment to charge was absolutely justified and the right decision. I thought so then and I still think so.

Dr HORTON: You say that on the basis of the material that was presented to you on 24 April; is that right?

Mr MacSporran: Yes, absolutely.

Dr HORTON: Do you see anywhere in these public interest considerations, so-called, Detective Sergeant Francis offering to you criteria or facts as to why you may exercise discretion as assessor for a minute or why the prosecutor may exercise his discretion not to prosecute?

Mr MacSporran: Not as such, no. I think that is a fair comment.

Dr HORTON: So nowhere, for example, is it mentioned that these were elected officials; is that correct?

Mr MacSporran: That is so.

Dr HORTON: Nowhere is it mentioned that the effect of the charge would be to remove the accused from elected office?

Mr MacSporran: That is so.

Dr HORTON: Nowhere is it mentioned that the removal of more than would constitute a quorum of the council might or would be likely to result in the appointment of an administrator and the council to be, in effect, spilled?

Mr MacSporran: No, but those considerations are just the effect of the process. Everyone is treated the same. Elected officials, because of the law passed by this parliament, were necessarily required to be stood down once charged. That is nothing to do with us; that is just a consequence.

Dr HORTON: I see.

Mr MacSporran: Yes, it is the impact, we acknowledge, we understand and we take cognisance of, but that is no reason for us not to charge unless the evidence, in the public interest, does not outweigh the effect of that impact.

Dr HORTON: But it was relevant to you in the remarks you made afterwards that for the first time in the 30-year history of your agency eight elected, to use your words, officials have been charged?

Mr MacSporran: Yes.

Dr HORTON: So the fact of charging elected officials seemed to be important to you, at least in public remarks you made on 26 April 2019?

Mr MacSporran: It was a matter that was historically significant just by the fact that there were eight of them from the one council charged at the one time with this sort of conduct. This is a matter that was highly relevant to the public assessment of the state of local government, as we have been saying from Belcarra forward.

Dr HORTON: The fact that these were elected officials and the fact they were answerable to a constituency was not a relevant public interest consideration in your mind?

Mr MacSporran: An elected official is answerable to the public. The public do not decide whether the evidence is sufficient to charge someone.

Dr HORTON: They decide whether the person—

Mr MacSporran: Should be elected.

Dr HORTON:—should remain an elected official because elected officials, last time I looked, were answerable to their electorate.

Mr MacSporran: But the criminal justice system acknowledges even elected officials who commit offences should be charged and placed before the courts.

Dr HORTON: You are creating a false dichotomy. I am not suggesting they are not. I am suggesting to you it is a public interest consideration in our representative democracy that the people you are seeking to charge (a) are elected and (b) the effect of the charge will be to remove them from office are a relevant consideration—not necessarily decisive. Please do not suggest to me I am suggesting they are immune from the criminal justice system.

Mr MacSporran: I am sorry, I thought you were suggesting that.

Dr HORTON: Am I right that you are saying that the fact that an accused is an elected official where the charge will result in them being removed from office and possibly the whole elected body being spilled and an administrator appointed is not a public interest consideration?

Mr MacSporran: Of course, it is. It is just a factor to be considered.

Dr HORTON: Precisely. We are not disagreeing, Mr MacSporran. Where is it in the memos that come to you or where is it in whatever you might have recorded about what was in your mind when you assessed the matter? That is the point.

Mr MacSporran: Not recorded. It is an obvious feature of the case.

Dr HORTON: But not obvious enough to be recorded, even by your recommending police officer. The public interest considerations, I think you have accepted here, are all one way; is that correct?

Mr MacSporran: You could view them that way if you take it line by line.

Dr HORTON: As an experienced prosecutor you would know that a proper public interest weighing is exactly that: it is factors on both sides—not every minute detail but the main material factors. Is that correct?

Mr MacSporran: Yes.

Dr HORTON: And this at pages 309 and 310 does not contain the other side of the equation about factors weighing against, for a moment, prosecution?

Mr MacSporran: No, that is so.

Dr HORTON: Do you know what DS Francis had by way of evidence from the Queensland Industrial Relations Commission or submissions from the parties when he prepared these memos?

Mr MacSporran: No, I cannot tell you that.

Dr HORTON: Did you have before you evidence or submissions from the mayor or councillors in the QIRC proceeding at the time you decided as assessor on 24 April 2019?

Mr MacSporran: I do not think I did. I had the summary of the closing submissions of the applicant, Ms Kelsey, not to be considered from a closing submission point of view as a summary of her case. We had that in the memo, if I recall, as a summary of the facts, because the facts in this case were quite diverse and complex. A useful collection of them was in the closing submissions of Ms Kelsey from the commission case. They were conveniently added to the list of material that was sent up the line for my consideration.

Dr HORTON: But not the submissions made on behalf of others in the litigation?

Mr MacSporran: No, that is so.

Dr HORTON: Written submissions are a piece of advocacy which occurs at the end of the case; is that correct?

Mr MacSporran: Yes.

Dr HORTON: So you had Ms Kelsey's advocate's assertions/submissions about her case; is that right?

Mr MacSporran: Yes, but not to be used for that purpose—simply to track through the factual summary of the matters that had emerged in the evidence.

Dr HORTON: You are confident that we will not find in the material that came to you recitations of passages or reliance upon her advocate's submissions in the QIRC proceeding?

Mr MacSporran: No, there is an extract of that in part, if I remember, in Mr Alsbury's memo at one point. I am not sure if it was 23 April or 24 April. There is an extract from those submissions, I think, in one of the memos. Again, Mr Horton, can I just say that all of those features were taken into account. That is exactly why this case was a case for a jury, in my view. Just by way of example, when I spoke to Mr Heaton to try to—

Dr HORTON: Can we come to that in a moment. We are going to come to that question of the discontinuance and the circumstances. Finally on this point, did you consider, in making your decision, the possibility that councillors of the council did not believe Ms Kelsey to have been an adequate CEO—completely distinct from the PID—as a relevant factor in assessing either the sufficiency of evidence or the public interest consideration?

Mr MacSporran: Absolutely. It was very clear very early on that one of the difficulties in proof was to exclude the evidence of innocent reasons for the dismissal expressed by councillors. At the end of the day, that is what a circumstantial case is all about. You look at all of the evidence. You do not do what lawyers do and pull it apart piece by piece. You look at the evidence globally, which includes that some of the councillors—some more than others—claimed—I use that word advisedly—to have had an innocent reason to dismiss Ms Kelsey and to deny that it had anything to do with the PID. That was their stated asserted position. Against that there were the facts that the mayor had orchestrated, and been enraged by the PID it seems, the other councillors in his bloc—the 'fab 7' I think they were called—to vote to terminate Ms Kelsey. The live question always was: was that what happened—that is, that they were subsumed by his manipulation of them to terminate Ms Kelsey because she had come to see me privately in the PID and so forth or were they genuinely unimpressed by her performance and for that reason entitled to terminate her? They were the live issues.

Dr HORTON: Have you ever—

Mr MacSporran: I am sorry. I was going to say 'finally' and then I will be quiet.

Dr HORTON: Sorry, you say 'finally' and then I will ask a question.

Mr MacSporran: I was going to say: finally, that is exactly why this was a case for a jury. When I saw Mr Heaton, we were talking about this and I was saying, 'This is what the Crown case is.' He was saying, 'But can we exclude these explanations?' We are to-and-froing. I said, 'Carl, the conversation you and I are now having is the very reason why this is a matter for a jury. There are competing inferences.'

Dr HORTON: Mr MacSporran, have you even today read the submissions of the parties to the QIRC proceedings other than Ms Kelsey's?

Mr MacSporran: No, I have not.

Dr HORTON: Did you read Ms Kelsey's submissions yourself?

Mr MacSporran: I flicked through them to try to get a sense of the factual scenario, and it was helpful. I understood entirely that they were her submissions, that they were putting emphasis on aspects favourable to her case. That is just part of the mix.

Dr HORTON: Mr MacSporran, I understand questions of nuance and evidence and 'all in the wash' et cetera.

Mr MacSporran: Yes.

Dr HORTON: What I am suggesting to you is one thing for present purposes: when it came to, as you said, the councillors being 'enraged'—I think was the word you used—by the PID, as a fact, we know now, and Mr Alsbury knew on 3 April before the charges, the PID was made after the probationary process.

Mr MacSporran: Had commenced.

Dr HORTON: What I want to suggest to you is: that is not a 'wash up of evidence' situation. That is a death blow to a reprisal case, because one did not take the action presumably on something that is yet to occur.

Mr MacSporran: It is express, can I say—and this comes back to that whole question of what informed my decision as to how to manage all of these aspects early in the piece. It comes back to what I understood to be the concerted effort by not only the mayor in marshalling the seven councillors but two unelected officials outside the council who were, in effect, conspiring to achieve just that result because she, Kelsey, had the temerity to meet with me in private and she had to go.

Dr HORTON: Is that your answer to what I have put to you about that bare fact that the PID was made after the probationary process which Ms Kelsey sought to impugn?

Mr MacSporran: No. I accept what you say about that.

Dr HORTON: Fundamental. Do you agree?

Mr MacSporran: You say 'fundamental'—to what?

Dr HORTON: To the viability of the charge for fraud.

Mr MacSporran: No, I do not agree.

Dr HORTON: You did not think at the time that maybe if you had read the submissions of the parties in the QIRC proceeding one might have a different construction placed on the assertions of collusion between councillors—

Mr MacSporran: No, I did not.

Dr HORTON:—and to the proposition that certain councillors were and were not aligned?

Mr MacSporran: No. I had a very firm view from as early as 14 February of what was behind the termination of Ms Kelsey, because Mr Hallam expressed it in conversations to Mr Smith, as came to me in a summary of the intercepted conversations.

Dr HORTON: I see. So for you that was all you needed to know?

Mr MacSporran: No, no. That was the start. That was the start of the process, of how I would manage the entire process, and the evidence was gathered in that context.

Dr HORTON: But, Mr MacSporran, we do not, when we charge people, finish where we start, surely? You have described it as the 'start'. I am not talking about the start; I am talking about the cold, hard, experienced analysis when it comes to the crunch of deciding—

Mr MacSporran: Yes, which was conducted.

Dr HORTON: I see. DS Francis charged the mayor and seven councillors on 26 March—

Mr MacSporran: April.

Dr HORTON: 26 April 2019. We will take up certain matters with him. Did you ever have occasion to see the QP9s that he prepared?

Mr MacSporran: I cannot recall. I may have. I cannot recall.

Dr HORTON: I see. You have not reviewed them recently, for example?

Mr MacSporran: No, I have not. No.

Dr HORTON: I understand. Before the charge was laid, was there liaison or consultation with the DPP about that possibility?

Mr MacSporran: No.

Dr HORTON: Chair, I am about to move to that final topic of the adequacy of disclosure to this committee with this witness. Would you like me to progress?

CHAIR: I might ask whether any committee members have a question on this topic.

Mr CRANDON: Mr MacSporran, I just wanted to clarify something, probably for my own benefit but perhaps for the record. When you consider what you know of Smith from all that you have spoken about, it is clear that you have a good understanding of him. He worked to control things. I think that is the inference that comes through all of the evidence that has been presented to us. He is powerful. He is power hungry. He is controlling.

Contrast that with your role as chair of the CCC, with the conversations you have and with what you write every day in the sign-off that you give for various things. When written one way, it sends a message to whoever the recipient is; when written another way it sends a completely different message. That is something that counsel has been talking about all the way through this. I think you have acknowledged that you could have written things better.

You are known to hold people to what they say and what they do. That is your reputation. You stand by it, or you appear to stand by it. I do not think I am putting words into your mouth in that regard. Would you expect the public to side with you where you clearly send the impression that you are authorising the charges to be laid, rather than approving the consideration by the officer?

You are very experienced. With all of your experience, you wrote words to the effect—and I am now paraphrasing—that you agree with the recommendation to charge Smith by three and seven relevant councillors with one count, rather than saying, 'I agree with the recommendation to refer the matter to a police officer.' Is it Sergeant Francis?

Mr MacSporran: Yes.

Mr CRANDON: In the public eye, do you believe—with all of your knowledge, with all of your experience, with what you have outlined to us—that the public would accept that it was a mistake that you made on that one occasion on what has turned out to be one of the most important decisions, according to your press release, that the CCC has made?

Mr MacSporran: Absolutely. I am human, Mr Crandon. I am guilty of a shorthand reference—and I agree entirely. It has given air to what I consider to be grossly false and damaging allegations against me personally. Having said that, I am partly responsible by the way I have recorded this decision. I would hope, and honestly believe, that people who know me, and even those who do not but know how I operate and have operated since I have been in this job since 1 September 2015, would accept my word here to you and everyone here that I have made an honest mistake, and I will pay for that because my reputation will suffer, and so it should if I have been sloppy in that respect. I am accountable like everyone else.

But I can assure you that what I have recorded there is in response—should have been in response and was intended to be in response—to what Mr Alsbury had asked, because he had made a special note to be clear about the recommendation. I, quite frankly, foolishly and negligently made an error. I can tell you absolutely I have never—never—taken the stance to charge or to interfere with charges for a nefarious or collateral or other improper purpose; nor would I.

Mr CRANDON: Thank you. Following on from that, if you can, put yourself in Sergeant Francis's place for a moment. He sends something up the line with an expectation that there be consideration given to authorising him to give consideration to the matter as to whether or not charges should be laid and that response comes back to him. In his role as a sergeant of police under the CCC's banner, how does Sergeant Francis read that instruction as it was written by you, as opposed to a recommendation for him to give consideration to? How do you, if you can, put yourself in his position?

Mr MacSporran: I can put myself in his position to the extent that, firstly, I know that he is a sworn police officer. He is a sergeant, so he has been around for a long time. He knows under our procedures that the reason it goes to him is because it has been through the lawyers, including up to my level, that we have given the imprimatur, as it were, for him to consider things. There is no way, frankly—I can say this from my personal knowledge of him—that he would take that as a direction by me to charge and give no further consideration to the matter.

Mr CRANDON: It is your contention, then, that, when he got all of the information in front of him to give consideration, if he did not believe it should be done he would come back to you and say, 'I think you've made a mistake in recommending that action'?

Mr MacSporran: Absolutely, and I would be devastatingly disappointed if he did not.

CHAIR: Mr MacSporran, I might ask a question, if I may. It touches on the question asked by counsel about the issue of whether it was a consideration or a factor weighing against laying a charge in the public interest section that the councillors may have considered the CEO at the time to simply not be satisfactory for the job. That is not recorded anywhere, is it? I think your evidence to us was that it was one of those things that was considered, but it has not been committed to the record, as far as I can see. Is that correct?

Mr MacSporran: You may well be right. If you have looked through the material that is in play and it is not there, I accept that it is not recorded. I can tell you it was clearly a factor. It had to be a factor because that was part of the evidence.

CHAIR: I understand, and you stated that to counsel before.

Mr MacSporran: Yes.

CHAIR: I want to ask a question which we touched on at a public hearing a couple of months ago and it relates to the submissions to the QIRC. You gave some evidence about that earlier. Did you or anybody from the commission attend the QIRC hearings or obtain and read transcripts of the proceedings prior to the decision to lay charges?

Mr MacSporran: I do not think so, but I am not sure about that. I would need to review the material to see what the sequence of events was. I am fairly certain we knew a bit about what had gone on there. I personally knew something about it but only from—from memory, this is; you might recall it yourself. There was a point in the hearings at the commission—that is, the QIRC—where the councillors were being cross-examined on their affidavit material where they had sworn—

CHAIR: Yes. They were grilled.

Mr MacSporran:—to the reasons for the dismissal or the termination. According to the *Courier-Mail* report, which is the traditional bible of what was going on in the commission at the time, Kelsey's case, advanced through the cross-examination, was going well. That was just the impression. People were giving evidence about what they had said in their affidavits, which was the first occasion they had actually sworn to the reasons for the termination, and it was not going well for them to maintain they were in fact the reasons. I am not sure—

CHAIR: That did not come out in the wash in the judgement, though.

Mr MacSporran: That is probably right, yes. That was the decision, yes, but of course that is not the criminal case.

CHAIR: No, I understand.

Mr MacSporran: Of course, that is what juries are for, Mr Krause: to assess competing stories. Councillors said in their affidavits, 'No, it wasn't about the PID' or the 'meeting me in private', or whatever they said; 'it was about the fact that she dressed up in a costume and went to a function with one side of the council as opposed to the other' and so on. Some of those reasons were, one might say, trivial. But it is a matter for a jury to decide whether they were or not.

CHAIR: Do you concede, though, that if your commission had reviewed the transcripts or even attended the QIRC hearings it may have given some important considerations about the credit of the witnesses and weigh in the public interest on the decision to charge?

Mr MacSporran: I do not necessarily agree with that. I think that—

CHAIR: Okay. Mr Horton, you have indicated that you are ready to go to a new segment. I think at this juncture, it being three o'clock and having had a good hour-and-a-half block, we might break for a short time and resume at 3.15.

Proceedings suspended from 3.00 pm to 3.16 pm.

CHAIR: Welcome back. We will pick up where we left off with Mr Horton.

Dr HORTON: Thank you, Chair. Mr MacSporran, I would like to return briefly to that decision to charge—on the question of timing only, because I did not touch upon it.

Mr MacSporran: Yes.

Mr Dunning: Mr Chair, I am sorry to interrupt, but do you realise there is one member not here?

CHAIR: Thank you, Mr Dunning QC. That is okay; we still have quorum.

Mr Dunning: I am not suggesting you do not.

Mr SULLIVAN: And we still have the numbers!

CHAIR: Deputy Chair, order. No need to be like that. Frivolity aside, we can carry on. Mr Horton, you have the call.

Dr HORTON: Thank you. Mr MacSporran, on the memo at pages 317 and 318 that came to you—I think you called it the cover sheet, correctly so—

Mr MacSporran: Yes.

Dr HORTON: The matter is marked as 'urgent', on the second page?

Mr MacSporran: Yes.

Dr HORTON: About a third of the way down, 'Urgent: Yes.'

Mr MacSporran: Yes.

Dr HORTON: What were the circumstances of urgency, so far as you were aware?

Mr MacSporran: Look, I am not aware, actually, what that is a reference to. I know there was a general desire to wrap it up. My memory is that as at the meetings leading up to 26 April—and I think there was one on the 24th, from memory—there was a discussion about whether the charges should be laid at that point or later, and in particular later because of the pending QIRC proceedings. The considerations that were put to me—or I learnt before the meeting, I think, for discussion at the meeting of 24 April—were: should we go ahead with charging before the QIRC case had finalised and been published, as it were? I came into the meeting and said, 'Look, I have thought about that. This is my view for your consideration. If we wait until after the QIRC case is finally decided and Kelsey wins that case, we will appear in the public eye—rightly or wrongly—to have not been game or willing to proceed until we had the backing of the QIRC.'

Alternatively, if you had waited until the QIRC had concluded and Kelsey had lost, we would undoubtedly have been accused, if we had gone ahead and charged, of some sort of reprisal ourselves for Kelsey failing in the commission but we had proceeded after that anyway to deal with the thing. The third consideration was obviously that there was no way of knowing—it turned out to be correct—how long that commission case was going to take to be concluded. This is April 2019 we are talking about and, of course, the commission case was ultimately decided in April this year, 2021, so two years later.

For all of the obvious reasons, my view was that if the evidence was sufficient, as it turned out to be when we assessed it in that period, we should just forget about what was happening in the commission—that was not a relevant consideration for us—and go ahead and do what our investigation had indicated we should do, and had always been the focus of our activity, and just get on with it, which is what happened.

Dr HORTON: Can I take you back to page 93 of the same bundle, please.

Mr MacSporran: Yes.

Dr HORTON: Email exchanges between Mark Andrews, Andrew Francis and others.

Mr MacSporran: Yes.

Dr HORTON: I do not know if you have seen this email before, but this seems to relate to the question of the decision of timing of charges.

Mr MacSporran: Yes.

Dr HORTON: In particular the line—

We really need to pinch Smithy & a decent portion of The Fab 7 prior to 2 May.

Mr MacSporran: Yes. I was not party to that email and I do not know that I knew that was the sentiment being expressed.

Dr HORTON: 2 May, I want to suggest to you, was at the time a date upon which the Industrial Relations Commission had set the period for the hearing of closing submissions. On 2 and 3 May that was scheduled.

Mr MacSporran: Yes.

Dr HORTON: Does that make sense to you, knowing what you knew?

Mr MacSporran: I certainly knew about the state of the commission case, because I knew there had been written submissions exchanged and all that remained to be done was oral submissions to the written submissions.

Dr HORTON: Yes.

Mr MacSporran: But I did not have 2 May as the date in mind, but it would fit with what I did know generally about those proceedings.

Dr HORTON: I think I am right in saying I do not think the closing submissions proceeded ultimately on that day.

Mr MacSporran: I think that is probably right actually, yes.

Dr HORTON: I think that was then thought that was the day.

Mr MacSporran: Yes.

Dr HORTON: Are you able to provide any enlightenment, therefore, why before 2 May—why before the closing submissions in the case—

Mr MacSporran: I do not understand that at all. In fact, as I say, my memory is that what I was being told is that there was some reticence to charge until after the commission evidence—not only the evidence but the whole case was decided. That is why I came into the meeting on 24 April—if it was that date—to express the views I expressed earlier and to get on with it, which is what happened on 26 April, two days later.

Dr HORTON: Yes. What I would like to do is just take you through some of the documents about timing.

Mr MacSporran: Yes.

Dr HORTON: I want to raise some matters with you, but I do not want to take them to the conclusion they need to be taken but perhaps do that on the second occasion.

Mr MacSporran: I understand.

Dr HORTON: To the extent that I am raising matters that are beyond your knowledge presently, would you indicate please? But I wanted to raise these things with you out of fairness, so that you have time for reflection.

Mr MacSporran: Certainly, thank you.

Dr HORTON: The sequence of events is really what I wanted to raise with you. On 6 August 2018 you meet with Ms Kelsey?

Mr MacSporran: Yes.

Dr HORTON: And the reinstatement is mentioned in the context of something being feasible; do you remember that statement?

Mr MacSporran: Yes. Can I just take issue with that slightly? I thought we agreed before that my interpretation of that note, which was made by, if I remember, Mr Alsbury, of that meeting, is in terms of I thought Kelsey saying if she is reinstated—and I assume there was a reinstatement application in the wings—it makes feasible for her to carry on. That is how I would interpret that note. I might be wrong about that?

Dr HORTON: No, I am not disagreeing with that.

Mr MacSporran: Okay.

Dr HORTON: The concept, for present purpose, is the desirability of reinstatement from her point of view is raised in that meeting?

Mr MacSporran: Yes, accepted.

Dr HORTON: Shortly afterwards, some research is done in the CCC—within a day or so—about what offences might be charged which would have an effect under section 175K of the Local Government Act, which I think you know is the provision by which if you are charged with certain offences you are removed from your position.

Mr MacSporran: Yes.

Dr HORTON: Were you involved in the commissioning of that research within the CCC?

Mr MacSporran: No, and I was not aware of it having taken place.

Dr HORTON: For your reference, so you have a reference to it going forward, pages 9, 10 and 11. The research is about automatic suspension of councillors for disqualifying offences. This is three days after the meeting but in terms of the research two days after, because that is being done on 8 August, it seems. I wanted to draw your attention to those emails.

Mr MacSporran: I accept that I am involved in that email exchange.

Dr HORTON: Yes.

Mr MacSporran: At pages 9, 10 and 11, as you say.

Dr HORTON: Oh, I see, yes.

Mr MacSporran: I am thanking Mr Docwra for the advice that he has provided.

Dr HORTON: On page 10. You may not be able to answer all of these questions now.

Mr MacSporran: No, I am just seeing this now, but I am more than happy to look at it when we come back. You certainly put your propositions, yes.

Dr HORTON: Let me ask some questions anyway and see how far we get.

Mr MacSporran: Yes.

Dr HORTON: One, were you involved in the commissioning of that research?

Mr MacSporran: I certainly do not recall it.

Dr HORTON: But I think you accept, if that has referenced you at the top of page 10, it was provided to you because of something you had discussed, it seems, with Mr Hutchings 'yesterday'?

Mr MacSporran: It seems that way. It looks to be a discussion that is said to have occurred between Mr Hutchings and myself, yes.

Dr HORTON: Do you remember what that was about, is there a note and who else attended?

Mr MacSporran: I do not, no, I am sorry.

Dr HORTON: No trouble. I might ask you to reflect on that and we might ask other witnesses as well.

Mr MacSporran: Yes.

Dr HORTON: Now, bear in mind this is many months before the decision to charge—

Mr MacSporran: Yes.

Dr HORTON:—takes place down the track.

Mr MacSporran: I think it is the case, too, if I remember—or I know now and must have known at the time—that the two offences we were considering, which were misconduct in public office and fraud, are both integrity offences. They were the only two, as I said before, that were under consideration through the whole period in relation to this particular charging of not only Smith but the seven councillors as well.

Dr HORTON: Yes, and I think that probably appears from the bottom of page 10.

Mr MacSporran: I see.

Dr HORTON: Section 408C is mentioned as being an integrity offence.

Mr MacSporran: Yes.

Dr HORTON: Can you see there the other one mentioned as being relevant in that regard?

Mr MacSporran: Yes.

Dr HORTON: Anyway, that is the research.

Mr MacSporran: Thank you.

Dr HORTON: Sorry to go between bundles, but this is an important chronology and they overlap, because there are these two streams, to use your terminology for a moment.

Mr MacSporran: Yes.

Dr HORTON: Page 293 of the bigger volume.

Mr MacSporran: Yes, is it page 37 of Mr Francis' memo?

Dr HORTON: No, I am sorry. It is the bigger bundle, Mr MacSporran—volume 1, page 293. It is about halfway through.

Mr MacSporran: Yes.

Dr HORTON: I am just going to ask you to note that there is an email exchange between you and Mr Hutchings on 8 August 2018. So, again, we are squarely in this period.

Mr MacSporran: Yes. This is a document I have seen in preparation for today. Last night I saw it, actually. Can I explain what I think this is about?

Dr HORTON: Yes.

Mr MacSporran: I could not quite place it when I first saw it last night, but we looked at some timing issues, because I initially thought the reference to an administrator might have been some conversations I had had with the previous DG of Local Government, Frankie Carroll, back when I was looking at the Fraser Coast issues back in 2016, because I know that Frankie Carroll was very frustrated with the then power to intervene in council affairs. I forget what the test was, but it was not adequate to deal with what was happening at Fraser Coast, which was not dissimilar to what was happening at Logan.

When I looked at the timing of these things, with the assistance of my instructing solicitor, what is very clear to me is that this conversation about an administrator is in the context of what had happened or was happening to Ipswich. If you remember, in Ipswich we charged the mayor and others with criminal offences and they were before the courts. Quite unusually, in terms of the way we normally operated, we decided because of what had happened at Ipswich and uncovered during the evidence—not just at criminal charges, but a very toxic, dysfunctional workplace involving a lack of reporting, cover-ups, bullying, harassment; it was just a toxic workplace—we took the rather unusual step of publishing a report, de-identified as much as it could be, about the incidents we were talking about to simply display how the council had operated significantly undermined public confidence in the local government system. That led, as you know, to the passing of the act of parliament to dissolve Ipswich City Council. So it was not a case where people were charged and the numbers on council meant they could not function, which is what happened in Logan; it was simply an act of parliament.

I gave evidence at the parliamentary inquiry on 30 July 2018, if my research overnight is right, and that would fit to the timing of this. I had given evidence on 30 July saying, 'Here is why the proposal to dissolve Ipswich is legitimate and necessary,' and I quoted the High Court case involving ICAC in New South Wales. That ultimately was passed by the parliament. I cannot remember what the vote was, but it went through so it had the numbers. Ipswich was dissolved, as you know, and there has been a lot of complaints about that process. But that is what happened. It happened I think after 8 August but certainly in August. I think this reference here about the appointment of an administrator is something that had been discussed as possibly a solution for Ms Kelsey because of the dysfunctional nature of the Logan council.

Dr HORTON: Okay.

Mr MacSporran: I am putting two and two together there. I do not know whether I am right, but that is my best guess about what that means.

Dr HORTON: I will ask you some questions about this. It says—

Al, I let Dan know—

'Dan' is Dan Williams, that is reasonable to assume, from MinterEllison?

Mr MacSporran: I think so, yes.

Dr HORTON: That is Ms Kelsey's solicitor—

what we spoke about this afternoon, and he was very appreciative of the efforts you have made. He will keep Sharon informed. He was especially interested in the prospect of the appointment of an administrator as he sees it as the only practical solution now.

It is then sent to you, I think.

Mr MacSporran: Yes.

Dr HORTON: Is that right?

Mr MacSporran: It is sent to me by Mr Hutchings, who has had the conversation with Mr Williams. I do not know directly what prompted that, but I am just, as I say, putting two and two together. I may be completely wrong, but the timing to me makes sense of what that might have been about.

Dr HORTON: I see.

Mr MacSporran: I do not know.

Dr HORTON: The timing I want to draw to your attention—

Mr MacSporran: Mr Hutchings might know.

Dr HORTON: Yes, we are going to ask him. The timing I want to draw to your attention, and you might want to reflect on it: 6 August, reinstatements mentioned by Kelsey as something that makes things feasible; 7 or 8 August, research is done in the CCC about possible disqualifying offences; and on the 8th you and Mr Hutchings discuss something—

Mr MacSporran: Yes.

Dr HORTON: And there are then discussions with Mr Williams—maybe initiated by Mr Williams, maybe otherwise—about the prospect of the appointment of an administrator.

Mr MacSporran: Yes. That is the sequence as you have outlined it, yes.

Dr HORTON: An administrator was appointed much later; is that right?

Mr MacSporran: Yes.

Dr HORTON: And that was effected by the charging of section 408C, by that applying to majority of councillors, so there is no longer a quorum, and that resulting in the disbandment of the council and the appointment of Ms O'Shea?

Mr MacSporran: Yes. Just by operation of mathematics, the numbers, as you said, under that law about standdowns when you are charged, which again was an act of this parliament.

Dr HORTON: And upon Ms O'Shea's appointment, did you have any dealings with her?

Mr MacSporran: Yes. I made a phone call to her. I cannot tell you the date, but it would have been after the councillors were stood down. She was then the administrator of the council, and I made the inquiry of her: what was her view then as to Ms Kelsey's position and was there going to be any relief for Ms Kelsey by the administration of the former council? She said to me, if I remember, something along the lines of she was getting legal advice from Crown Law, I think, and did not commit one way or the other as to what she was going to do. I think that was all that was said. She may have told me later that the advice was that they were not going to take any action and let us let the QIRC case run its course. I cannot remember whether that was a separate phone call or whether the advice had been included earlier. Yes, that is what I recall about that.

Dr HORTON: Did you suggest or make any request to her that Ms Kelsey be reinstated as CEO?

Mr MacSporran: I may have asked whether that was in contemplation or whether it was desirable.

Dr HORTON: You may wish to answer this when you return, rather than now.

Mr MacSporran: Certainly.

Dr HORTON: But the course that I have just taken you through, combined with your call to Ms O'Shea, might suggest to the committee that the purpose of laying the section 408C charge was to assist Ms Kelsey with the possibility of a reinstatement in her Queensland Industrial Relations Commission proceeding, because if the council were removed, the animosity which might otherwise be thought to exist and which might legitimately weigh against her reinstatement as distinct from an action in damages.

Mr MacSporran: Well, I can answer that now. Categorically, I reject that entirely. There was never, ever any ulterior motive in the charging of the seven councillors. As I say, the evidence in my view was sufficient to allow it to be referred to a police officer to make that decision, which is what happened. It then went to the Director of Public Prosecutions, who was then Mr Byrne QC. When the brief was delivered, Mr Alsbury and I went to see Mr Byrne, as a courtesy, discussed with him in a very summary way what the charges were and the basis for them. Mr Byrne did not ever say anything about the appropriateness, or inappropriateness I should say, of the charges. As you know, and I said before, the charges proceeded.

Dr HORTON: Can I just stop you there—

Mr MacSporran: Yes.

Dr HORTON: And put something different to you—that is, that it might be one thing for a moment to accept that the charges were able to be brought in a prosecutorial discretion sense. What I am suggesting to you perhaps is this: was the decision to do so infected by or affected by an improper purpose, which would be assisting Ms Kelsey in her action for reinstatement specifically by bringing about the spill of the council?

Mr MacSporran: It was not and, frankly, I find such a suggestion to me personally offensive. I understand why you have to put it, but I find it personally offensive. There is absolutely no truth in such a suggestion, I can assure you.

Dr HORTON: I might come back to that on a second occasion—

Mr MacSporran: Absolutely.

Dr HORTON: But I wanted to give you notice of it. I wanted to take you through the sequence, and I do not want to press you on such matters when you have been in the witness box, so to speak, all day.

Mr MacSporran: I understand, and I thank you for that.

CHAIR: Are there any questions from committee members at this time?

Mr CRANDON: I have one very quick question. Mr MacSporran, referring to that email from Rob Hutchings where he says, 'I let Dan know what we spoke about this afternoon', did you take any notes?

Mr MacSporran: No. I kept to my usual inadequate practice of note taking and did not.

Mr CRANDON: Mr Hutchings is a prolific note taker. Are you aware of whether or not he took any notes?

Mr MacSporran: I do not. I assume if he did it would be in the brief but I have not seen it, but I have not looked through the entire material. Mr Hutchings will no doubt tell us.

Mr CRANDON: Thank you.

CHAIR: Thank you, Mr Crandon, for that brief question. No lengthy preambles today. Mr Horton, please move onto the next segment.

Dr HORTON: Thank you, Chair. Mr MacSporran, you should have a very small bundle as well, not in a folder, which relates to the issue of the disclosure to this committee.

Mr MacSporran: Yes.

Dr HORTON: That contains transcripts of what was said here. I might start really at the end, so to speak, and this is with the 'no longer' point which you and I had an exchange about earlier today.

Mr MacSporran: Is the first page 'LGAQ'?

Dr HORTON: It is. Does your version have a page number?

Mr MacSporran: It is 1.

Dr HORTON: Perfect, that is the one—no need to take you to it for the minute. We will see how far we get without having to get you to trawl through documents. You had reported to this committee that the charge had been discontinued by the DPP on the basis that there were no longer sufficient prospects and no longer sufficient prospects of success to warrant continuing.

Mr MacSporran: Yes.

Dr HORTON: We can go to Mr Heaton's memo if you wish, but you accept that is not the basis that his memo expresses.

Mr MacSporran: No, no—in fact is the basis.

Dr HORTON: Okay. Could we go to that?

Mr MacSporran: Certainly. I have a copy here, and I assume we can compare notes about which copy it is.

Dr HORTON: It will not matter for the moment. There is one change which we will come to in it, which might differ, but I would be very interested if you would use yours.

Mr MacSporran: Okay.

Dr HORTON: It is at page 403 of volume 2, in effect. This one is unsigned, Mr MacSporran.

Mr MacSporran: I understand, yes.

Dr HORTON: Do you have a signed version or what you understand to be a final version?

Mr MacSporran: The one I have in front of me now is unsigned, but the one I had this morning was signed, I think.

Dr HORTON: It does not matter I think for the moment, Mr MacSporran, but could I just draw your attention to paragraph 31 of yours. Does your paragraph 31 consist only of one sentence—albeit three-and-a-bit lines long?

Mr MacSporran: At page 409, yes.

Dr HORTON: And the '31' number is italicised.

Mr MacSporran: Yes, I think it is. Oh, I see.

Dr HORTON: Yes. There is a sentence that I think was removed from paragraph 31 in the course of its finalisation. Does your other version that you have before you have the sentence that was removed?

Mr MacSporran: Yes.

Dr HORTON: Would you read that sentence? I just cannot remember what it says.

Mr MacSporran: The sentence says, 'I agree with the QIRC Commissioner's assessment when he said'—and then it quotes a passage from the QIRC decision.

Dr HORTON: I see. Which by then has been handed down.

Mr MacSporran: Yes, but not published.

Dr HORTON: Correct. It is decided on 1 April.

Mr MacSporran: Yes.

Dr HORTON: But I think until the 29th, because the parties had time to give submissions about what should and should not be published, it is not made public.

Mr MacSporran: Yes.

Dr HORTON: Do you recall the reason for the removal of the sentence and quote, and was it what we have just described?

Mr MacSporran: I do not know, to be clear, but I assume that might have—I did not even know that had been done, frankly. The only one I had seen was the one I had here, which had the sentence in it, or the quote in it. I do not think it changes anything, frankly. It is just a technicality, if you like, to observe the proprieties of the confidentiality of the QIRC decision at the time this memo is written. Take no point about that; it is just in the material.

Dr HORTON: That is the inference. I just wanted you to be aware of the difference.

Mr MacSporran: I understand.

Dr HORTON: I am not going to suggest for the moment it takes us anywhere.

Mr MacSporran: The point I wanted to make, or the point that I am making about what I told the committee, is on the very front page of Mr Heaton's memo, which is in the box headed 'Decision'. It says—

In relation to the prosecution of the charges of Fraud alleged against each of the eight defendants there are insufficient prospects of success to justify continuing further. The charges of Fraud will be discontinued against each defendant.

which is what I told the committee, I thought.

Dr HORTON: I am interested in the words 'no longer'. Am I wrong, but does this memo of the DPP not use those words?

Mr MacSporran: No, you are right—

... insufficient prospects of success to justify continuing further.

It is the same meaning, I would have thought. There are no longer sufficient prospects or there are insufficient prospects to continue further. It is the same concept, isn't it, or am I going mad?

Dr HORTON: I am not suggesting they are the same concept; I am suggesting they are different. Maybe it is me who is going mad, but one of us is.

Mr MacSporran: What he has conveyed here and what I have conveyed to the committee in my understanding—and certainly intended to convey—was that when I considered the matter, when Mr Francis considered the matter, when Mr Mike Byrne QC, then DPP, considered the matter, all of us thought there was evidence of the elements of the offence, so there is a prima facie case, and in addition through all of those stages there were reasonable prospects of successfully prosecuting the eight defendants. After nine days of committal, Mr Heaton took the view, informed by his prosecutors, which is entirely appropriate, that after cross-examination of Ms Kelsey and others at the committal proceedings there were no longer those sufficient prospects to warrant continuing. So there was enough to charge and put it before the court, but at the committal proceedings, where these things are tested, the case became one that was not, in Mr Heaton's view, worth pursuing. I disagreed with that. I thought it was still worth pursuing; it was a matter for a jury. I have every confidence in my own mind that had the jury had regard to the evidence there may well have been convictions that followed of all eight. That is my personal view.

Dr HORTON: We will come back to that.

Mr MacSporran: I think what I have said to the committee is consistent with what is in the box on the front page of Mr Heaton's memo.

Dr HORTON: Let's unpack it a little bit. It is a gloss by you, not a quote from Mr Heaton; correct?

Mr MacSporran: Well, I think that is a fair comment.

Dr HORTON: Yes. So you are not quoting Mr Heaton; you are using your own words that you thought summarised the effect of what Mr Heaton had done?

Mr MacSporran: I am sure they did.

Dr HORTON: I understand that, but you accept there is a difference—and I think you alluded to it in responding—between saying this—

Mr MacSporran: Perhaps, Mr Horton, you could explain to me, then, what your view of the difference is.

Dr HORTON: I am trying to.

Mr MacSporran: All right. I will be quiet and let you continue.

Dr HORTON: There is a difference between these things. One is a prosecution which no longer has prospects of success because of things that happened at the committal which could not reasonably have been known beforehand or were not reasonably known beforehand.

Mr MacSporran: Yes.

Dr HORTON: Agree? Then, 'This case has insufficient prospects of success—full stop.' You agree? I am using an abstract concept for the moment, Mr MacSporran. I am not referring to a document.

Mr MacSporran: I am just processing your question. I think very technically—very technically—you have a point. But that does not accord with the discussion I had with Mr Heaton, frankly. It was all on the basis that after the committal—because Mr Heaton's memo, if you look at the content of it, talks about the major issue is Ms Kelsey's credibility.

Dr HORTON: Now, we will come in a moment to your discussion with Mr Heaton, but for the moment take me to where the memo is as the major issue Ms Kelsey's credit.

Mr MacSporran: I think if you read the memo it is—

Dr HORTON: What part in particular would you say best elucidates what you are saying is its main effect in that regard?

Mr MacSporran: I am just reading this quickly now. We may be able to return to this when we come back, if we can. Looking at it now, I am seeing that at para 21 at page 407—

A 'full' committal hearing was conducted with cross examination of many of the proposed crown witnesses, including Ms Kelsey and the five other councillors who did not vote to terminate her employment. Ms Kelsey in particular, was cross-examined at length. The assessment of the senior prosecution team who conducted the committal was that the councillors were not particularly impressive witnesses and that in particular, Ms Kelsey was a poor witness.

Then down in para 23, towards the bottom of that page, last paragraph—

The assessment of the prosecutors was made known to them and the flaws in the case were discussed.

That was made to known to us, the CCC. The flaws were discussed—

Particularly, the inability to exclude other rational reasons for the decision to vote to terminate Ms Kelsey's employment, and credibility issues with Ms Kelsey. Whilst I accept that the case does not rest entirely on the credibility of Ms Kelsey, the reasonableness or otherwise of the various reasons advanced by the councillors will rest to some extent on what a jury might make of Ms Kelsey. Her lack of credibility will work against any conclusion that the reasons advanced by the Councillors were not rational reasons which operated on the minds of the individual councillors when the time came to vote.

Dr HORTON: I am not challenging that this memo raises issues of credibility of Ms Kelsey, some of which is said to have become known at the committal. I want to ask to two more questions about this. One is: Ms Kelsey gave evidence at the QIRC; correct?

Mr MacSporran: I am sorry, what was that again?

Dr HORTON: Ms Kelsey had also given evidence in the QIRC proceedings?

Mr MacSporran: Yes, as I understand it, yes.

Dr HORTON: And Ms Kelsey had been assessed—I think it is fair to say her credit was not regarded well by the presiding member there.

Mr MacSporran: That is a fair comment there. I have seen the remarks he makes, yes.

Dr HORTON: And it was reasonably available to you at an earlier stage to have attended the QIRC or have had access to the submissions of others besides Ms Kelsey who might have had an assessment—an assessment—of what her credit was like in that context?

Mr MacSporran: Yes.

Dr HORTON: Did you avail yourself of the material that might be available to allow some assessment of her credit to be made in the context of what had happened in the QIRC?

Mr MacSporran: No, because I took the view that her credibility, whilst it is a factor, could not ever be a determining factor. I am comforted in that view again by the fact that it did not cause Mr Byrne, who was the DPP at the time the brief arrived, to have any reservations about running the case.

Dr HORTON: We will come to—

Mr MacSporran: Furthermore, after these matters became apparent—that is, the complaint to the committee and then the institution of these proceedings—I did reflect very carefully on my decisions to allow a police officer to charge and go ahead and, importantly, I thought that we should get someone independent to review the decision to charge, someone outside the commission, to give her some comfort or otherwise—

Dr HORTON: At the time?

Mr MacSporran:—and retired chief judge Kerry O'Brien agrees with the propriety of charging.

Dr HORTON: Could you stop for a minute, Mr MacSporran? Are you talking about at the time you were charging, or are you talking about recently?

Mr MacSporran: Recently, to review the decision to charge on the evidence we had.

Dr HORTON: At the time of deciding these charges, did you take external advice from any person?

Mr MacSporran: No, I did not. I did not think I had to.

Dr HORTON: Did you at any point in the events we have discussed today take any advice from a person external to the CCC?

Mr MacSporran: Prior to charging? No.

Dr HORTON: You are saying that since then and in recent times you have taken advice from a retired judge about the exercise of the prosecutorial discretion?

Mr MacSporran: Yes.

Dr HORTON: Mr MacSporran, I am not suggesting to you today—I think I have been very clear about it—that a re-exercise of the discretion would not, on any view, be capable of supporting charges. My proposition you will have heard in opening: proper purpose, bias, taking into account all material considerations. It is a very different thing I want to suggest to you from a re-exercise of discretion. I am not cavilling with you about whether someone could, on the material properly assessed, have prosecuted. I want to be very square about that, because otherwise we will—

Mr MacSporran: I understand, Mr Horton, yes.

Dr HORTON: Thank you. Now, returning to the memo, I understand the credit question—I have suggested to you that there were ways of knowing about that ahead of time, but it was not all that the DPP was interested in; is that right? Look at paragraph 20—

This was always going to be a challenging case to prove.

Mr MacSporran: Yes.

Dr HORTON: It goes on—

The Crown was necessarily setting out to prove that the valid reasons that they may have had for voting to terminate her employment were not the *actual* reasons—

Mr MacSporran: Yes. I do not quarrel at all with the analysis of Mr Heaton. He had the view ultimately that he was not going to allow his resources to be deployed to finish this case off.

Dr HORTON: And at paragraph 30—

Mr MacSporran: I disagreed. Sorry.

Dr HORTON: I am unpacking this. At paragraph 30, middle of the paragraph, on page 409—

The evidence demonstrates that prior to the making of the PID and in the 4 months afterwards, there were issues which, in the subjective view of each of the councillor defendants, undermined her suitability for the position of CEO.

And that was something which the Crown had assumed the obligation to negative; is that correct?

Mr MacSporran: Yes.

Dr HORTON: And you accept that in part this decision was made at least on the basis that the PID had been made after the probationary process was in play?

Mr MacSporran: Yes, yes.

Dr HORTON: I see. I think you have accepted 'no longer' were not words Mr Heaton uses; you say it is your characterisation of what he does, and is it based primarily on the assessment of credit of Ms Kelsey at the committal?

Mr MacSporran: No. It was a large factor, as I read his memo, and an expressly large factor in our discussions about the deficiencies in the case in the presence of the actual prosecutor, Mr Green, who was part of our discussions with Mr Heaton, Mr Alsbury and myself.

Dr HORTON: You accept that the timing of the PID in relation to the alleged reprisal was not a new fact—that it was always a fact in the case that the PID had come after the probationary process's commencement?

Mr MacSporran: Look, it is late in the day. I am tired, frankly.

Dr HORTON: I understand.

Mr MacSporran: I would like to revisit that entire question about the PID. You might well be right or my concession before might well be right, but I would like to reflect on that, because you are making now a significant point about it that I had not appreciated earlier and I would like to reflect on it when I come back.

Dr HORTON: No trouble. I am making that point, and the relevant dates for your reference overnight are 10 October and 12 October. The 12th is the day the PID is made in the letter from MinterEllison to your organisation, and the 10th is when the councillors and mayor meet as part of the probationary process. There are things that have occurred before with the probationary process, but that is a meeting at which—the finding in the QIRC is of these things having occurred; I direct your attention to those perhaps. That fact, we will suggest to you in due course, is not a fact which changed, but it is a fact which was not well drawn to your attention in the memoranda from DS Francis to which I have taken you. That is part of what I have suggested to you is part of the flawed process.

Mr MacSporran: I understand your reasoning I think now, and I will reflect on that for when I come back after I have looked at the entire document bundle if I have had the opportunity.

Dr HORTON: Thank you. In light of what this witness has said, is that a convenient time, committee, to adjourn for the day? I probably will not be that much longer with Mr MacSporran tomorrow morning and then I would propose to call Mr Alsbury, who the committee has heard about today, and after that, if there is time, Mr Hutchings. I think representatives of the CCC have confirmed that they would be available tomorrow if the committee wish to hear from them.

CHAIR: Thank you, Mr Horton. We are happy to proceed on that basis. If there are no other questions from the committee members, which I am glad to say there is not, we will proceed on that basis. Mr MacSporran, we will shortly adjourn proceedings for today but on the understanding that you will come back in the morning and complete the first set of questions from Mr Horton. That is understood?

Mr MacSporran: Yes, thank you.

CHAIR: Okay, members, thank you for your assistance here today. Thank you, counsel. Thank you to the committee secretariat staff. At this juncture we will adjourn this inquiry for the day and we will reopen at 9.30 in the morning.

The committee adjourned at 3.59 pm.