



# ***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**

**WEDNESDAY, 18 AUGUST 2021**

**Brisbane**

## WEDNESDAY, 18 AUGUST 2021

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**The committee met at 9.31 am.**

**CHAIR:** Good morning, everybody. Welcome back to the Legislative Council chamber for the second day of hearings for our inquiry. Before we get into proceedings today, I think it is appropriate, given we are sitting here in parliament as a public body, a representative committee of the parliament, that we mark and remember Long Tan Day and Vietnam Veterans Day and remember the 60,000 Australian personnel who served in Vietnam and the 521 former service men and women who lost their lives in that conflict, especially in light of events around the globe right now. In that vein, before we get started, I thought it appropriate that we observe a moment's silence. I ask that everyone be upstanding to do that.

*Whereupon those present stood in silence—*

**CHAIR:** Thank you, ladies and gentlemen.

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

**CHAIR:** Mr Horton, we left off yesterday with your examination of Mr MacSporran. I imagine the most appropriate point for us to start off again today is for you to continue that. Are there any other matters that you would like to have addressed prior to going into that?

**Dr HORTON:** No, there are no housekeeping matters, Chair. Once Mr MacSporran is finished, I propose to call Mr Paul Alsbury, about whom you have heard some evidence; then, hopefully today, towards the end of the day, Mr Rob Hutchings, the director of Legal Services. At the conclusion of Mr MacSporran's evidence today, I would seek to have tabled the two bundles of documents which Mr MacSporran has had and which the committee has had reference to so that the record is clear. I note your earlier ruling that that does not include publication without further notice.

**CHAIR:** That is right. That sounds good. Are there any other matters that members wish to raise at this time? No. That is good. Mr Horton, if you would carry on, that would be appreciated.

**Mr MacSporran:** Mr Horton, I wonder whether I could make a correction to something I said yesterday?

**Dr HORTON:** Of course.

**Mr MacSporran:** You recall that I made a concession about the nature of the endorsement I had made on the cover sheet that came to me in respect of the charging process?

**Dr HORTON:** Yes.

**Mr MacSporran:** Could I briefly, if I could, take you through why I think I was in error in making that concession. I had the opportunity overnight to reflect on the email and the attachments to it, the attachments being other memos. We should look at the page in the bundle. Perhaps if we can turn up for the record what that is.

**Dr HORTON:** 317 I think is your endorsement.

**Mr MacSporran:** That is in volume 2, I think.

**Dr HORTON:** It is.

**Mr MacSporran:** Thank you. The endorsement reads, as we know from the evidence yesterday—

I agree with the recommendations to charge Smith x 3 and the 7 relevant Councillors with 1 count of fraud as suggested.

I have signed and dated that 24 April 2019. If we go to page 319, which is Mr Alsbury's memo to me of the previous day, I think, 23 April, you will see that the end of that, on page 321, under the heading towards the bottom of the page, 'Charges', Mr Alsbury is telling me in paragraphs 15 and 16 and following, on page 321 on to 322—

I consider the following charges are appropriate (whilst accepting that the ultimate decision will be for a police officer seconded to the CCC).

For Luke Smith:

Brisbane

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

Then he outlines two charges of misconduct in public office—the first one relating to Alison Frawley, the second one relating to the commencement of the probation process—and then on page 322 the third charge is in relation to Sharon Kelsey, and then paragraph 17 of the memo—

For all councillors mentioned at paragraph 11, above, and Luke Smith:

Recommend a charge of dishonesty under 408C(1)(e);(2A), which is the fraud charge we have been talking about. What I am saying in my cover sheet memo endorsement is that I agree with that recommendation in the memo from Mr Alsbury to me as reflected in his request of me on the back of the cover sheet, which is page 318, the highlighted section of the bundle—

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).

and so on.

On balance, I think there is no doubt that what I am saying on the cover sheet is just that—that is, that the charges as referred to Mr Alsbury, including the fraud charge against Mr Smith and the seven councillors, be referred to a police officer to consider whether or not those charges are appropriate. Of course, we know now that is what happened.

**Dr HORTON:** Thank you. If your evidence in response to the question I am about to ask is no different from that given yesterday on your then understanding of the context of your endorsement, please just say so. Pursuant to what power in your act—the Crime and Corruption Act—did you make the decision which we find recorded in the endorsement?

**Mr MacSporran:** I cannot give you any specific power. It is a process we adopt internally to assess the matters and to make sure that it is available to be referred to a police officer to exercise his or her independent discretion.

**Dr HORTON:** I see, but you do not or cannot point to a provision or provisions of the Crime and Corruption Act which empower you to make that decision?

**Mr MacSporran:** I cannot currently but, as I said yesterday—pretty clearly I think—I have not had an opportunity to consider all of the material and some of these points you have raised yesterday and are continuing to raise today—and of course I understand, as is proposed and foreshadowed, that I will be coming back at some point after the evidence of the other witnesses is concluded and I will have the, hopefully, ample opportunity to deal with the matters that are outstanding or that I might be able to comment further on to help the committee and to resolve any issues that might be still outstanding, and I welcome the opportunity of doing so.

**Dr HORTON:** Thank you.

**Mr MacSporran:** Can I just clarify one further point, if I could, without wasting any of your time, hopefully? There were questions yesterday about how I knew when I was assessing the material that the councillors on the one hand were covered by insurance organised through the LGAQ and Ms Kelsey on the other hand was completely self-funded or thereabouts. Whilst I could not point to the material that might indicate that was the case to my knowledge, I have had a review done overnight and I have some references in the material in the bundle that you have given me that might be helpful if I could point out quickly, if it is convenient?

**Dr HORTON:** Yes. You do not have to—it is up to the committee—necessarily do so in session, if you want to provide it to us separately.

**Mr MacSporran:** I would prefer just to do it very quickly here I think, if I could, without—

**Dr HORTON:** I am in the chair's hands.

**CHAIR:** Mr MacSporran, you may.

**Mr MacSporran:** Thank you very much. So just bear with me and I will check my note about the pages. The first I think is volume 2 at page 77, which is the start of the memorandum headed 'Sharon Kelsey Public Interest Disclosure'. This is a 16-page document. If we go in that bundle firstly to page 92, you will see at the top of page 92 there is a date, 11.2.18. This is an extract, if you like, from the contents of an intercepted telephone conversation of that date—11 February 2018. It is between Mr Smith—Luke Smith—and Jim Soorley and you will see what is recorded there. It is the intercepted telephone call. You see the blacked out section in about the middle of the page?

**Dr HORTON:** Yes.

**Mr MacSporran:** Just above that you will see Soorley says—

*'yeah well let her go to court, let the court award that, and you're covered by insurance'; Smith 'yep I'm fine'; Soorley 'Council's covered by insurance'; Smith 'Yep'; Soorley 'she's not'; Smith 'No'; Soorley 'she can do whatever she [REDACTED] likes, let her let her rabbit on until she [REDACTED] bleeds to death the [REDACTED] old dead chook' ...*

**CHAIR:** Mr MacSporran, I thought you were going to refer the committee to some references rather than reading them directly into the record. I would prefer if you would give us the references to the material you wish to refer the committee to and we will undertake that review ourselves.

**Mr MacSporran:** Very well. That is the first one, on page 92 of that intercepted call of 11 February 2018. The next reference is—

**Dr HORTON:** Mr MacSporran, can I interrupt for a minute? If this is a reference to the councillors being insured, that is not the point of the question.

**Mr MacSporran:** I thought it was yesterday, Mr Horton.

**Dr HORTON:** I read to you words such as 'at no personal cost'. Take it for a moment that it is accepted, as I think I said to you in questioning, the councillors would have been insured in the ordinary course.

**Mr MacSporran:** I do not think you did say that, frankly. We can check the transcript. I am not going to debate it with you now. We can do it when we come back, I suppose.

**Dr HORTON:** Mr MacSporran, just stay with me for a minute, please. I put to you the source of the assertions which you had investigated, for instance 'at no personal cost'. Assume for a moment the councillors are insured. What I am interested in is any other information you had before you to show that it was at no personal cost to them, leaving aside the question of insurance, which I think I have accepted was likely to have been the case.

**Mr MacSporran:** Well, I do not think that is the way you put it, frankly, and I am disappointed, Mr Horton, if that is the way you are now putting it. Can I just give these references and we can perhaps move on? I have one further correction to make—

**Dr HORTON:** Would you do so very quickly for this reason: one is I do want to get through witnesses today. I do not want to have you in the box for too long, Mr MacSporran, for your sake.

**Mr MacSporran:** That is very decent of you, Mr Horton.

**Dr HORTON:** And there are other CCC witnesses waiting to come on today.

**Mr MacSporran:** I know.

**Dr HORTON:** And I would prefer to cover—I do not have many topics for you today, but I would like to move on as quickly as possible to the substance.

**Mr MacSporran:** Yes. Can I just give these references for completeness so you have a record of them?

**CHAIR:** Please perhaps refer to the document number and paragraph and page number in those particular documents.

**Mr MacSporran:** Yes, I will. The next is page 109 of volume 2, which is—just bear with me to get to the start of it so we know what we are talking about—the Francis memo, I think. It starts at 97. It is the memo from Sergeant Francis to Inspector Preston, 'Consideration to commencement of proceedings—Operation Front', and the reference is at page 109. At the top of the page you will see the conversation referred to there—109.

**CHAIR:** Page 109?

**Mr MacSporran:** Page 109, yes.

**CHAIR:** Okay.

**Mr MacSporran:** That is that. Can I finally just deal very quickly with Mr Heaton's memo?

**Dr HORTON:** I am going to turn to that now. I would like to ask you some questions about that.

**Mr MacSporran:** Very well.

**Dr HORTON:** If we turn to the memo, which you might recall is at volume 2, page 403, Mr MacSporran.

**Mr MacSporran:** 403?

**Dr HORTON:** Yes.

**Mr MacSporran:** Thank you.

**Dr HORTON:** Now, we were having an exchange yesterday about the extent to which that memo in effect raises as new things, if you like—things that have happened since the charge was laid as being a reason why the charge's evidence might no longer be sufficient. Do you recall that?

**Mr MacSporran:** Yes.

**Dr HORTON:** And you wished to point to the observations, correctly so, in the memorandum concerning the assessment of credit of Ms Kelsey during the committal.

**Mr MacSporran:** Yes.

**Dr HORTON:** And that is, I think it is fair to say, the basis upon which you say your characterisation of Mr Heaton's decision as being one that the evidence was no longer sufficient—

**Mr MacSporran:** No, that is part of it.

**Dr HORTON:** I understand.

**Mr MacSporran:** If you read the memo, there are a number of considerations outlined of the sort that we took into account in our assessment as well. They are just what you do as a senior lawyer assessing these cases. They are set out very carefully in Mr Heaton's memo. They are not dissimilar to the considerations that we considered. And we have a different view, but what is clear from Mr Heaton's memo is that what he is saying is, the decision on the front—

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.

That is as at 6 April 2021 and he refers to, in various parts of the memo, which I can give you the paragraph numbers for, that that assessment of credibility, of prospects, of the ability of the Crown to negative innocent explanations is all following the nine-day committal in December 2020. That is why I said to the committee there are no longer sufficient prospects to justify continuing with the case in front of a jury.

**Dr HORTON:** I do not want to take up too much of your time today on this. I want to be as quick as I possibly can be because I think you are making this a bigger issue than it needs to be, with respect.

**Mr MacSporran:** I thought it was a big issue yesterday, Mr Horton.

**Dr HORTON:** If we go through this, can I put some questions and you answer them? It might be a quicker way to deal with the point. That way you will understand what I am putting to you and what I am not putting to you. On page 403 the words in the box that you have referred to again today are as consistent with these two propositions: one is that the evidence is no better or worse than it was when you commenced this charge—your organisation commenced this charge—

**Mr MacSporran:** No, I do not agree at all.

**Dr HORTON:** I have not finished the question so I do not know how you can answer it, Mr MacSporran. Could you please wait? It will be much easier for Hansard and you will be out of the box much more quickly today if I can finish, please. The proposition in the box at page 403 is as consistent with the proposition that the evidence is longer sufficient as it is with the opposite proposition; do you agree?

**Mr MacSporran:** I do not agree, no.

**Dr HORTON:** He is simply saying on 9 April the evidence, as I stand today, is not sufficient.

**Mr MacSporran:** Mr Horton, that is an absurd proposition, with respect. The context of that boxed wording is the memo—

**Dr HORTON:** We are going to come to context. Just stick for the moment with the words in the box. Just read it for a moment like a senior lawyer—

In relation to the prosecution of the charges of Fraud alleged against each of the eight defendants there are insufficient prospects ... to justify continuing further. The charges of Fraud will be discontinued against each defendant.

I want to suggest to you those words in the box, highlighted for everyone's attention at the beginning of the memo, mean as at today, objectively, plainly, clearly, there are insufficient prospects to go further—that is, to present the indictment or to complete the committal; do you agree?

**Mr MacSporran:** I agree, but what is the point of that interpretation?

**Dr HORTON:** The point of this is: if this is your basis for saying to the committee that Mr Heaton considered the evidence was no longer sufficient in order to suggest that something had happened which you had not known, this box text is an insufficient basis for you to make that assertion.

**Mr MacSporran:** I was not relying upon the box decision to make that assertion. I was relying on the box decision in the context of and including the contents of the memo, which is nine, 10 pages long.

**Dr HORTON:** Good. Let us go to that. That memo in the context and content states other things. I am accepting, as you are suggesting to me, Mr Heaton talks about the credit of Ms Kelsey at the committal as being material to his decision.

**Mr MacSporran:** That and other things, yes.

**Dr HORTON:** Let us just for the moment try to deal with it issue by issue. I will come to other issues, but for the minute I am just going to deal with credit, or try to. On the topic of credit, Mr MacSporran—

**Mr MacSporran:** I am listening, Mr Horton.

**Dr HORTON:** Good. The credit of Ms Kelsey, as I suggested to you yesterday, was something which was also available for you to have regard to because she had given evidence in the QIRC proceeding; is that correct?

**Mr MacSporran:** Yes.

**Dr HORTON:** You could have made some assessment of credit for yourself, likely credit, because you had the advantage that she had recently appeared in a contested hearing in the QIRC; correct?

**Mr MacSporran:** Yes.

**Dr HORTON:** You said, as part of deciding the charge, you had available to you her own advocate submissions about how that case had gone.

**Mr MacSporran:** Yes, but for the purposes of assessing what the facts were, not what the advocacy for her was.

**Dr HORTON:** Right. That would be a hard task in submissions to try to separate facts from advocacy, one would think.

**Mr MacSporran:** I did not find it difficult, Mr Horton.

**Dr HORTON:** I see. So you were able to separate out of your mind that part of her advocate submissions which were advocacy?

**Mr MacSporran:** Yes.

**Dr HORTON:** And that part which were bare objective facts?

**Mr MacSporran:** Yes.

**Dr HORTON:** You would not find in an advocate submission for her, would you, a critical—and I do not mean unfairly critical but a critique, if you like, of whether her credit was bad. You would not expect to find it in that document?

**Mr MacSporran:** No, you would not.

**Dr HORTON:** You would expect to find that assertion, that submission—and that is what it is for a minute—that advocacy, in the other side's submissions?

**Mr MacSporran:** Yes.

**Dr HORTON:** I take it you have never read, to this day, the other side's submissions in the QIRC proceeding?

**Mr MacSporran:** No, I have not.

**Dr HORTON:** Because you only had before you relevantly for this purpose Ms Kelsey's advocate submissions?

**Mr MacSporran:** Yes.

**Dr HORTON:** I see. I want to suggest to you in the submissions of the advocate for others in the QIRC case dated 18 April 2019, for example, of the third to ninth respondents, there is a detailed, systematic and analytical treatment of facts going to Ms Kelsey's credit.

**Mr MacSporran:** All of which would have been a matter for the jury.

**Dr HORTON:** I see.

**Mr MacSporran:** That is what juries are for, Mr Horton: to assess these things, to weigh up on one hand arguments for, to take into account arguments against. As I said yesterday, when Mr Heaton and I spoke about this, we had exactly that sort of conversation. He was advocating the difficulties he would have in proving the case, excluding innocent hypotheses in the explanations given by the independent councillors and Mr Smith, and I was arguing that that would be a matter for a jury to consider. That is exactly what juries do.

**Dr HORTON:** Can we go to some of the other factors that you wanted to go through. Leave credit aside for the moment. There are other factors revealed in here. For example, in Mr Heaton's memo, paragraphs 8 and 10, you can see that he highlights that the meeting about the probationary process occurred on 10 October 2017 yet the PID was made, as the director here is pointing out in paragraph 10, 'two days after' the probation report meeting.

**Mr MacSporran:** Yes.

**Dr HORTON:** That is not a new fact.

**Mr MacSporran:** No.

**Dr HORTON:** That is an example of something which has not changed between the date that Ms Kelsey was charged and 9 April 2021.

**Mr MacSporran:** Yes. Look, I do not see that as being fatal at all to the charge proceeding. Contrary to what you were suggesting yesterday, I had a brief look. I am not across the detail to be able to explain it in some rational way now, but I would like the opportunity when I come back to deal with that point, but my evidence here, to be expanded when I come back, if that is permissible, is that that is not a fatal aspect to the assessment of all of this case going forward to a jury.

**Dr HORTON:** Next, it always had to be shown that a majority of council was affected—infected, if you like—by the relevant bad motive because one councillor alone, or less than a majority, could not have brought about Mr Kelsey's termination.

**Mr MacSporran:** No, you see, that is where the misconception arises in respect of this. If you are charging fraud against the eight on the basis that they aided, abetted, counselled or procured each other and so forth in this case led by Smith, at the end of the day if this had gone to a jury the charge of fraud would have been assessed by the jury on the judge's directions to them to say, 'Well, is the conduct of each dishonest in the relevant sense?' And it might have been, for instance, say, one councillor was that dishonest by knowing what Smith's motive was and agreeing to be part of it to cause the vote to terminate her.

**Dr HORTON:** I think you are agreeing with me, Mr MacSporran. You had to get a majority.

**Mr MacSporran:** Not at all.

**Dr HORTON:** Because a minority would not have been able themselves to bring about Ms Kelsey's termination.

**Mr MacSporran:** 7-5 is the majority, yes.

**Dr HORTON:** Yes. I think we are agreeing.

**Mr MacSporran:** Sorry. I do not think you are putting it that way at all, frankly. Can I finish my explanation for a moment? The seven and Luke Smith—Luke Smith stood aside; he cannot vote, by order of the commission.

**Dr HORTON:** He was enjoined, Mr MacSporran.

**Mr MacSporran:** Enjoined, thank you. He cannot vote because he has been enjoined, Mr Horton; is that so? He cannot vote. So the other seven can. They are charged with fraud on the basis that they do his bidding, knowing what he is up to, that he wants her removed because she is a PID. The seven: there might have been at the end of the day a jury's assessment, 'Well, three of those we are not satisfied beyond reasonable doubt their reasons were the PID as opposed to some innocent explanation.' That would not mean that Smith and the balance could not be convicted of fraud. That is a matter for a jury.

**Dr HORTON:** You accept that if the evidence was not sufficient on elements the judge might decide it ought not go to the jury or might direct a jury to return a verdict of acquittal? You accept that?

**Mr MacSporran:** Yes, if that was the submission made and the judge accepted it, yes.

**Dr HORTON:** I think you are saying on this, 'Let's just deal with it as a matter of principle.' A matter of credit might be unlikely to be dealt with in that way, of course, if it turned on credit. But if it turned on, for example, whether the reprisal—whether the action was in response to a public interest disclosure, it might be on a fact like that that the matter would be not referred to a jury if the evidence was insufficient at trial or the judge might direct a verdict of acquittal.

**Mr MacSporran:** I am not prepared to accept that proposition until I, as I say, have access to the material and give some thought to it when I come back and I am prepared to engage that debate with you. Not today, thank you.

**Dr HORTON:** Thank you. Let us move on. I want to check, because you mentioned yesterday some thousands of pages. I want to just check and put on the record what you had available to you for giving evidence yesterday and today. You were provided with 1,000 pages of documents by the inquiry; is that correct?

**Mr MacSporran:** I thought it was 1,200 or 1,300 or something. It is around that large amount. I do not know the exact pages.

**Dr HORTON:** Two lever arch folders, double sided printing; correct?

**Mr MacSporran:** That is what you provided me here with yesterday, yes.

**Dr HORTON:** That is my question. This is what we are dealing with.

**Mr MacSporran:** Yes.

**Dr HORTON:** When did you first see those documents—those bundles, I should say?

**Mr MacSporran:** It would have been—I am just trying to think. I think it was either last Friday or the weekend.

**Dr HORTON:** Understood.

**Mr MacSporran:** I will check that. I am not sure of the exact time of it.

**Dr HORTON:** All the documents in the bundle—is this correct?—are documents from your commission?

**Mr MacSporran:** I assume so, yes. I think we disclosed them to you and you picked out 1,200 or a thousand to refer back as being the ones you wanted us to deal with, or me to deal with in particular, yes.

**Dr HORTON:** Did you have some topics provided by your lawyers that we had given notice of as topics that you might be asked about?

**Mr MacSporran:** Yes, very broad topics, yes.

**Dr HORTON:** Did you receive those topics on Friday of last week?

**Mr MacSporran:** Probably. I cannot tell you exactly when. It would have been around about then.

**Dr HORTON:** And you have the assistance here and had the assistance of five legal representatives—is that correct?—in preparing for yesterday and today?

**Mr MacSporran:** Yes. Can I just qualify that slightly, in my own defence? What I said yesterday about my IT or technical incompetence was a reference to my practice at work. I do not have access myself and I do not usually need access so I do not concern myself with IT access to our record system. So in preparation for this inquiry I was not able to access the records that related to my involvement in this entire exercise so I had to rely on others to provide any bundles of material that had my emails, calendar appointments and so forth to give me some idea of my involvement directly, firstly, in the topic of this inquiry. Now, that is just the way it was.

I had assistance but there were more pressing issues—not just my running the commission but also the people who were trying to help me find those documents to give them to me having to get the same exercise for other witnesses in the inquiry who were going to talk about their documents. As you know from the material we have disclosed to the inquiry, there are many, many thousands of documents that were extracted from our system and provided to you for that purpose.

**Dr HORTON:** Mr MacSporran—

**Mr MacSporran:** What I am getting around to saying is that at the end of the day I have not had an opportunity to assess my involvement of our own documents or the bundle you provided late last week. That is why I am very keen, as you propose, to bring me back when I have had a chance to assess that material more fully and provide you with whatever explanations I can to assist you and the committee.

**Dr HORTON:** Chair, they are the questions I have for Mr MacSporran today. Might he be stood down to return, as the committee has indicated, subject to any questions?

**CHAIR:** Thank you, Mr Horton. Are there any questions at this point?

**Mr Dunning:** Excuse me, Chair—

**CHAIR:** Mr Dunning, please. Mr MacSporran, we are going to ask if any committee members have questions.

**Mr MacSporran:** I am sorry.



**CHAIR:** Deputy Chair?

**Mr SULLIVAN:** Thanks, Chair. Mr MacSporran, if I can go to the issues raised around the QIRC information. I think it is fair in your evidence yesterday, and I guess counsel assisting prompted that this morning too, you said effectively that apart from the closing summary you did not give consideration to much of the material that the QIRC used?

**Mr MacSporran:** Mr Sullivan, I think that is probably right, what I said. But can I qualify that again by the fact that I am responding yesterday on the run without being given documents to read before I answer here. The assumption is made, clearly by Mr Horton's last series of questions, that I was completely au fait with at least the bundle that he gave me, and I am not.

**Mr SULLIVAN:** Sure, but from your recollection, at the time you did not seek further information from the QIRC hearing in your—

**Mr MacSporran:** I did not seek further information. I may have had some in the memos that I was given. I just cannot assist you with the detail of that at the moment. I would like some time to reflect on that.

**Mr SULLIVAN:** You also referred to a meeting or briefing, I think you may have described it, with Mr Byrne QC as he was then.

**Mr MacSporran:** Sure.

**Mr SULLIVAN:** I am sure His Honour will not be offended by that reference. Forgive me: I forget if you said you and a colleague briefed him or you briefed him and a colleague.

**Mr MacSporran:** I went with Mr Alsbury, as a courtesy, to speak to Mr Byrne.

**Mr SULLIVAN:** Thank you. In that discussion, can I ask two questions? Are you aware if any material from the QIRC hearing was contained in the CCC brief of evidence provided to the DPP?

**Mr MacSporran:** I do not think it was. I do not think it was. It came up as a relevant feature after they decided or they were deciding to discontinue and we then promoted their need to look at the QIRC material.

**Mr SULLIVAN:** Are you aware or do you recall, in that meeting with Mr Byrne or further discussions when it was briefed to the relevant prosecutor or consultant prosecutor, I believe, whether there was any discussion around what material was available at the QIRC at the time?

**Mr MacSporran:** I think there was, yes.

**Mr SULLIVAN:** There was discussion between you and Mr Byrne on that point?

**Mr MacSporran:** Not between me and Mr Byrne, no, but between the lawyers, I think, from our organisation and the prosecutors, I think, in that mix-up going forward before the decisions were made to discontinue—I think. But, again, I was not personally involved so it is a memory of mine only.

**Mr SULLIVAN:** If you are not personally involved, it did not feature as part of your discussion—

**Mr MacSporran:** No, not that I recall.

**Mr SULLIVAN:**—with the director?

**Mr MacSporran:** With Mr Byrne it was just a meet and greet, as it were, as a courtesy to hand the material over, give him a bit of a heads-up about what the fraud charge was about, leave it with him with the expectation that if there was a difficulty with it we would be told and we would try to advance our arguments about it. There was never any such query. Furthermore, when I was reviewing this just overnight I came across some written submissions by the prosecution team at DPP, because apparently the committal was listed for a full hand-up committal with a no-case submission anticipated by the defence. The Crown produced seven or eight written outlines by the prosecutors to say, 'Here's why the matter should proceed to a jury.' Consistently with Mr Heaton's memo, there was never a question to the DPP that there was no case to answer or that it had no prospects. It proceeded until nine days into the committal when the situation changed, as Mr Heaton's memo reveals.

**Mr SULLIVAN:** You have drawn us to Mr Heaton QC's memo and then you start in your opening Mr Alsbury's memo, I believe, of 23 April. Do you consider that that memo from Mr Alsbury effectively set out—it mentions what charges are suggested or preferred. But do you believe that it included what elements would need to be proven beyond reasonable doubt, including what issues would need to be negated?

**Mr MacSporran:** I think it did. It is a summary of matters, if you like—

**Mr SULLIVAN:** Could you draw us to that, in that memo?

**Mr MacSporran:** I am sorry?

**Mr SULLIVAN:** Could you point to that in the memo?

**Mr MacSporran:** It is 317, I think, if I remember.

**Mr SULLIVAN:** I think it is 322 where he sets out, at paragraph 17, what councillors—what charges should be preferred.

**Mr MacSporran:** Yes, that is what I refer—

**Mr SULLIVAN:** That is my language, sorry.

**Mr MacSporran:** I am sorry; I referred to that before. It is para 17, the fourth page, which is page 322 of Mr Alsbury's memo.

**Mr SULLIVAN:** At paragraph 17.

**Mr MacSporran:** And I quoted that paragraph 17 earlier. I said—

For all councillors mentioned at paragraph 11, above—

that is on page 3—

and Luke Smith:

So it is the seven councillors and Luke Smith—

Section 408C(1)(e);(2A)—

that is the circumstance of aggravation, 2A. And the charge is—

... dishonestly caused detriment, namely the dismissal from employment, to Sharon Rae Marie Kelsey.

And the detriment was of a value of at least \$100,000.

**Mr SULLIVAN:** So you say that they are the elements that need to be proven beyond a reasonable doubt?

**Mr MacSporran:** Yes, that is the formulation of the charge, yes.

**Mr SULLIVAN:** I guess my question is also where in the document I pointed to—what would need to be negated for a successful prosecution?

**Mr MacSporran:** Again, I just have to read the document. That is where it is.

**Mr SULLIVAN:** Okay, but that is a document that you had at the time of your decision-making.

**Mr MacSporran:** Yes, that is—

**Mr SULLIVAN:** And I think you said yesterday it was likely to be the source of your meeting on the 24th? The memo was the 23rd and the meeting was the 24th, if I am correct.

**Mr MacSporran:** Yes and we had the meetings. This is the material that formally comes to me with the cover sheet to ultimately say yes or no, it should go to a police officer.

**Mr SULLIVAN:** I am happy to be drawn to it if it is not an absence, but in the absence of setting out, as Mr Heaton's memo did years later, the elements and what needed to be proved and what needed to be negated, can I assume that that was an issue you turned your mind to in deciding what charges and, in your words, shorthand approved that memo?

**Mr MacSporran:** Absolutely. You have to do that, because what I am doing is saying that my appreciation of the material available is sufficient in terms of there being a prima facie case and reasonable prospects of conviction such that it can go to a police officer to exercise their independent discretion to charge or not.

**Mr SULLIVAN:** So in the absence of that being in the papers, can I take us to that meeting on the 24th?

**Mr MacSporran:** Yes.

**Mr SULLIVAN:** Did you ask DC Francis if he had seen material of the QIRC?

**Mr MacSporran:** I cannot recall that. I may have. I cannot recall.

**Mr SULLIVAN:** Do you recall—and I will get the attendance incomplete, but I am sure it was DC Francis, Hutchings, Paul Alsbury, Ms McIntyre—

**Mr MacSporran:** Ms McIntyre.

**Mr SULLIVAN:** And there are handwritten notes that counsel has taken us through in terms of their recollections of that meeting.

**Mr MacSporran:** Yes.

**Mr SULLIVAN:** Did you go through in that meeting what elements of those proposed charges needed to be established and what needed to be negated for there to be a successful prosecution?

**Mr MacSporran:** My memory is I would not have done it that way, because that would have been an artificial way of dealing with these matters. These discussions about the evidence coming in—what it meant, where it was going, how it was shaping up—were all in the mix throughout. We do not sit down then and have a meeting where you tick a box to say, 'Is that element present or not?' These are matters of judgement and assessment, which I have the ultimate call on whether it goes to a police officer and what they do with it. As I say, it is not quite as clinical as you are supposing it might be, but I canvass all of those issues necessarily.

**Mr SULLIVAN:** With respect, it does not seem to be on the papers that you say formed the basis of that meeting, it does not seem to be in the notes of your officials coming out of that meeting and it does not seem to be within your recollection of that meeting that you went through the elements of what needed to be proven and whether or not it would be—sorry, I will put it this way: in considering whether charges should proceed or not, do you consider at that point whether there are prospects to succeed?

**Mr MacSporran:** Yes, that is an assessment that is made. It is the same test the DPP applies.

**Mr SULLIVAN:** You can make that assessment without considering what elements need to be proven and what needs to be negated?

**Mr MacSporran:** No, that is not the case, Mr Sullivan. All of those considerations are taken into account, and necessarily so. It is how you apply the test.

**Mr SULLIVAN:** As we see from page 403, in Mr Heaton's memo, it is particularly an issue of what needs to be negated when you are dealing with the dishonesty element of fraud; is that a fair point?

**Mr MacSporran:** Yes. Where you have a case where they give so-called innocent explanations for why they agreed to terminate as part of that group of seven, with the mayor sidelined, you have to consider the judgement call about whether those innocent explanations are likely to be accepted by a jury or, more particularly, whether the Crown can exclude that that was a reason, as opposed to—

**Mr SULLIVAN:** You say at the time those considerations were—

**Mr MacSporran:** Absolutely. That is routinely engaged in as a process of assessing these things.

**Mr SULLIVAN:** You said this morning—we will have to check—I think you said that the issues that Mr Heaton raised in his memo and the memo that he provided are not dissimilar to the material that the CCC had at the time. I think you used the phrase 'not dissimilar'.

**Mr MacSporran:** Yes, that is a summary by—

**Mr SULLIVAN:** Can you see from this exchange, perhaps, that there is a level of detail extraordinarily different between the considerations of Mr Heaton's memo and the prospects of success and what appears to be a discussion between you and five or six of your officials at the CCC on the 24th, noting the charges were laid on the 26th, I believe?

**Mr MacSporran:** Yes, but bear in mind Mr Heaton's memo of 6 April 2021 is produced in circumstances where he knows there is pushback from the CCC at the highest level to promote whether this is a case that should go forward or not. He has entertained as a courtesy to us, as he should, I think, arguments that we might want to advance. He has given us a chance to make written submissions and on request, and I think appropriately, he has entertained a meeting with us—myself and Mr Alsbury and him and his prosecutor and staff—to simply talk it through to see whether we could arrive at a different view. Mr Heaton is well aware that there is, if you like, controversy and different opinions about whether this should go forward or not, so Mr Heaton has recorded it in that fashion to justify, if you like, a case of this size and to document a case of this size around—

**Mr SULLIVAN:** His legal opinion then, yes. In terms of looking at this evidence and coming to a different point of view, was there any voice in that meeting on the 24th that put a different view—

**Mr MacSporran:** Mr Alsbury—

**Mr SULLIVAN:**—that there were no prospects of success?

**Mr MacSporran:** I am sorry, can I have you repeat that question? I was talking over the end of your question, sorry.

**CHAIR:** Perhaps don't do that, Mr MacSporran.

**Mr SULLIVAN:** To put the view on the 24th that there were no prospects for success for that particular charge?

**Mr MacSporran:** I think it is fair to say the DPP view was that there was no longer sufficient prospects.

**Mr SULLIVAN:** Sorry, on the meeting of 24 April 2019 with your officials?

**Mr MacSporran:** No. No-one suggested from our end that the case had, to my memory, insufficient prospects to go forward.

**Mr SULLIVAN:** Again to your memory, because I do not see it in the memo, did anybody raise character issues or any other issues in that meeting on the 24th about what had occurred at the QIRC?

**Mr MacSporran:** I do not—

**Mr SULLIVAN:** To your recollection? I am just asking, because it was a meeting that obviously was significant.

**Mr MacSporran:** To my recollection, no, but that is in the context of there being a long process leading up to this meeting. Again, I would like to reserve my right to review the material before I come back next time, and perhaps if I have a different recollection or I have found something that contradicts that I would like to be able to inform you about that.

**Mr SULLIVAN:** Why I press on this meeting, Mr MacSporran, is that not only is it the date that you initialled the memo, but it is also then what seems to be several sets of handwritten notes coming out with the proposition of charges are to be laid and what charges they would be.

**Mr MacSporran:** Yes, because it was a view that we collectively held.

**Mr SULLIVAN:** That was a meeting where the position was settled—as you took us to this morning, Mr Alsbury's paragraph 17 on page 322—what charges should be laid, and two days later they were.

**Mr MacSporran:** But in the context of, as Mr Alsbury said in his memo—at 317, from memory—just bear with me—322—

**Mr SULLIVAN:** He set out the proposed charges in—**Mr MacSporran:** Paragraph 15 on page 321—

I consider the following charges are appropriate (whilst accepting that the ultimate decision will be for a police officer seconded to the CCC).

**Mr SULLIVAN:** But that police officer was at that meeting on the 24th?

**Mr MacSporran:** I think he was. I am not sure. It will be in the notes who attended. But it was always intended to go to him to make the decision.

**Mr SULLIVAN:** And several of the attendees at that meeting walked away with what charges were preferred or were approved, and you yourself, on your shorthand, as you described it, listed the charges—not just approve or disapprove; you have listed the charges, correct?

**Mr MacSporran:** Correct, but what I explained this morning—

**Mr SULLIVAN:** I understand, with the reference to Mr Alsbury's 'to remove any doubt' paragraph?

**Mr MacSporran:** Yes. I would expect, but you will establish when the witnesses come in and they are asked—we will see what they say, but I am pretty confident that they would not have thought, in particular Sergeant Francis would not have thought that he had no choice but to charge because I had said I recommend it, in the context I have explained this morning, but you will have to ask him that, Mr Sullivan.

**CHAIR:** We will go to a question from Dr Robinson.

**Dr ROBINSON:** Mr MacSporran, yesterday we were talking about the issue of the charging officer, the police officer who makes the charges. Generally speaking, when you have recommended to the charging officer that charges be laid, have there been any times when they have differed from you and not gone ahead and laid the charges? If you need to take that on notice, I am happy for you to come back with further details.

**Mr MacSporran:** I would like to take it on notice generally, but I can, as we sit here, specifically remember one occasion, because it was a recent occasion, and that was the occasion arising out of our investigation into the 50/50 recruitment involving the QPS. We called it our Operation Arista. It became a public report which was recently tabled in parliament. You will recall the event; I have spoken to the committee about it in public session et cetera.

**CHAIR:** Quite familiar with it.

**Mr MacSporran:** My view was, fairly strongly I must say, that the conduct that had been uncovered as part of that investigation warranted fraud charges. Mr Alsbury agreed with me. We went through the process that you have seen here which is routinely done and every such case that comes up the line, we send it down the line. I cannot think who the police officer was now, but the word came back that they were not prepared to lay a charge or charges. I saw the memo that came back from the officer. I did not agree with it, but that is what happened. As you know, no charges were laid and a public report was tabled in parliament.

**CHAIR:** Could you take the balance of that on notice, please?

**Mr MacSporran:** Yes, certainly, Mr Krause.

**Mrs McMAHON:** I want to turn to the issue of public interest that we discussed yesterday, particularly considerations about who the persons under investigation or to be charged are and specifically in relation to elected officials. I understand with the remit of the CCC that you assess and investigate some very high profile public people and in fact you have investigated some of the highest profiled public people in the state. I was wondering whether there are instances, or whether there is a procedure in those instances, whereby the CCC does take into account to some level the employment, the job, the impact or the political or government ramifications of charging any of these people, whether they be elected officials or some of the most senior bureaucrats in this state.

**Mr MacSporran:** I think it is fair to say—I suppose to state the obvious—that when the investigation is complete you cannot ignore the nature of the position and the impact that might occur if charges are laid. Having said that, we have to be very careful that we are not seen to be favouring one party over another simply because they are either an elected official or a high-profile public servant. We would be the first to be scathingly criticised if we were seen to be in any way favouring someone because they were a minister or an MP as opposed to your local run-of-the-mill drug trafficker who is investigated and charged on the street corner when he or she is dealing.

In all of these cases all factors are considered and given very careful consideration, including, I might say, the Logan case. We agonised over this, as you know from the material—Mr Alsbury in particular—and then we decided to charge. We always consider all aspects, but we have to be very careful not to be seen to be favouring someone over someone else. That is how the criminal justice system works, as you know.

**Mrs McMAHON:** In this case or in other matters where there have been high-profile persons of interest, would it be a matter of course that those considerations are written somewhere or that those assessments are made or committed to paper?

**Mr MacSporran:** They may be, just as an objective fact that arises in the investigation but not as a special consideration that they are a high-profile person or a member of parliament et cetera. You cannot give that additional weight over and above someone who is not a member of parliament. If the evidence is sufficient, it is sufficient. If the public interest test is satisfied in the way the guidelines are outlined then the case proceeds—and why should it not, frankly?

**CHAIR:** I want to ask you about a slightly different issue. It is one that has arisen in the submissions. It concerns a related issue to this inquiry—it is about Ipswich City Council. Around the time when—and you referred to it yesterday—there was an act of this parliament to dissolve Ipswich City Council which came about after two previous failed attempts at dissolution by the minister under previous legislation, there was a media report on 10 July 2018 which indicated that the decision to sack Ipswich City Council was being made 'acting on the advice that I've had'—and the 'I've' in that context was the minister—'from the chair of the CCC'. There was an implication in that exchange that there had been advice given by you to the minister to sack Ipswich City Council. Did you have contact like that in any sense with the minister for local government seeking his sacking of Logan City Council at any stage of this saga that unfolded in Logan City in 2018 and 2019? Did you advise him to do the same thing?

**Mr MacSporran:** I am sorry, I am just not quite understanding your question. Are you asking whether I dealt with the minister in respect of Ipswich?

**CHAIR:** No, I am asking whether you gave similar advice as was reportedly given to the minister about Ipswich in respect of Logan City Council in that it should be sacked?

**Mr MacSporran:** No, because the fall of the Logan City Council came about simply because the mathematics of them being charged and stood down, as the law mandated they should be, left the council unable to operate and an administrator was put in. That is how that happened.

**CHAIR:** I understand that. I will just go one step further with that. As I understand it, there could have been other options considered by the minister at that time. Before the dissolution came about and before the charges were even laid, which ultimately led to the dissolution, did you have any conversations or give any indication to the minister at all that you were seeking for Logan City Council to be dismissed? This is before the charges.

**Mr MacSporran:** I understand. I think you are referring, if I am correctly interpreting your question, Mr Krause, to what Mr Horton raised with me yesterday, which was the note in the bundle here of 8 August 2018. If I remember from yesterday, there is an email from Mr Williams, who was Sharon Kelsey's solicitor at Minters, to Mr Hutchings, our director of Legal Services, at the time saying, 'Thanks for the support. We are particularly interested in the possibility of administration as being a possible solution. It might be the only practical outcome' et cetera. I think that might be what you are referring to.

**CHAIR:** No, that is not what I am referring to, but it is interesting you raise that. I just wanted you to answer whether you had any conversations or discussions or whether any advice was given to the minister in any respect prior to the charges being laid—or after the charges were laid, for that matter—about Logan City Council being dismissed.

**Mr MacSporran:** I would like to take that on notice. My recollection is not sufficient at the moment to answer that adequately, but I would be very happy to come back and give you as fulsome an answer as I can after I have had the opportunity to review the documentation in this case, which is voluminous.

**CHAIR:** So you cannot rule it out in that case?

**Mr MacSporran:** That is unfair, with great respect. I am telling you I am here to help and I want to come back and give a more fulsome answer once I have had the opportunity, in fairness to me and my organisation, to assess this material, which is voluminous. I do not think it is too much to ask, Mr Krause, frankly.

**CHAIR:** I have another question in relation to Ipswich which has arisen from the submissions. A couple of mayors were subject to criminal charges arising from investigations by the CCC. I will take a step back, if I may. At Logan City Council the five councillors who were not impacted by charges were appointed as advisers to the administrator who was then appointed. As I understand it—and correct me if I am wrong—this was done with your okay in that case?

**Mr MacSporran:** My memory is that Ms Tamara O'Shea, the administrator appointed, rang me to check whether we had any adverse holdings in respect of four of the five who had not been charged and whether we would have any concerns about them being appointed to assist the administrator, Ms O'Shea. I think we checked our holdings and I had no knowledge of any adverse evidence against them so I think I told her that. That is my memory, but there might be documentation about that, I am not sure.

**CHAIR:** In relation to Ipswich there were 10 councillors who have not been charged and, as I understand it, will not be charged with any type of corruption offence arising from Operation Windage, I think it was.

**Mr MacSporran:** It was Windage; that is correct, yes.

**CHAIR:** I previously raised this in the parliamentary inquiry into the act of parliament that dissolved Ipswich City Council. Why were those 10 councillors not given the ability to either stay in office with an administrator appointed or be appointed as advisers?

**Mr MacSporran:** Mr Krause, that is not something I can answer. That is a matter for the administrator, the minister, the department. Ms O'Shea rang me; I did not ring her.

**CHAIR:** That is okay. I am talking about Ipswich at the moment.

**Mr MacSporran:** I know.

**CHAIR:** The media report seemed fairly reliable because the then minister, Stirling Hinchliffe, spoke on ABC Radio in Brisbane and said that he was sacking Ipswich City Council, or dissolving the council, on your advice. Are you saying now that your advice was not to sack the council?

**Mr MacSporran:** No, that is a different question. You asked me a moment ago about why the ones who were not charged were not put in to help the administrator. It is a different question altogether about the sacking of the council. I was consulted, if I remember, but I would have to look at the documentation about that to see the sequence—

**CHAIR:** I know you want to take that one on notice.

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

**Mr MacSporran:** I think, in fairness to me, I am entitled to. I was not aware, except from reading the paper, that you had spoken to a Boonah newspaper that suggested there might be some questions about Ipswich. There was no notice to me in the material I was given that Ipswich might come up here.

**CHAIR:** No.

**Mr MacSporran:** I would like the opportunity, if I may, to reflect on the documentation to get this sequence right, because it is obviously important to you. I do not quarrel with the fact that it is, but because it is I would like to give you the most assistance I can and be fully informed to do so, if I could, please.

**CHAIR:** The point I wanted to get to, Mr MacSporran, was that there were no charges laid against the five remaining councillors in Logan.

**Mr MacSporran:** That is so.

**CHAIR:** They were, with your accession, if not at your instigation, permitted to be employed as advisers to the administrator, but there was no such luxury—

**Mr SULLIVAN:** Chair, I am taking a point of order on this. Going to what happened after the Ipswich council was sacked is outside the terms of reference of this inquiry. It is not in the papers presented to the witness or to the committee. There were submissions by particular ex-councillors—

**CHAIR:** Yes, there were.

**Mr SULLIVAN:**—to the effect that they were relevant to the terms of reference they have been accepted. Your line of questioning goes to what happened after their—it is completely outside the terms of reference of the investigations for Logan City Council.

**CHAIR:** With respect, Deputy Chair, I think it is a related matter, but I am happy to rest at this point on the basis that the chairperson will come back to us on that matter. I was just going to make the point that those councillors—and Mr MacSporran has made various reference to matters being able to proceed to a jury—were not accused of anything or, indeed, charged with anything and were not entitled to go to their jury, the voters, in due course. I am happy to leave it at that point and to hear more from Mr MacSporran about the matter when he has had a chance to review it. Are there any other questions from committee members?

**Mr CRANDON:** Mr MacSporran, this is a continuation of my questions yesterday in relation to the matter of power and who is where in the organisation. Yesterday I contrasted Smith and his power, his control, with yourself. I outlined some aspects and referenced specifically the comment written by you on the front of that memo that basically agreed with the recommendation to 'charge Smith x 3 and the 7 relevant councillors' et cetera.

**Mr MacSporran:** That is page 317 of bundle 2.

**Mr CRANDON:** Yes. I took the opportunity to have a look—and you mentioned it earlier—at Investigation Arista. In the foreword, you say—I am selecting various sentences out of the full foreword—

It is about how messages from the executive leadership are communicated, understood, acted and reported on within an agency.

...

This report is important for the public sector because it could happen in any agency.

...

Who is prepared to speak truth to power?

...

Investigation Arista details how the Queensland Police Service (QPS) reacted when its most senior officer, the then Commissioner of Police, decided to implement a strategy about gender equity.

...

Senior officers claimed not to know that, within their organisation, "aspirations", when expressed by those higher up the chain of command, were taken as direct orders.

...

So the staff who had been tasked with the implementation of the strategy began to manipulate processes, data, language, and the truth to gratify executive "aspirations" and the organisation's media image.

I think that is a very telling last sentence that I am quoting, and it is not the end of your foreword. It is telling in a number of ways, and they have been alluded to by Mr Horton—that is, the tone of the material that has been presented to us throughout this hearing, and certainly was presented to you, appears to be very slanted to one side.

I asked you yesterday whether or not you felt that Sergeant Francis would have had the view that it was an order or that it was a decision made by you or the alternative—that it was being sent down to him to make a decision. The officers in Arista were very experienced police officers who were dealing with a matter that was presented to them by their most senior officer—the then Commissioner of Police. You are the most senior officer within the CCC. You are the chair of the CCC.

**Mr MacSporran:** I am the top dog of the watchdog.

**Mr CRANDON:** Yes: you are the top dog of the watchdog—well said. Can you contemplate similarities between those officers and the way they handled the matter with the aspirations that you had to claim a scalp, a big scalp, and all of the tone? Can you contemplate that things may have gone the way I suggested to you yesterday, and that is that it was regarded as an order—that it is going to be: 'This is what we're going to do,' rather than, 'Give consideration to this'?

**Mr MacSporran:** Is that the question?

**Mr CRANDON:** Yes.

**Mr MacSporran:** Definitely not.

**Mr CRANDON:** Not in any way?

**Mr MacSporran:** Not in any way at all, for the reasons I have been at pains to say for a day and a half.

**CHAIR:** There are no other questions, but the deputy chair wants to put something on the record.

**Mr SULLIVAN:** For completeness, I referred to a range of handwritten notes in earlier questions. I put on the record that I was referring to folder 2, pages 327, 329, 333 and 335, which are a range of different officers' handwritten remarks.

**CHAIR:** Mr MacSporran, there being no other questions at this point, we are in a position to stand you down pending recall in some days time. We will take a break for 15 minutes. Thank you, Mr MacSporran.

**Mr MacSporran:** Thank you, Mr Krause.

**Proceedings suspended from 10.38 am to 10.59 am.**



**CHAIR:** We will resume the hearing now. Mr Horton, did you wish to proceed with your next witness?

**Dr HORTON:** Yes. Before I do, Chair, I seek to have tabled the two volumes of material to which reference has been made in the course of the examination of witnesses. Volume 1 comprises 736 pages; volume 2 has 455 pages, plus 95 pages in a separate divider in that volume.

**CHAIR:** We will consider them tabled but not published at this point.

**Dr HORTON:** And, also, an email from me to Mr MacSporran's legal representatives of Friday, 13 August 2021 at 13:48—I will not hand you a copy, but it is in the committee's records—being the topics of which Mr MacSporran was advised on Friday before his appearance here.

**CHAIR:** We can also consider that document tabled but not published at this point in time.

**Dr HORTON:** Could we proceed with the next witness, Mr Paul Alsbury of the CCC.

**Mr Paul ALSBURY** (accompanied by Mr Peter Dunning QC and Mr Matthew Wilkinson)

*Witness was sworn—*

**Dr HORTON:** You are Paul Alsbury; is that correct?

**Mr Alsbury:** That is correct.

**Dr HORTON:** What is your position description at the CCC?

**Mr Alsbury:** The job title is Senior Executive Officer (Corruption).

**Dr HORTON:** So do I understand it correctly that you really are the second in charge to Mr MacSporran in matters to do with corruption?

**Mr Alsbury:** In a legislative sense, yes. Administratively, I report to the chief executive officer.

**Dr HORTON:** I see. In a legislative sense, do you report directly to Mr MacSporran, as a matter of practice, on matters of corruption?

**Mr Alsbury:** Yes. The way the legislation is worded is that I am responsible to the chairperson for the performance of the commission's corruption functions.

**Dr HORTON:** Thank you. Mr Alsbury, there are two broad issues which my questions to you will cover. One is the CCC's involvement in a QIRC proceeding commenced by Ms Sharon Kelsey. The second is to do with the decision to charge section 408C Fraud of certain people after that. Were you involved in both streams?

**Mr Alsbury:** Well, I did not have any involvement in the commencement of QIRC proceedings. I certainly had involvement in relation to the charging of the offence that you have mentioned.

**Dr HORTON:** I know you did not commence, but did you have any involvement in the CCC's involvement in that proceeding?

**Mr Alsbury:** Yes, I did.

**Dr HORTON:** The CCC decided not to commence a proceeding it might otherwise have commenced in the QIRC or elsewhere concerning Ms Kelsey's alleged reprisal?

**Mr Alsbury:** That is correct.

**Dr HORTON:** Let's start from this perspective. I do not want to take you through this in more detail than you need because the committee, with another witness, has already been through the chronology. Could I take you to the larger of the two bundles, Mr Alsbury, starting at about page 89. Mr Alsbury, if I go too quickly through this or you need to look each side of what I am taking you to—hopefully it is chronological—please ask me to slow down, if you like, if I am going through it too quickly. I am going to attempt to go as expeditiously as I can in the interests of your time and the committee's.

**Mr Alsbury:** Certainly.

**Dr HORTON:** If you will look at page 89, please. It is a meeting with MinterEllison. Were you present for this meeting?

**Mr Alsbury:** I was not.

**Dr HORTON:** Can I ask you to note, please—it is relevant to what comes later—you will see it on 30 May 2018. It is with Ms Kelsey's lawyers and CCC representatives.

**Mr Alsbury:** Yes, I see that.

**Dr HORTON:** Mr Hutchings and Andrew Francis. On page 90 there is a reference about halfway down to these words: 'scope + time need discussing'. I think I am correct in interpreting those words in that way?

**Mr Alsbury:** Yes. Yes, I see that.

**Dr HORTON:** Were you involved about this time with any consideration given to whether Ms Kelsey's lawyers should request the QIRC to issue a summons to your organisation?

**Mr Alsbury:** Yes, I was certainly involved in discussions in relation to that issue, yes, Mr Horton.

**Dr HORTON:** Did those discussions include discussions as to the scope of any possible subpoena, summons, notice of attendance to produce?

**Mr Alsbury:** The only issue I raised in relation to scope, from my recollection—and my recollection has been refreshed by being able to go through emails—is that I had a concern that if the scope was too broad then there would be adverse resourcing implications for the commission. My focus was conducting the investigation that we were conducting under operation named Front. I did raise that with Mr Hutchings. His response was that was not an issue, as we were able to rely on section 213 of our act in responding to any process that might be served on us.

**Dr HORTON:** Yes, I think you have the benefit of a legislative provision which permitted you to refuse to produce, in effect, at your discretion.

**Mr Alsbury:** That is so, yes.

**Dr HORTON:** In fact, the answer to the summons in the end was voluntary anyway so far as the CCC was concerned because it could have excised those powers entirely over the entirety of the material?

**Mr Alsbury:** That is correct.

**Dr HORTON:** Do you remember being involved in any discussion with MinterEllison about possible scope?

**Mr Alsbury:** I was not involved in any discussions with MinterEllison, and I do not recall any conversation about that issue other than the email exchange I have just referred to. There may have been, though. There were a lot of conversations around this issue. It was a difficult issue that we were grappling with, I must say. Yes, I know there were a number of conversations about how we should approach the issue at the commission.

**Dr HORTON:** I am going to jump fast-forward a little bit, and if I have jumped too far and you need me to explain some other steps or take you through documents, stop me. You were ultimately asked by McInnes Wilson whether the CCC had advised—I think that is the word he uses, but I will come to your document—MinterEllison as to the documents which were in the CCC's possession?

**Mr Alsbury:** Do you mean McInnes Wilson?

**Dr HORTON:** I do mean McInnes Wilson.

**Mr Alsbury:** That is correct.

**Dr HORTON:** Yes. And you wrote back saying you were satisfied, in effect, that that had not occurred?

**Mr Alsbury:** That is correct.

**Dr HORTON:** You made inquiries, did you, before you sent that letter to McInnes Wilson?

**Mr Alsbury:** I did.

**Dr HORTON:** Were you satisfied that had not occurred?

**Mr Alsbury:** I was.

**Dr HORTON:** But you yourself had not been involved in all of the discussions with MinterEllison?

**Mr Alsbury:** That is correct. I had not been involved in any discussions with MinterEllison or with Ms Kelsey.

**Dr HORTON:** I understand. But I guess, then, that letter in which you advise McInnes Wilson of that conclusion was to the best of your knowledge and whatever investigation you did about it?

**Mr Alsbury:** That is so.

**Dr HORTON:** To this day, even if you have come to know things afterwards, does that assertion remain true?

**Mr Alsbury:** You have paraphrased it, Mr Horton, but I have recently seen the letter and I still consider it to be correct.

**Dr HORTON:** Thank you. In the course of the discussions with MinterEllison—although not in those discussions, I want to make clear—there was some involvement of you in the general issue. Can we go, for example, to page 97 of volume 1? It is 7 June 2018. It is an email that was sent to you by Rob Hutchings. Does Mr Hutchings report to you in any way?

**Mr Alsbury:** No. He does not now because he does not work at the commission, but he did not back in 2018 either. He was the head of the legal division; I was the head of the corruption division, so we were executive leadership team colleagues.

**Dr HORTON:** I see, and involved in this common issue together, it seems?

**Mr Alsbury:** Yes, that is correct.

**Dr HORTON:** Albeit with different roles?

**Mr Alsbury:** Yes.

**Dr HORTON:** So the concern is expressed here in the second paragraph: 'overriding concern is one of urgency for Sharon Kelsey's sake'. Do you remember what the urgency was at this time?

**Mr Alsbury:** My recollection is that there was some sort of court date coming up. To the best of my recollection, that is what that means.

**Dr HORTON:** And whose 'forensic advantage' did you understand to be referred to there where Mr Hutchings says to you—

I gather that while this timing might have some forensic advantage in light of the hearings commencing next week—which seems to make good your recollection—

the overriding concern is—

**Mr Alsbury:** I am trying to work out what that means. I could only speculate that he might be referring to some investigative strategy. I am reluctant to go too much further in relation to that because of operational reasons.

**Dr HORTON:** Yes, please do not speculate. I will come to other emails where I can make the point ultimately I want to make.

**Mr Alsbury:** All right.

**Dr HORTON:** If you look at page 103, the second paragraph of the email at the top of the page—

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

That is you, I understand?

**Mr Alsbury:** That is correct.

**Dr HORTON:** And—

in conjunction with the Chairperson.

**Mr Alsbury:** Yes.

**Dr HORTON:** Is that a correct statement of organisationally what should occur in connection with this issue?

**Mr Alsbury:** I have not had a look at what the delegations were back then, but that would have been appropriate given that I was the head of the division that had resulted in the generation of the documents.

**Dr HORTON:** Yes, and I am not being as technical for the moment as a delegation, because this might be something more informal than a delegated decision for the minute. But the words I want to focus on here are 'in conjunction with the Chairperson'. Was that something organisationally which was the right way to be doing this matter?

**Mr Alsbury:** As I said, this was an issue that the commission had grappled with. As far as I know, it had not arisen before so we had had a lot of discussions in relation to this matter. I suspect the reference to 'in conjunction with the Chairperson' was simply a recognition of the fact that there had been those discussions which had involved the chairperson, and it was such an important issue.

**Dr HORTON:** Thank you. Page 105, the next couple of pages along, is an email from Rob Hutchings to David Preston. You are not a party to this email, I just point out, but it said there—

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

Is that correct?

**Mr Alsbury:** Yes. That email is referring to timing and it refers to a point that I must have made—I must say, I do not recall it, to be honest—that it would be unfair to provide some things but not others. It would be unbalanced.

**Dr HORTON:** Yes, but the issue of whether this happens is at the end of the day your call—'this' being provision of the documents to the QIRC and when.

**Mr Alsbury:** That is correct, yes.

**Dr HORTON:** With perhaps the qualification only that you would do those things 'in conjunction with', by which, let us just say, consultation with the chair?

**Mr Alsbury:** That is so. There are a number of people involved in it, a number of lawyers, who provided advice to me and advice to the chairperson. There were a number of people involved in this issue at the time, but I was the person who was going to be signing the document if it was going to be signed.

**Dr HORTON:** Yes, I understand, and someone else might or you might do the dissemination authority, for example; is that right?

**Mr Alsbury:** I am sorry?

**Dr HORTON:** You might prepare, you might sign, the dissemination authority?

**Mr Alsbury:** That is correct, yes.

**Dr HORTON:** And that dissemination authority is really a formal act for the documents to leave the building which otherwise should be securely kept with the CCC?

**Mr Alsbury:** That is correct, yes.

**Dr HORTON:** And we will come to those but not in great detail because they themselves are not in issue, so far as I am concerned in my questioning with you. Page 107 is a letter from MinterEllison—you are not a party—to Mr Hutchings saying—

... it is imperative that all relevant materials are provided to the parties promptly.

Do you remember being advised that there was some pressure from Ms Kelsey's lawyers to get these documents out quickly?

**Mr Alsbury:** I would have been advised. I certainly remember being mindful of that, yes.

**Dr HORTON:** Why was it of concern whether Ms Kelsey's lawyers thought something was needing to be prompt?

**Mr Alsbury:** It was of no concern to me, although—I will just refresh my memory—there had been a decision made by that time that we would assist where we could in relation to this issue.

**Dr HORTON:** Who was that decision made by?

**Mr Alsbury:** That was made arising from discussions with the chairperson, Mr Hutchings from memory, myself. So it was a decision of the chairperson's, yes.

**Dr HORTON:** I see. Where do we see that decision recorded and the reasons for it?

**Mr Alsbury:** I do not recall seeing that it was sort of recorded, per se. So, yes, I cannot help you there.

**Dr HORTON:** Is this true that it is a decision made at an early stage of this investigation—that is, to assist where the CCC could?

**Mr Alsbury:** Yes.

**Dr HORTON:** And that what we see flow in the CCC's involvement or interaction with the CCC proceeding or issues concerning it is a flow-on from that decision about assisting where you could?

**Mr Alsbury:** That is fair to say, but if I can just add to that. It was also a decision to be measured, if I can use that term, which included, as much as we could, treating everyone in that litigation in the QIRC equally.

**Dr HORTON:** That was my next question, really. Assist where you could, but assist who? Who was it decided to assist or whom or what?

**Mr Alsbury:** It was Ms Kelsey and her legal representatives. They were of course the ones asking for assistance.

**Dr HORTON:** Yes, I see. And to your knowledge, had they requested that assistance?

**Mr Alsbury:** I am sorry?

**Dr HORTON:** To your knowledge, had they requested the assistance which it was decided to give—that is, assist Ms Kelsey and her legal representatives 'where we could'?

**Mr Alsbury:** I do not think they requested assistance on those terms. There is correspondence in this respect, but I think at the early stages they were requesting us to consider either instituting proceedings ourselves, either joining proceedings, or assisting with the provision of material. As I said, there is correspondence in relation to this so I would obviously defer to that rather than my memory of it.

**Dr HORTON:** Can I tell you respectfully you are right, and the correspondence is before the committee, the request from MinterEllison about a number of things for which ultimately—for example, I will point this out for your benefit. On page 79 of your bundle MinterEllison says—

It would be of great assistance if the CCC could provide us:—

certain things. Your recollection is correct: before this there have been other requests. But at this particular point in time the request is for assistance of this particular kind.

**Mr Alsbury:** All right. And to be complete, Mr Horton—and I do not want to be contrary—I was actually thinking of another letter which, if it is not in your bundle of documents, I am sure we can assist you in locating.

**Dr HORTON:** Yes. I do not want to take you back through every document, but 63 might be another of the type of letters that you are thinking about—12 April, where your involvement is requested by MinterEllison in more than one possible way.

**Mr Alsbury:** That is actually the letter I was thinking about, so thank you for drawing that to my attention.

**Dr HORTON:** That is before the committee. I have not taken you to it because your recollection seems to be consistent with what that document says.

**CHAIR:** Mr Alsbury, would it be okay if you put your microphone down a little bit so we can all hear you better, and Hansard as well? Also, Mr Horton, if you could just speak up a little louder, that would be appreciated by members of the committee as well.

**Dr HORTON:** Thank you. I am sorry for that.

**CHAIR:** And closer to the mic.

**Dr HORTON:** Thank you, I will. Mr Alsbury, would you return, please, to page 109 or so, where we were? You will see Mr MacSporran and you are both being involved in an issue on 20 June 2018 with Mr Rob Hutchings, which seems to be, if you turn over the page, about a discussion about the option of a summons issued by the court.

**Mr Alsbury:** Yes, that is correct.

**Dr HORTON:** I might try to short-circuit this. The assistance that you would give where you could to Ms Kelsey and her legal representatives, albeit in a measured way, as you have suggested, ends up being in the issue of a summons to the CCC after some considerable dealings between your staff in the CCC—one in particular, Mr Hutchings—and MinterEllison; is that correct?

**Mr Alsbury:** That is correct, Mr Horton, and there were two issues that were very important to the commission. One is that the summons that was issued, or the attendance notice—whatever the term is—required us to deliver the documentation to the QIRC as opposed to any of the parties. The other issue was that the parties be given notice of that document being issued and served on the commission.

**Dr HORTON:** Yes, I understand. Let me just check my notes, I am sorry. Now, ultimately the QIRC ruled that material inadmissible before it; is that correct?

**Mr Alsbury:** I think—well, yes. I think the ruling was to set aside the attendance notice—

**Dr HORTON:** The order, yes.

**Mr Alsbury:**—but there were a number of factors that led to that. One of them was that the material was inadmissible in the proceedings.

**Dr HORTON:** Yes. Have you reviewed the correspondence between CCC staff and MinterEllison regarding the issue of the summons or the notice of attendance to produce?

**Mr Alsbury:** I have reviewed the correspondence that is in this bundle, yes.

**Dr HORTON:** Yes. That is all I am referring to for the moment.

**Mr Alsbury:** Yes.

**Dr HORTON:** Did you think that that correspondence lives up to the adjective 'measured'?

**Mr Alsbury:** I did and I do.

**Dr HORTON:** I see. So this level of engagement between Mr Hutchings and Mr Williams which you see reflected in these documents is something which you thought was assisting Ms Kelsey and her lawyers but in a measured way only?

**Mr Alsbury:** That is correct.

**Dr HORTON:** Excuse me one moment, Mr Alsbury. Now can I ask you to turn please, Mr Alsbury, to page 273 of the larger volume? We are going to 6 August 2018, Mr Alsbury. By this time the documents have been sought pursuant to the notice and provided, but I think I am right in saying there has not yet been the ruling to which we just referred, but it is imminent. I think late in August it came.

**Mr Alsbury:** That is correct, yes. You are right.

**Dr HORTON:** This is a meeting on 6 August 2018 at which you were present?

**Mr Alsbury:** Yes.

**Dr HORTON:** And you have conveniently typed for us at 277 and 278 your handwritten notes taken contemporaneously at the meeting?

**Mr Alsbury:** To be completely accurate, I typed it for some Magistrates Court committal proceedings, but I am happy for you to use them.

**Dr HORTON:** Anyway, you say they are an accurate reflection of what is in the preceding pages that you have handwritten, thank you.

**Mr Alsbury:** That is right, yes.

**Dr HORTON:** At that meeting you will see—278—these words appear at second dot point and third dot point—

- Looking at making another reinstatement application
- If gets reinstated—makes it feasible.

**Mr Alsbury:** Yes.

**Dr HORTON:** To your knowledge, was that what Ms Kelsey told the meeting?

**Mr Alsbury:** That is correct. Mrs Kelsey said that, yes.

**Dr HORTON:** Were you aware of her success or otherwise at that time about whether she had succeeded in being reinstated on an interim basis by the QIRC?

**Mr Alsbury:** I do not know if I can say I was up to date. I am not familiar with that jurisdiction. I remember there were all sorts of things coming in and out about what was happening and appeals and all sorts of things, but I was aware generally where the litigation was up to.

**Dr HORTON:** I see. We will come back to this chronology when I discuss with you the fraud charge issue. You mentioned earlier the commitment to do whatever the CCC—I am sorry, to assist Ms Kelsey and her legal representatives. Could I take you to, please, page 633? It is an email sent by Mr MacSporran to you and others—copied to you, more accurately—on 4 September 2019 directed to Rob Hutchings—I am on leave from today but think we should do whatever we legitimately can to support Kelsey.

Is that an accurate framing of what you understand to be the chair's commitment to assist Ms Kelsey and her legal representatives?

**Mr Alsbury:** Yes.

**Dr HORTON:** Is the word 'legitimately' there the word that you have summarised as 'moderately'—'measured' I am sorry?

**Mr Alsbury:** I think 'legitimately' there—and I am only speculating—means lawfully and consistent with the carrying out of our functions. But when I read it, I did not think to myself, 'What does the chairperson mean by "legitimately?"' I suspect when I read it, it just confirmed what I already knew to be the case.

**Dr HORTON:** Yes, I see. It is a bit more than measured, isn't it, that statement?

**Mr Alsbury:** I am not sure I follow you, Mr Horton.

**Dr HORTON:** To do whatever one legitimately can, I want to suggest to you, is different from being measured.

**Mr Alsbury:** I do not know if I would agree with that. I think that is just being picky about the use of words, to be completely honest.

**Dr HORTON:** I understand. But in any event what is said at page 633 by the chair you understood to be completely consistent with the decision which had already been made by him about assisting Ms Kelsey and her legal representatives in a measured way?

**Mr Alsbury:** That is correct.

**Dr HORTON:** To your knowledge, were other people who worked for you on this team apprised of the chair's decision in that regard also?

**Mr Alsbury:** They would not have been necessarily apprised of this as a decision, but they certainly knew what was going on. They would have known what was going on when we disseminated the documents to the QIRC in July and they knew that request had been made. So they would have seen how Mr MacSporran's views about assisting Kelsey had manifested themselves.

**Dr HORTON:** And we can see him telling Mr Hutchings directly?

**Mr Alsbury:** Yes.

**Dr HORTON:** Moving back to this August date we have discussed, you were involved in the drafting or discussions about the letter which went from Mr MacSporran to the Minister for Local Government on 7 August but not sent, I think, till the following day?

**Mr Alsbury:** Mr Horton, I was trying to work out whether Mr Hutchings drafted it or whether I drafted it, but either way I certainly saw a draft and was happy with the letter.

**Dr HORTON:** Thank you. On pages 285 to 291 you will see you send the draft on—I am not suggesting for a minute that it matters whether you drafted it or not—and you are involved in the chain that goes to Mr MacSporran.

**Mr Alsbury:** That is correct.

**Dr HORTON:** Then the letter appears at page 291.

**Mr Alsbury:** Yes, it does.

**Dr HORTON:** If we look at the third paragraph—

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

What is the basis, in your understanding, of that legislative intent?

**Mr Alsbury:** I am sorry, Mr Horton. Can you just—

**Dr HORTON:** On page 291, the third paragraph. I am sorry; it is the last sentence.

**Mr Alsbury:** Yes, there is a provision in I think the Crime and Corruption Act which allows the commission to institute proceedings in relation to reprisal in certain circumstances. One of the conditions is that the person alleged to have been or suffered the reprisal is a public officer.

**Dr HORTON:** Yes. You might be thinking of section 49 of the Public Interest Disclosure Act.

**Mr Alsbury:** That rings a bell, yes.

**Dr HORTON:** But you as the CCC had not done so?

**Mr Alsbury:** No.

**Dr HORTON:** So is this the thinking: 'We could've done something and didn't, but that means we can involve ourselves in other ways'?

**Mr Alsbury:** That is probably oversimplifying it.

**Dr HORTON:** How would you state it?

**Mr Alsbury:** Well—

**Dr HORTON:** I should ask first: are you a lawyer?

**Mr Alsbury:** Yes, I am. In relation to public interest disclosures, the legislation had indicated that the Crime and Corruption Commission potentially had an interest in that. The interest is particularly strong when it relates to a public officer under our legislation advising or notifying the commission of a reasonable suspicion of corruption. I think that makes it clear that the commission has a role to play in protecting whistleblowers, for want of a better term. It is certainly consistent with one of the corruption functions of contributing to the integrity of the public sector.

In this case we thought the public interest was served by pursuing a criminal investigation and using our resources in that way, but I think it would have been disingenuous of us to take the view—not only disingenuous, completely inconsistent with the performance of our functions—to say, 'We've decided to pursue a criminal investigation. We have no part whatsoever to play in relation to whatever civil action might be taken by the whistleblower.'

**Dr HORTON:** I am a lawyer, of course. I am interested only, for the minute, in the source of your functions or power that we find in the statute. You are a statutory body as the CCC. One must find in statute authority for what you do; correct?

**Mr Alsbury:** That is correct.

**Dr HORTON:** And if we cannot find it in statute then we have cause to be concerned; correct—some root of it in statute?

**Mr Alsbury:** Yes, I agree with that, but our legislation is not a rule book. It does not say, 'If this happens, you are allowed to do this but you are not allowed to do that.' It is at a much higher level than that. We have a prevention function in relation to corruption and we also have that role to do as much as we can to increase the integrity of the public sector in Queensland.

**Dr HORTON:** I see. I am trying to get to bedrock here. What is the statutory provision that you would rely upon to say it is the legislative intention to give the CCC a role to play in reprisal matters? You said section 49, I think: right to apply to the Supreme Court?

**Mr Alsbury:** Well, yes. That is—

**Dr HORTON:** But not a step that was taken by the CCC?

**Mr Alsbury:** No. I can point you to general provisions of our legislation.

**Dr HORTON:** We can do that in a minute. The CCC never charged reprisal as such, did it?

**Mr Alsbury:** It did not.

**Dr HORTON:** And reprisal is the charge which matches for a moment the taking action in response to a PID?

**Mr Alsbury:** It is the one that I suppose is tailor-made for that, yes, but it is not the only charge.

**Dr HORTON:** I see, so the CCC did not utilise section 49 in the sense of taking action. It did not charge reprisal as such. But you would say even in those circumstances it is within power to write to the minister and seek funding for a private litigant in a private proceeding?

**Mr Alsbury:** Absolutely.

**Dr HORTON:** Absolutely?

**Mr Alsbury:** Absolutely.

**Dr HORTON:** You are unqualified in your answer?

**Mr Alsbury:** Unqualified. That was completely within the performance of our functions, and the letter explains I think why that is.

**Dr HORTON:** Yes. It goes on to say because it is connected with—I am trying to be more analytical than that here—its corruption function and clearly aligned with the purpose of the CC Act 'to continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector'. To be clear, it helps improve the integrity of, and reduce the incidence of corruption in, the public sector for taxpayers, through the minister, to give an ex gratia payment to a private litigant to fight proceedings in the QIRC about her dismissal?

**Mr Alsbury:** Let me put it this way, Mr Horton: under our legislation public officers, so for example chief executive officers of local government authorities, have a duty—they are not doing us a favour; this is their legislative duty—to notify the commission of reasonable suspicion of corrupt conduct. We have to be able to rely on them to do that, because complaints that come from within organisations are a very important way for corruption to be uncovered. It is the most important way, in fact. We need that framework to be able to be relied on. We cannot rely on that framework if people who discharge that function then get no support when they do it. It might as well not even be in the legislation if we are not going to support public officers when they discharge that very important anti-corruption function.

**Dr HORTON:** I see. And the support you think, I take it, was appropriate here was to seek public funding for Ms Kelsey to have aired in the QIRC the complaint she made in connection with being a CEO of a local government and then being removed from it?



**Mr Alsbury:** I do.

**Dr HORTON:** Thank you. So you backed the letter that Mr MacSporran sent to the minister that appears at pages 291 and 292?

**Mr Alsbury:** I did.

**Dr HORTON:** You seem to do so in an unqualified way, if I may say so.

**Mr Alsbury:** I do.

**Dr HORTON:** Thank you. The ruling is that the materials are not going to be in the QIRC; correct? You recall that?

**Mr Alsbury:** That is correct.

**Dr HORTON:** On 3 October, more or less the same material is delivered to the council?

**Mr Alsbury:** Well, no. I cannot agree with that. If I recall correctly, what was delivered to the council were reports—I think they are called extraction reports—relating to WhatsApp chats.

**Dr HORTON:** Correct.

**Mr Alsbury:** The material that had been disseminated to the QIRC was far more extensive than that.

**Dr HORTON:** Thank you. Working on that assumption for the moment, what involvement did you have with the consideration of whether those documents that you have just referred to should go to the Logan City Council office on or about 3 October 2018?

**Mr Alsbury:** I cannot remember having any involvement in relation to that.

**Dr HORTON:** You were the responsible officer for signing the dissemination authority with respect to answering the notice of attendance to produce for the QIRC; correct?

**Mr Alsbury:** I was.

**Dr HORTON:** You would ordinarily have been the person responsible for signing the same authority in respect of any dissemination of these documents to the Logan City Council?

**Mr Alsbury:** It would depend on the circumstances.

**Dr HORTON:** These circumstances, Mr Alsbury. These circumstances.

**Mr Alsbury:** Well, not necessarily. They were provided to the council on 3 October because the investigating officers were investigating potential offences under the Public Records Act, specifically destruction of public records. My reading of the—I have actually listened to the recording of that attendance by those officers with the acting chief executive officer of the Logan City Council. My recollection is that they wanted two things: one is for the acting CEO to confirm whether or not the records that they were delivering had already been entered—

**Dr HORTON:** Mr Alsbury, the transcript is in evidence before the committee.

**Mr Alsbury:** All right; okay. Well, I was just—

**Dr HORTON:** Just come back to my question.

**Mr Alsbury:** I will cut to the chase.

**Dr HORTON:** Please do.

**Mr Alsbury:** They were performing a function of the commission. In my view, they were entitled to leave those documents with the acting CEO without any approval from me.

**Dr HORTON:** I see, but when the CCC was responding to the notice of attendance to produce, that too was fulfilling a function of the commission; correct?

**Mr Alsbury:** It was, yes.

**Dr HORTON:** So the need for a dissemination authority does not turn on whether you are fulfilling a function of the commission or not; correct?

**Mr Alsbury:** Well, I think in most circumstances if you are performing a function of the commission you do not need a dissemination authority.

**Dr HORTON:** Can you contemplate an instance in which one is not fulfilling a function of the commission, working for the commission? Is there such a possibility at the CCC?

**Mr Alsbury:** Well, there are circumstances where we provide documentation to people when we are performing a function of the commission. I can give you a—

**Dr HORTON:** No, when you are not—when you are not. You said when you are; I am interested in the 'not' case. Is there any other possibility that you would give someone documents not performing a function of the commission?

**Mr Alsbury:** All the time. All the time.

**Dr HORTON:** Right.

**Mr Alsbury:** I can give you an example if you want one.

**Dr HORTON:** Not for the minute.

**Mr Alsbury:** All right.

**Dr HORTON:** Now, you are performing a function of the commission, surely, when you are giving the documents to the, in your assertion, QIRC in response to the notice to produce?

**Mr Alsbury:** Yes.

**Dr HORTON:** And you are fulfilling a function, in your assertion, when the documents go to the Logan City Council on 3 October?

**Mr Alsbury:** That is correct.

**Dr HORTON:** I see. So there is no difference that both are in fulfilment of a function; correct?

**Mr Alsbury:** There is no difference in both are fulfilling a function—

**Dr HORTON:** And in the first case we have a dissemination authority and in the second we do not?

**Mr Alsbury:** That is correct.

**Dr HORTON:** And in the second case, I think—we do not have the email, but the authority is said to be in an email of 26 September, not from Mr Preston. Is that your understanding?

**Mr Alsbury:** I would have to look at that. I should say, so as not to appear obstinate, it would have been preferable had that been approved in writing or had there been some formal written acknowledgement of that dissemination.

**Dr HORTON:** I want to suggest it is more than that, Mr Alsbury. Section 329 of your act: are you familiar with it?

**Mr Alsbury:** Yes, I am.

**Dr HORTON:** Subsection (4)(d) defines improper conduct as—

disclosure of confidential information without the required authorisation, whether or not the disclosure contravenes an Act ...  
You are not suggesting that this was not confidential information that was delivered to the council; correct?

**Mr Alsbury:** Correct.

**Dr HORTON:** And you are not suggesting it was with authorisation?

**Mr Alsbury:** I am, actually. It would have been authorised by section 62, which was in the previous act before you look at the current—

**Dr HORTON:** No, I understand; it was amended in this period. But no administrative authorisation from any senior staff member above the deliverer?

**Mr Alsbury:** I think it was probably with the approval of the inspector, but no-one above that.

**Dr HORTON:** David Preston?

**Mr Alsbury:** That is correct, yes.

**Dr HORTON:** I see. So you would wish to tell this committee that you regard the delivery of the documents on 3 October 2018 by DS Francis to the Logan City Council as having been authorised within the meaning of section 329(4)(d)?

**Mr Alsbury:** Yes.

**Dr HORTON:** Okay, but you are not suggesting there exists a dissemination authority?

**Mr Alsbury:** No, there is not.

**Dr HORTON:** And in fact you are saying to us there was no need for one in a lawful sense?

**Mr Alsbury:** In my view, technically there was no need for one. I am mindful that others may disagree with me, including others at the commission, but I will put it this way: if I was being asked to assess whether a notification should be made against Detective Francis under section 329, I would say that no notification need be made.

**Dr HORTON:** I see, so telephone intercept material concerning conversations between individuals can leave the building of the CCC without a dissemination authority, in your assertion to this committee?

**Mr Alsbury:** Well, again, I do not mean to be contrary, but it was not telephone intercept material; it was material that was obtained from a telephone or more than one telephone through an extraction process.

**Dr HORTON:** By exercise of compulsive or coercive powers?

**Mr Alsbury:** That is correct.

**Dr HORTON:** Yes. So that material—you are suggesting, to use your description for a moment—you are saying to this committee can lawfully leave the building of the CCC without a dissemination authority?

**Mr Alsbury:** In the circumstances that relate here, yes, I am.

**Dr HORTON:** I see, and were you told of the impending delivery that was to occur by anyone?

**Mr Alsbury:** I do not believe I was.

**Dr HORTON:** Is that unusual?

**Mr Alsbury:** Not at all. Not at all. These are very experienced investigators. Their teams are led by a very experienced detective inspector who reports to a very experienced detective superintendent. They do not need me to micromanage how they carry out investigations.

**Dr HORTON:** I see, despite the fact that you were the one who gave the dissemination authority in the preceding case of the delivery to the QIRC?

**Mr Alsbury:** Well, I think they are two different scenarios.

**Dr HORTON:** I see. Were you involved in the decision whether to invoke the Public Records Act in connection with the material delivered to the council on 3 October?

**Mr Alsbury:** I was not involved in relation to that dissemination, but I take umbrage with your characterisation of it as invoking the Public Records Act. The Public Records Act is a piece of legislation in this state. It needs to be complied with.

**Dr HORTON:** Slow down for a minute. You invoked—the CCC invoked—the Public Records Act, so I am just talking about the CCC's conduct for a moment. The CCC in delivering it invoked—misnamed, I think, by DS Francis on the transcript, but he invokes that as the reason he is delivering this to the council; correct?

**Mr Alsbury:** Detective Francis is investigating potential offences under the Public Records Act.

**Dr HORTON:** Let us return to my question: did he or didn't he? You have the transcript; you have listened to it. Did he do that? I think he gets the name of the act wrong, but we understand him I think to be invoking—that is, 'I am doing this because this is a function that is to be done under or in connection with the Public Records Act.'

**Mr Alsbury:** I am just not comfortable with the way you are categorising this.

**Dr HORTON:** You categorise it for me.

**Mr Alsbury:** He is investigating—he is carrying out duties in the context of a corruption investigation and he is investigating potential noncompliances with the Public Records Act.

**Dr HORTON:** I see. I think we are agreeing.

**Mr Alsbury:** All right; well, that is fantastic.

**Dr HORTON:** And that is what he tells—on the transcript and on what you have listened to—to Mr Trinca as the reason he is there?

**Mr Alsbury:** Yes.

**Dr HORTON:** But you do not know he is going down to do that job?

**Mr Alsbury:** No, I do not.

**Dr HORTON:** And you have not been involved in being asked about whether the Public Records Act is properly to be invoked in this instance?

**Mr Alsbury:** To the best of my recollection, I did not know about that. I have conversations with investigators all the time just in passing. I may have been told, but I do not specifically recollect it.

**Dr HORTON:** Now, the material delivered to council by DS Francis on 3 October included legally professionally privileged material; is that correct?

**Mr Alsbury:** It did.

**Dr HORTON:** That material could not leave your building, on your analysis, without dissemination authority; is that correct?

**Mr Alsbury:** Well, no, I would not agree with that.

**Dr HORTON:** Isn't this why you have a dissemination authority, so someone senior turns their mind to whether the material that is confidential should be going out the building of Queensland's premier crime and corruption body?

**Mr Alsbury:** That is correct. What you have said is correct, and I think the issue here is that Detective Francis maybe should have engaged with the relevant legal officer, Ms McIntyre, a bit more in relation to the issue.

**Dr HORTON:** And the ordinary course, I suggest to you, is that he would do that. The regular and proper organisational course was that he engage with Ms Makeeta McIntyre about this very issue.

**Mr Alsbury:** That would be usual, yes. I have to accept that. I am trying to get away from this concept of there needs to be a dissemination document whenever a commission officer uses a document in performing their functions. That would be unworkable.

**Dr HORTON:** I am for the minute sticking to 3 October 2018. I think you have agreed with me, ultimately, there should have been a dissemination authority.

**Mr Alsbury:** Ideally there should have been.

**Dr HORTON:** I do not work in the world of ideals, if that is all right. I am saying to you there should have been a dissemination authority in the instance of 3 October 2018 delivery by DS Francis.

**Mr Alsbury:** There should have been, but I do not think what he did was inconsistent with our legislation.

**Dr HORTON:** When did it first come to your attention that no dissemination authority had existed for the dissemination by DS Francis?

**Mr Alsbury:** To put this in context, I think 5 October was the last day before I went on leave and I came back, I think, on 30 October, so I did not know what was going on for most of October because I was overseas. I am aware that Ms McIntyre discovered what had happened and took issue with it. Ms McIntyre drew that to my attention—I think it was on 6 November.

**Dr HORTON:** Of 2018?

**Mr Alsbury:** Yes.

**Dr HORTON:** Did you do anything to draw this to the attention of this committee or the parliamentary commissioner in connection with or in obedience with section 329?

**Mr Alsbury:** No, I did not.

**Dr HORTON:** Do you regard that you should have?

**Mr Alsbury:** No, I do not think I should have.

**Dr HORTON:** In that connection, did you tell the CEO, to whom you report of these matters?

**Mr Alsbury:** No, I did not.

**Dr HORTON:** Were you aware before the delivery of these documents to the council that Ms Kelsey's lawyers, MinterEllison, had made a request about this?

**Mr Alsbury:** I do not know if I was aware of MinterEllison's request, but I think sometime in September documentation was provided to Luke Smith's lawyers, and also Cherie Dalley, and I signed the letters in relation to that material.

**Dr HORTON:** At page 341 of the bundle there is reference to these documents being delivered to acting CEO Silvio Trinca 'tomorrow'—this is 11 September—'as soon as you give us the go ahead & nice letter from the SEO'. You are the SEO; is that understood?

**Mr Alsbury:** Yes, that is correct.

**Dr HORTON:** Were you ever asked to do the letter?

**Mr Alsbury:** No.

**Dr HORTON:** There was no letter, was there?

**Mr Alsbury:** So you are talking about 3 October?

**Dr HORTON:** Yes.

**Mr Alsbury:** Yes, I accept there was no letter.

**Dr HORTON:** If you turn back to page 331, email from Mr Williams to Mr Hutchings, 28 August 2018. This is immediately after the notice of attendance to produce and set aside by the QIRC. That occurs on the 24th of that month. On 28 August Minters writes to the CCC asking whether the CCC would consider providing the documents to the Logan City Council and/or the individual councillors. Is this, do you understand, the catalyst for the delivery on 3 October?

**Mr Alsbury:** I do not know. Look, I cannot say. I cannot say because I do know that Detective Inspector Preston met with people from the Queensland State Archives on 25 September. Whether this was a catalyst for him to meet with the Queensland State Archives or the two were independent, I do not know.

**Dr HORTON:** The request from Minters is not about the Public Records Act; is that correct?

**Mr Alsbury:** No, it is not.

**Dr HORTON:** Their request comes just after the QIRC has ruled that these documents cannot be before it.

**Mr Alsbury:** That is so.

**Dr HORTON:** It does not only set aside the notice to produce; it says, 'We cannot have compulsorily obtained material in the QIRC'; correct?

**Mr Alsbury:** Yes, that is so.

**Dr HORTON:** So now it seems Minters is asking for the delivery of a subset, let us just say for a moment, of what the QIRC has said cannot be before it being delivered to the Logan City Council; correct?

**Mr Alsbury:** Yes.

**Dr HORTON:** The only available inference for that is so that the Logan City Council might be obliged to disclose them in her QIRC proceeding?

**Mr Alsbury:** Yes, I think that is the only available inference.

**Dr HORTON:** One possibility I am asking you to infer from that series of events is that 3 October 2018 delivery is to put the documents into the hands of the council so that it becomes obliged to disclose them the QIRC proceeding?

**Mr Alsbury:** I do not think that was the case, to be honest.

**Dr HORTON:** Do you know that not to be the case, or you think it?

**Mr Alsbury:** I just think it. To put that in context—

**Dr HORTON:** Yes, please do.

**Mr Alsbury:** I have been advised not to speak to potential witnesses in relation to this matter so I have not been able to interrogate people in relation to these sorts of issues.

**Dr HORTON:** This is 2018. When were you advised not to speak to witnesses? Recently?

**Mr Alsbury:** Yes, in the last week or so.

**Dr HORTON:** Before that time did you make inquiries of this kind from these people—anytime in the last few years?

**Mr Alsbury:** No, I did not.

**Dr HORTON:** If the delivery was for the purpose of putting the documents into the hands of council so that it becomes obliged to disclose them, that would be seeking to circumvent a ruling, wouldn't it, of the QIRC in an inappropriate way?

**Mr Alsbury:** I do not know if I could agree with that because I am just not across the nuances in relation to QIRC disclosure obligations and, of course, I think there would be legal argument in relation to these issues anyway. One of the positions the commission took in relation to the July dissemination is, 'Look, it is not our job to decide whether something is admissible or not and, if it is, the use that can be made of it.'

**Dr HORTON:** The QIRC had told you no. Maybe on that occasion, but this is after. The QIRC has said no—full stop.

**Mr Alsbury:** Well, I do not think the QIRC did say that in those terms.

**Dr HORTON:** I see.

**Mr Alsbury:** They certainly did not say if a party to the litigation is in possession of this material they should not have to disclose it under disclosure obligations.

**Dr HORTON:** It said it could not be put before it. There was no legitimate forensic purpose, as I understood it, in light of the authority of *Flori* at the Supreme Court. It is a fairly recent decision of Justice Atkinson which says just that and which is, I submit to you, good law in this state.

**CHAIR:** Mr Horton, do you need a moment to grab a reference to that decision? I see counsel assisting digging around.

**Dr HORTON:** I will, if you do not mind.

**CHAIR:** Take that moment.

**Dr HORTON:** I am sorry, Mr Alsbury, for that—

**CHAIR:** Then you can be precise about the decision.

**Dr HORTON:** Thank you. You have read the ruling, have you, Mr Alsbury?

**Mr Alsbury:** I have read the ruling, yes.

**Dr HORTON:** Para 155 of the ruling, to remind you of the conclusions, to use the member's words, at which he arrives to support a decision to set aside the notice—

- (a) general legal principles and common law principles enunciated in *Flori* and *R v Leach* preclude the applicant's unrestricted access to materials and the use of materials obtained under compulsion;
- (b) having regard to such principles, I am satisfied that an implied limitation emerges out of the structure and purposes of the CC Act—

I am paraphrasing—

- (c) the implied limitation—

paraphrasing—

extends to a prohibition on the derivative use of the material ...

Again, paraphrasing slightly—

- (d) ... cannot be ... tendered into evidence, it can serve no legitimate forensic purpose and, save for a consideration of material other than material obtained by compulsion, the notice must be set aside;
- (e) —

This—

... may jeopardise the fair conduct of the substantive proceedings and risk interfering with the administration of justice;

- (f) ... not consistent with the performance of the CCC's functions;

and (g). I do not know about you, but I read that and there is not much left for an ability for the QIRC to properly have this information in another way. Do you read it differently?

**Mr Alsbury:** Could I just make three points—and I do not want to have a legal argument with you, Mr Horton. You have a view and I completely respect that view, but I would make three points. One is, when courts or commissions decide issues, they decide things based on the specific circumstances that they are presented with. Secondly, this matter is decided basically lumping everything in together. Thirdly, Councillor Dalley or Mrs Dalley disclosed the WhatsApp chats to the commission and they were used in the commission. So that seems to suggest to me that they were not inadmissible.

**Dr HORTON:** I see. So you are suggesting that some things delivered down to council were not obtained by the use of compulsory powers?

**Mr Alsbury:** I am not saying that.

**Dr HORTON:** I see. I am not putting this to you on the basis of my view, that ruling. I want to make that clear. I am saying that 155 is clear and unambiguous. It does not require legal analysis, just reading. That that was the end of the story for this material, that it should not be before the QIRC, is what I want to suggest to you.

**Mr Alsbury:** Well, I am not prepared to agree to that, Mr Horton, I must say.

**Dr HORTON:** We will move on. The material is requested to be returned by the CCC from Logan City Council in early November 2018; correct?

**Mr Alsbury:** Yes, that is correct.

**Dr HORTON:** Without explanation; correct?

**Mr Alsbury:** I believe so, yes.

**Dr HORTON:** Have you inquired of the circumstances in which the request for the retrieval of the documents was made? By this time you are back at work, I think?

**Mr Alsbury:** Yes. I have not inquired. I have made an assumption about why that was.

**Dr HORTON:** Unless you want us to give your assumption, do not. I prefer to work on facts.

**Mr Alsbury:** Okay. All right.

**Dr HORTON:** They are returned to the CCC shortly afterwards and MinterEllison makes another request for the documents to go back to the council. Are you aware of that?

**Mr Alsbury:** Yes, I am.

**Dr HORTON:** Were you aware at the time?

**Mr Alsbury:** Yes, I was yes.

**Dr HORTON:** It is a very odd series of events, I want to suggest to you. QIRC says no. The documents—MinterEllison says, 'Please deliver them to the council.' DS Francis, without dissemination authority, goes down and says, 'This is for the purpose of the Public Records Act' and says, 'Can I please have the documents back' a few weeks later. That is an extremely odd set of circumstances; correct?

**Mr Alsbury:** Given what we have discussed about Ms McIntyre's position when she heard about it and the fact that there had not been a dissemination authority and she was also concerned that LPP material had been delivered—and, again, this is what I was referring to as why I assumed they had been retrieved—I do not think that is extraordinary at all.

**Dr HORTON:** In fact, it could be said that these circumstances, as unsatisfactory as they are, show that the CCC does not itself adhere to the high standards it requires of others.

**Mr Alsbury:** Are you referring to the fact that there was not a written dissemination?

**Dr HORTON:** Take that first, yes.

**Mr Alsbury:** I would accept that it is a lapse on this occasion.

**Dr HORTON:** Second, that legally privileged material is dispersed?

**Mr Alsbury:** Yes. We had taken a very conservative view in relation to that but, again, that should not have happened; I agree with you.

**Dr HORTON:** Third, that it is done chronologically and, I want to suggest to you, causatively on the basis of a request from a private party in QIRC after the ruling in order to bring about an obligation for the council to disclose them back to QIRC?

**Mr Alsbury:** I do not agree with that. Of course, the other date to consider in the mix here is the date upon which the CCC executed search warrants to obtain devices which they then examined and realised that records had been deleted. I think that was 1 or 2 June 2018.

**Dr HORTON:** In relation to which no-one was charged?

**Mr Alsbury:** You are talking about the deletion of public records?

**Dr HORTON:** What you are talking about is what I am talking about. In relation to that, no-one was charged?

**Mr Alsbury:** That was because of a time limit issue but, yes, you are right.

**Dr HORTON:** Thanks. Then—page 415—the documents have come back to the CCC and on 15 November 2018, to you this time—and to Mr Hutchings but first to you—Minter says 'our client requests' you 'please return the documents, or copies' of them to the council. Do you see that in the last substantive paragraph in the letter?

**Mr Alsbury:** Yes. That is correct, yes.

**Dr HORTON:** So here we are—

**Mr Alsbury:** For completeness, that letter was copied to Tim Fynes-Clinton and another person at his firm, King & Company Solicitors, who acted for the council.

**Dr HORTON:** So it is. And that is important, is it, to show, you want to suggest, a balance?

**Mr Alsbury:** I mean, this is MinterEllison's letter, but I make the point because I suspect you are going to suggest some sort of collusion between the commission and MinterEllison in relation to these documents.

**Dr HORTON:** No, I am not going to suggest that.

**Mr Alsbury:** I am glad to hear that.

**Dr HORTON:** I am going to suggest this: Minter, in this letter, does not express the slightest concern or interest in the Public Records Act; correct?

**Mr Alsbury:** That is correct.

**Dr HORTON:** In fact, I think it is fair to say Minter has never expressed in these series of events interest in the Public Records Act?

**Mr Alsbury:** No, I do not think so.

**Dr HORTON:** The request is made and processes are put in place, it seems, for a dissemination authority; correct?

**Mr Alsbury:** That is correct.

**Dr HORTON:** This circumstance, I want to suggest to you, is the same as the last one that we have just experienced so far as the need for a dissemination authority is concerned?

**Mr Alsbury:** Well, it is. The difference is Ms McIntyre has come and said that there were issues with the first dissemination.

**Dr HORTON:** I see. That is the only difference in your mind—that this time we have Ms McIntyre who comes and says, 'There was a problem last time; there should be one now'?

**Mr Alsbury:** That is right, yes.

**Dr HORTON:** That is it? That is the only difference, Ms McIntyre speaking up?

**Mr Alsbury:** That is right.

**Dr HORTON:** There is not an organisational concern? There is not a legal concern? No-one says, 'The processes were not followed and the processes that must be followed are these'; is that correct?

**Mr Alsbury:** Ms McIntyre said that.

**Dr HORTON:** Yes, it comes from Ms McIntyre. 15 November—you do not have a voice in it at this stage, or do you express a view?

**Mr Alsbury:** About?

**Dr HORTON:** About the need for a dissemination authority.

**Mr Alsbury:** I do, around that time. Actually, I think it is on 15 November.

**Dr HORTON:** Go to 417 and you will find from you: 'I have no problem sending them back.' Mr Alsbury, I want to suggest to you that you should have had problems sending them back.

**Mr Alsbury:** I disagree.

**Dr HORTON:** QIRC ruling saying no—paragraph 155. Delivery request by MinterEllison, 'Please send them back to council'; no mention of Public Records Act. An investigator takes them down 3 October. There is no covering letter—ones foreshadowed from you—no covering letter, no dissemination authority. It comes back without explanation. Mr Alsbury, you have a problem at this stage, I want to suggest to you. Chronologically, this is a problem stage?

**Mr Alsbury:** When you say 'chronologically', what are you talking about, Mr Horton?

**Dr HORTON:** The events I have just recited to you.

**Mr Alsbury:** I do not see why it is a problem.

**Dr HORTON:** I see. Red flags are flying, I want to suggest to you, with the events I have just described.

**Mr Alsbury:** No.

**Dr HORTON:** In fact, a proper supervisor responsible for these issues of dissemination authorities, and having signed them on like issues in the past, should have known what had occurred with respect to the QIRC ruling, the delivery to the council in irregular circumstances including there being no dissemination authority?

**Mr Alsbury:** I do not agree.



**Dr HORTON:** Did you know at this stage there had been no dissemination authority?

**Mr Alsbury:** Did I know there had been none?

**Dr HORTON:** Right.

**Mr Alsbury:** Sorry, was that your question?

**Dr HORTON:** Yes. Had Ms McIntyre drawn it to your attention?

**Mr Alsbury:** Yes. She had drawn that to my attention—again, I think it was 6 November.

**Dr HORTON:** This was on the 15th. On the 15th you have no problems sending these documents back?

**Mr Alsbury:** With a dissemination authority and with LPP removed.

**Dr HORTON:** I see. What inquiry do you make about purpose here—purpose of delivery?

**Mr Alsbury:** I cannot remember what conversations I had, but certainly the dissemination document that came to me set out the purpose.

**Dr HORTON:** Public Records Act; correct?

**Mr Alsbury:** Yes, that is right.

**Dr HORTON:** The true purpose, I want to suggest to you, is to put these documents back in the hands of the Logan City Council so that they might be susceptible to disclosure in the QIRC proceeding.

**Mr Alsbury:** No, not at all. Can I give you a longer answer in relation to this?

**Dr HORTON:** Please do.

**Mr Alsbury:** In relation to timing, I did not want to or want for the commission to be accused of frustrating any disclosure obligations by having taken the documentation back at the start of November, I think it was. In terms of timing, we made sure we did this by the time that MinterEllison were requesting. When I signed that dissemination authority, I did not think there was any possibility that it would result in the documents being disclosed to the QIRC. I took that view based on Mr Fynes-Clinton's email of 1 November 2018. He had made the council's position crystal clear in relation to that point, so I knew this was not going to result in anything being disclosed. We were still concerned about public records issues, which are articulated in the correspondence dated 19 November 2018.

**Dr HORTON:** I want to directly suggest to you the evidence you have just given is false, and I want to do that by reference to a document—pages 465 and 466. It is a letter from you to the council—Mr Silvio Trinca, 12 February 2019. Just reflect on that letter, if you would, in case you have not seen it for a while.

**Mr Alsbury:** Yes, I know the letter.

**Dr HORTON:** Am I reading that letter incorrectly? It is a suggestion, if not instruction, to the Logan City Council to disclose certain things in the QIRC proceeding.

**Mr Alsbury:** Sometime after the November letter and after the State Archivist had reviewed the documentation and said which records were public records and which were not.

**Dr HORTON:** Is that your full answer to my suggestion that this letter shows your earlier evidence to be false?

**Mr Alsbury:** Yes, it is. I deny your assertion that my evidence has been false.

**Dr HORTON:** One cannot, I want to suggest to you, have those two propositions held together: on 15 November you think there is no possibility of the documents being disclosable in QIRC, to 12 February 2019 where you assert as much to the council in a letter under your hand with the contact officer being Paul Alsbury.

**Mr Alsbury:** On 19 November, I thought that there was no possibility that the documents would be disclosed—not disclosable but disclosed, actually disclosed—because of our delivery of the documents to the council on 19 November.

**Dr HORTON:** That issue has changed, you are saying?

**Mr Alsbury:** The position had changed because the State Archivist had reviewed them.

**Dr HORTON:** In your mind, that would change a disclosure obligation how?

**Mr Alsbury:** There was an independent third party providing an opinion about the records being public records. This is in the context, by the way, of Mr Fynes-Clinton swearing an affidavit, which had been drawn to my attention, claiming that in his view barely any of the records were public records.

**Dr HORTON:** Do not worry yourself with Mr Fynes-Clinton for the minute. I am asking about the discharge of your functions under the act. I know you can have regard to that obviously, but how does the assessment of these records by anyone else affect their amenability to being before the QIRC in light of the ruling you had seen earlier from the commissioner? What is it about being assessed as being a public record or not that suddenly makes them disclosable if they have been obtained using coercive powers?

**Mr Alsbury:** The ruling of the commissioner was not operating on my mind particularly, because by then I knew that Dalley had disclosed these recordings in the proceedings.

**Dr HORTON:** It should have been operating on your mind, I am suggesting to you. It was a determination of law by a commissioner, in connection with the very same proceeding in which disclosure might otherwise be susceptible to occur.

**Mr Alsbury:** No, I do not agree.

**Dr HORTON:** Why did you write to council on 12 February 2019 in the terms that you did?

**Mr Alsbury:** At that time, the State Archivist had reviewed the records. We felt that there was some independent party having reviewed them, and given that they were records that should have been lodged in the council's record system, we saw no reason why they could not be disclosed at that time.

**Dr HORTON:** Who is 'we'?

**Mr Alsbury:** The commission. Having said that, I am signing the document, so I am taking responsibility.

**Dr HORTON:** You said 'we decided'—not the whole commission, but someone you said—you used the word 'we'. Which natural persons are you saying are 'we'?

**Mr Alsbury:** I suspect Ms McIntyre drafted this letter, but I cannot recall.

**Dr HORTON:** I think I have been through this, but the assessment by an independent authority about whether something is or is not a public record did not change the nature of the actual document that had itself always possessed the character it possessed; correct?

**Mr Alsbury:** I do not agree.

**Dr HORTON:** You had then an administrative decision in connection with it, not binding on the tribunal; correct?

**Mr Alsbury:** The State Archivist's opinion is not binding on the commission; I would agree with that.

**Dr HORTON:** I think you say it correctly. It is an opinion of the State Archivist; correct?

**Mr Alsbury:** Yes.

**Dr HORTON:** Did anyone inform you before you sent the letter on 12 February—am I right in this?—that Ms Kelsey had withdrawn her application for disclosure in the QIRC on 4 December 2018?

**Mr Alsbury:** I do not recall whether that was disclosed to me.

**Dr HORTON:** It was after you wrote the letter, was it not?

**Mr Alsbury:** I am just trying to think when I learnt of that.

**Dr HORTON:** Mr Fynes-Clinton writes to you after you send the letter and says, 'Aren't you aware Ms Kelsey herself—the person whom you are assisting—has withdrawn her own request months ago for disclosure?'

**Mr Alsbury:** Yes, that would have been the 14 February letter.

**Dr HORTON:** Isn't what you are now doing more than seeking to assist Ms Kelsey in a measured way and going in to bat for her side of the QIRC proceeding?

**Mr Alsbury:** No, I do not agree with that and, in fact, if she had withdrawn the disclosure application then we were not going in to bat for her at all. It was not something she was pushing.

**Dr HORTON:** Your subjective view was that this material would benefit Ms Kelsey in the QIRC?

**Mr Alsbury:** Yes, that is correct.

**Dr HORTON:** You thought and, I think it is fair to say, the general CCC view was that this material showed collusion?

**Mr Alsbury:** Yes.

**Dr HORTON:** And it painted the councillors and mayor in a very bad light?

**Mr Alsbury:** In terms of the issues that were being litigated, yes.

**Dr HORTON:** So the discovery of them, or once they were in the hands of the QIRC they would weigh more in Ms Kelsey's favour in the case than on the council's side of that equation?

**Mr Alsbury:** Yes.

**Dr HORTON:** Doing what you did in the respect we have just covered, I want to suggest to you, is more than assisting Ms Kelsey and her legal representatives in a measured way; it is actively going in to bat and taking sides.

**Mr Alsbury:** I disagree with that. When I say 'measured', I mean if we were going in to bat for Ms Kelsey then perhaps we could have disseminated documents directly to her. We did not do that. We gave the documents to the organisation that always had the right to the documents.

**Dr HORTON:** The QIRC is the organisation here?

**Mr Alsbury:** No, the council.

**Dr HORTON:** I see. You have mentioned that Councillor Dalley had produced her own versions of the WhatsApp in disclosure. You were aware that they were her WhatsApp records?

**Mr Alsbury:** Yes, they were.

**Dr HORTON:** You understand that differs from material compulsorily obtained at law?

**Mr Alsbury:** No, the WhatsApp records obtained from her were obtained under a warrant as well.

**Dr HORTON:** Correct me if I am wrong, but she produces in the QIRC her own WhatsApp records correct?

**Mr Alsbury:** Yes, that is right.

**Dr HORTON:** And you have mentioned that a bit as well, that one of the parties has made disclosure?

**Mr Alsbury:** Yes.

**Dr HORTON:** But what she is disclosing is her records. She has not coercively obtained them; correct?

**Mr Alsbury:** They would not have been available had we not coercively obtained—

**Dr HORTON:** No, these are hers. These are from her records.

**Mr Alsbury:** We might be at cross-purposes. They had been deleted. We extracted them and we gave them back to her.

**Dr HORTON:** You did not say, 'I'm giving you a warrant for your own records off your phone', or did you?

**Mr Alsbury:** We did. That is how we got the records in the first place.

**Dr HORTON:** And that is what you disclosed?

**Mr Alsbury:** That is my understanding, yes.

**Dr HORTON:** We have probably covered that course. Let me catch up with the Chair. Chair, what time did the committee intend to break or when is a convenient time to break?

**CHAIR:** Mr Horton, if now is a convenient time, we could take a break.

**Dr HORTON:** If that is appropriate.

**CHAIR:** You seem to be at the end of one of your sequences.

**Dr HORTON:** I think I am, thank you.

**CHAIR:** Members and Mr Alsbury, we will take a break. We will come back at 1.30 pm.

**Proceedings suspended from 12.25 pm to 1.30 pm.**

**CHAIR:** We will resume our hearing for the inquiry. I note that the member for Oodgeroo is absent for the moment owing to other parliamentary committee commitments. Also, the member for Cooper will have some other commitments she has to attend to later on this afternoon. Just for the record, it is not people not showing up; they just have other things on within the precinct as well. That said, we will resume with Mr Alsbury. Mr Horton, is there anything you need to raise or deal with before you carry on?

**Dr HORTON:** Nothing, Chair. Mr Alsbury, can we move to a new topic, which is the decision to charge fraud?

**Mr Alsbury:** Yes, Mr Horton.

**Dr HORTON:** On 30 January 2019 a meeting is convened on that topic within the CCC.

**Mr Alsbury:** That is correct.

**Dr HORTON:** You can see the notes in the smaller volume at page 70. You were present, I understand, at the meeting?

**Mr Alsbury:** Sorry, Mr Horton: I just needed some assistance to find the right page. Yes, I was present at the meeting.

**Dr HORTON:** Do we see notes taken by you anywhere here?

**Mr Alsbury:** No, you do not.

**Dr HORTON:** Did you take notes at the meeting?

**Mr Alsbury:** No, I did not.

**Dr HORTON:** Understood. You have a recollection of what occurred?

**Mr Alsbury:** I do not, to be completely honest. I am assisted by other people's notes, but I do not have a very good recollection.

**Dr HORTON:** Understood. Will you glance at page 77, please? Do you remember if that memorandum was before that meeting on 30 January?

**Mr Alsbury:** It was, Mr Horton, yes.

**Dr HORTON:** It was, did you say?

**Mr Alsbury:** Yes.

**Dr HORTON:** Do you recall whether any other like document was before that meeting on that day?

**Mr Alsbury:** No. As I recall, it was just this document.

**Dr HORTON:** I see. The topic of the meeting—please tell me or stop me if I am going beyond what your refreshed recollection, with the benefit of these notes, might provide. A discussion took place there about evidence relating to possible charges against councillors?

**Mr Alsbury:** Yes, that is correct.

**Dr HORTON:** In particular, an explanation of evidence took place; is that right?

**Mr Alsbury:** Yes.

**Dr HORTON:** Do you recall who by?

**Mr Alsbury:** I cannot recall who led the discussion. I am presuming it was Detective Francis. I am sure others also had a voice and discussed the issues during the meeting.

**Dr HORTON:** Yes. I am going to point out a couple of notations and then ask a question. Page 71, the second last line seems to read—

All content to charge. Authority by chair provided.

**Mr Alsbury:** Yes.

**Dr HORTON:** Then 73—

Frawley charge already approved to commence.

And 74—

Chair approve 1 x Misconduct (Frawley) + 1 x Fraud (Kelsey) against Smith ...

**Mr Alsbury:** That is correct, yes.

**Dr HORTON:** Pending something else happening.

**Mr Alsbury:** Yes.

**Dr HORTON:** What was your understanding of the decision the chair was making at that 30 January meeting?

**Mr Alsbury:** He was giving approval for two charges. One related to—I should pause to note that there are proceedings before the court at the moment.

**Dr HORTON:** Could I save you some time? I did not mean about the description of the charges. Take that as understood. That might save you that other problem.

**Mr Alsbury:** I do apologise.

**Dr HORTON:** As a matter of law administration, what is it that you understand the chair is there doing by that decision?

**Mr Alsbury:** He is approving that the charges are able to be considered by a seconded police officer. To put that in context, where the seconded police officer has been so closely involved in the investigation then that has already happened, in effect. But that is the nature of the approval.

**Dr HORTON:** I see—not the decision to charge itself, as I understand it. You are drawing that distinction.

**Mr Alsbury:** That is so, yes. Seconded police officers retain their powers as a constable. It is up to them to satisfy themselves that charges are appropriate.

**Dr HORTON:** Understood. You agree that the terms of the chair's approval here do not make the qualification or the explanation you would unless one reads, for example, authority to charge as being different from decision to charge, for example?

**Mr Alsbury:** Yes, that is correct.

**Dr HORTON:** You say that is understood by those at the meeting so far as you were aware that this was the authority, subject to what was pending—there is a statement yet to come—to refer the matter to a commissioned police officer to decide whether to charge?

**Mr Alsbury:** That is correct, yes.

**Dr HORTON:** Nevertheless, before the chair and before those at the meeting is a document that looks a little like the beginnings of or part of a prosecution memorandum or summary of evidence—is that correct?—at page 77 and continuing.

**Mr Alsbury:** Yes, that is right.

**Dr HORTON:** Are you able to point out there anywhere where there is a consideration of the elements or limbs of any potential fraud charge?

**Mr Alsbury:** There is not in that document.

**Dr HORTON:** Am I correct in saying—please correct me if I am wrong; I am just characterising it generally—this seems to be a general gathering of material that might or might not inform charges which are being discussed at the 30 January meeting?

**Mr Alsbury:** That is correct, yes.

**Dr HORTON:** But there is no limb-by-limb exploration and there was not for that 30 January meeting.

**Mr Alsbury:** That is right.

**Dr HORTON:** Is anyone at the meeting going through in a non-written way, if you like, 'Let's articulate the limbs of an offence of fraud to work out whether I should give authority to refer it to a police officer to decide whether to charge'?

**Mr Alsbury:** No, that did not happen at that meeting.

**Dr HORTON:** I see. Is it fair to say it is a general assessment and characterisation from that memo and from what Detective Francis said of what is available?

**Mr Alsbury:** Yes.

**Dr HORTON:** Understood. The chair's decision in this regard is not one which itself we can find in the CCC's legislation?

**Mr Alsbury:** No.

**Dr HORTON:** It might be an administrative or organisational process, recognising the chair's special experience in prosecuting and in criminal law generally?

**Mr Alsbury:** That is correct. Can I go back in relation to your question before the last one? Section 49, from memory, allows the commission to refer matters to a prosecuting authority, which includes a seconded police officer.

**Dr HORTON:** Yes, understood.

**Mr Alsbury:** So that is where it is in legislation.

**Dr HORTON:** Yes, I see what you mean.

**Mr Alsbury:** It is not specifically in relation to the issue you are asking about.

**Dr HORTON:** I understand. Then the police officer's ability to charge comes at law from the effect of their commission and other sources of law?

**Mr Alsbury:** That is correct, yes.

**Dr HORTON:** Then some further memos are produced. The timing again comes for a decision about the charges in April of the same year?

**Mr Alsbury:** It does, yes.

**Dr HORTON:** You were involved in the preparation of some of those memoranda?

**Mr Alsbury:** I was.

**Dr HORTON:** In fact, I think several are written by you.

**Mr Alsbury:** Yes.

**Dr HORTON:** This time if we just proceed on a little to understand what is before you as a group when those decisions are made on, I think, 24 April 2019.

**Mr Alsbury:** Yes.

**Dr HORTON:** If you look at page 97, there is a memorandum which is dated 25 March 2019 by DS Francis—bottom right-hand corner. There are several versions, I think. Does that look to be one of those memoranda which were before you as a meeting on or about 24 April 2019?

**Mr Alsbury:** That is right. The version that was effectively the final version, which was before the chairperson—I think it is a 54-page version of it.

**Dr HORTON:** Yes, thank you. I think that appears later. We will come to that.

**Mr Alsbury:** Yes.

**Dr HORTON:** You made some comments, I think, on a draft of Mr Francis'. That appears at page 148, I think?

**Mr Alsbury:** Yes.

**Dr HORTON:** Perhaps the 54-page memorandum, I want to suggest to you, appears there at page 257 and following.

**Mr Alsbury:** That is correct.

**Dr HORTON:** Now, presumably in early April, you are in the process of considering some of the material which ultimately ends up in your memoranda?

**Mr Alsbury:** That is right.

**Dr HORTON:** And on 3 April you write an email to Mark Reid, at page 146?

**Mr Alsbury:** Yes.

**Dr HORTON:** And you express a problem. You say—

.. the problem I have always had with this is that the dodgy probation process was started before the PID.

**Mr Alsbury:** Yes, I do say that.

**Dr HORTON:** Am I getting right the dates, that the PID was made on 12 October 2017 by Ms Kelsey but the probation process—at least we can see something decisive happening on 10 October 2017?

**Mr Alsbury:** That is right, yes.

**Dr HORTON:** Is that the chronology you have specifically in mind when writing this line?

**Mr Alsbury:** I do. If I can elaborate?

**Dr HORTON:** Please.

**Mr Alsbury:** This, from memory, is an issue about how a charge would be particularised. I think the issue I was making there is that 'the dodgy probation process'—and I am just using my words; I apologise—

**Dr HORTON:** I think it finds its way into the memo as well, just out of interest.

**Mr Alsbury:** Oh, okay, all right.

**CHAIR:** I do not think that is unparliamentary!

**Mr Alsbury:** All right. Well, that is good. I am not in trouble then! The dodgy probation process could not have been reprisal, because it obviously happened before the public interest disclosure.

**Dr HORTON:** I see, because the reprisal has to be as a result of making a PID?

**Mr Alsbury:** Yes.

**Dr HORTON:** I see. So that might be a reason, in your mind, why reprisal was not charged?

**Mr Alsbury:** This is more an issue about how you would particularise a charge.

**Dr HORTON:** Understood.

**Mr Alsbury:** My view about why reprisal should not be charged had to do with other issues.

**Dr HORTON:** Good. We will come in the end to that.

**Mr Alsbury:** Yes.

**Dr HORTON:** Then you go on to say—

One thing Andrew—

I think you say 'Andrew' here, but it is Andrew Francis—

hasn't dealt with was the evidence of the councillors during the coercive hearings. I must say—

just personally speaking for the moment—it seems—

... convincing or, at the very least, capable of raising a reasonable doubt.

That was a view you honestly held at the time?

**Mr Alsbury:** Yes. I was speaking generally, but yes.

**Dr HORTON:** Besides being expressed to Mark Reid, do you express these views at any other time to those around you and involved in this decision-making?

**Mr Alsbury:** I do remember expressing those views to members of the investigating team and I think also Ms McIntyre. One of the reasons I remember that is pretty much everyone disagreed with me on that point.

**Dr HORTON:** Yes. And so how far do you take these points, in light of that disagreement?

**Mr Alsbury:** They go into the mix of factors. This was a complex matter and it was one of the things that we considered, amongst many other things. In terms of assessment of credibility, it is not an exact science. So when people disagreed with me on that point, you know, I was not sort of saying, 'You're mad. What are you talking about?' or things like that.

**Dr HORTON:** Credit is a point on which reasonable views might differ?

**Mr Alsbury:** Exactly, and I accepted those as reasonably held views by the investigating team and Ms McIntyre.

**Dr HORTON:** Yes. The point you make about chronology does not seem to find its way into Mr Francis' memorandum of 5 April, which I think is the one which goes for those number of pages.

**Mr Alsbury:** Are you talking about the 54-page one?

**Dr HORTON:** Yes.

**Mr Alsbury:** Yes. Can I just say: it is a bit confusing, because I think the date of the first memo was the—

**Dr HORTON:** 25 March?

**Mr Alsbury:** 25 March, and then when further versions were done, the date was not changed.

**Dr HORTON:** Understand. I do not think anything from my purpose turns upon that, other than it explains why we have a few documents which look the same but might have small changes. But you have drawn our attention to the document which you say was the ultimate version which was before the meeting, in effect, or before the chair and maybe you as assisting in the decision?

**Mr Alsbury:** Yes.

**Dr HORTON:** Understood. Your point about the PID postdating the probationary process I want to suggest to you just is not made clear in Mr Francis' memorandum?

**Mr Alsbury:** I would accept that.

**Dr HORTON:** Yes. Now, we do not see in his memorandum an analysis of the elements of the offences he is raising for consideration?

**Mr Alsbury:** No, we do not.

**Dr HORTON:** Or the way in which they might be particularised, or the evidence that might or might not go to each?

**Mr Alsbury:** No, we do not see that.

**Dr HORTON:** Am I fairly characterising this, this way: I recognise that you did not make either decision—either the authority to refer to a police officer to charge or the charge itself? To the extent that I am going beyond what your decision-making was, please let me know. The question is this: was the decision about charging made on the basis of a general flavour of evidence going, for example, to dishonesty and fraud, rather than a limb-by-limb or element-by-element analysis?

**Mr Alsbury:** The answer to that is no. We had had discussions previously in relation to charges and how charges and how charges might be particularised. Those conversations actually started I think back in August of 2018, so there had been ongoing conversations. To be complete in my answer, usually an observations document from a lawyer would be completed which would document the exercise that you are talking about, about going through the elements of the offence. That was not done in this case, although I think there is a draft document from Ms McIntyre that was done at some stage.

**Dr HORTON:** Yes, I have seen it.

**Mr Alsbury:** Yes.

**Dr HORTON:** Who would normally prepare that document or be responsible for bringing it to the decision-maker?

**Mr Alsbury:** The observations?

**Dr HORTON:** Yes.

**Mr Alsbury:** That would be the case lawyer, in this case Ms McIntyre.

**Dr HORTON:** I see. Who does Ms McIntyre answer to?

**Mr Alsbury:** She answers to a director, but in reality she was answering to me in relation to this matter.

**Dr HORTON:** So are you saying that, in that sense, the responsibility to ensure there was an observations document prepared and made available to those deciding was, in a supervisor sense, yours?

**Mr Alsbury:** First of all, I do not think there was a requirement that that be done, but I made a determination that it was not necessary in the circumstances of this matter.

**Dr HORTON:** I see. Did you tell her that?

**Mr Alsbury:** I imagine I would have, because in the usual course she would have had in her mind that she would have been expected to do it.

**Dr HORTON:** The document I think you might have in mind is at page 57 of the bundle that is presently before you. I have taken you straight to the page that deals with fraud, but if you want to look at the legal advice observation commencement page, it is page 43.

**Mr Alsbury:** Yes, that is the draft document I was talking about, yes.

**Dr HORTON:** Now obviously, this version at least is unfinished.

**Mr Alsbury:** Yes.

**Dr HORTON:** And was this the most up-to-date version, that you know of, having been prepared?

**Mr Alsbury:** Yes.

**Dr HORTON:** The suggested date there is 14 December 2018.

**Mr Alsbury:** Yes. I see someone has written that date on there but—

**Dr HORTON:** That might have been written for the inquiry, but there is no reason for you to think the date might be markedly different?



**Mr Alsbury:** No. Sorry, I did not mean to interrupt you, but no, there is no reason to suspect that that is wrong.

**Dr HORTON:** Why did you form the view that no such document was necessary here?

**Mr Alsbury:** There had been a lot of discussion, including discussion with the chairperson, so the issues had been covered, and I thought insisting on this type of document was just unnecessary red tape in this particular instance.

**Dr HORTON:** Yes. Nowhere, though, do we see in the other documents—I want to suggest to you for the 24 April 2019 decision—any systematic element-by-element analysis of the offences that are offered up as being those for which authority is sought to charge?

**Mr Alsbury:** That is correct.

**Dr HORTON:** Your memorandum—I think there are two there you will see, Mr Alsbury—one on 319, one at 323, another one at 325, I think. But if you go, for example, to page 321, page 3 of 4 of your memorandum of 23 April, para 10—

In my view, charges against Luke Smith clearly have reasonable prospects ...

We do not see which charges you are talking about there—do we?—and we do not see them being treated separately or by element?

**Mr Alsbury:** We see the charges later in the document, but we do not see an elementisation of the charges.

**Dr HORTON:** Yes. Paragraph 16 sets out the formulation of the charge—correct?—or the offence?

**Mr Alsbury:** That is correct.

**Dr HORTON:** But nowhere do you break down, for example, how it might be that you are going to prove dishonesty?

**Mr Alsbury:** No. No, that is correct.

**Dr HORTON:** Did anyone have at the meeting or did anyone make reference to the prosecution guidelines?

**Mr Alsbury:** Well, you are talking about the Director of Public Prosecutions guidelines?

**Dr HORTON:** Yes.

**Mr Alsbury:** Yes. They are referred to, although not by their name, in the document we have just been looking at.

**Dr HORTON:** Yes. Could you just point out where, please?

**Mr Alsbury:** When I talk about reasonable prospects of success, that is the first limb of the test under the director's guidelines, and then public interest considerations are the second limb of the director's tests.

**Dr HORTON:** Yes. Is there discussion at the meeting at which the charges are considered of the criteria that arise under the guidelines for public interest considerations?

**Mr Alsbury:** No, we did not—we did not go through one by one in relation to the factors that the guidelines set out under the public interest criteria.

**Dr HORTON:** Well, you did not go through—not one by one, but you did not go through them at all from the guidelines?

**Mr Alsbury:** No.

**Dr HORTON:** So we do not see, for example, in this document a consideration of what factors might weigh—I want to emphasise those two words: 'might weigh'—against a charge; correct?

**Mr Alsbury:** Are you talking about from the public interest viewpoint?

**Dr HORTON:** Yes.

**Mr Alsbury:** No, we do not.

**Dr HORTON:** But you do express the conclusion at 14 that you are of the view that it is in the public interest to pursue the charges?

**Mr Alsbury:** That is correct.

**Dr HORTON:** That is because the charges are of a type which you say are an egregious example of corrupt public administration?

**Mr Alsbury:** That is correct.

**Dr HORTON:** I see. I accept that the type of charge—the type of conduct—alleged for a minute is an important consideration in the public interest consideration.

**Mr Alsbury:** Yes.

**Dr HORTON:** But I suggest to you, though, there are other pressing factors which arise also which need consideration.

**Mr Alsbury:** There are. But under the director's guidelines, the more serious the offending the more likely that the public interest will require a prosecution to be pursued. The director's guidelines go on to say matters in mitigation can then be considered at sentence if the matter gets far.

**Dr HORTON:** It sounds like you are saying the fact of the egregious example of corrupt public administration here trumped all other public interest considerations.

**Mr Alsbury:** It made the offence of a serious nature to the extent that the issue that I have just sort of said, about the more serious the offence the more likely the public interest will require a prosecution—it rendered that applicable.

**Dr HORTON:** I understand that, and I am interested in the words 'more likely'. That is okay; I understand what you are saying. But did that trump all other considerations such that no other public interest consideration needed to be taken into account?

**Mr Alsbury:** In my view, in practical terms it did.

**Dr HORTON:** I understand. That is why we do not see in the memo, for example, you saying, 'We need to be aware from a public interest point of view that the charge of fraud,' for example, 'under section 175K of the Local Government Act will lead to removal upon charge of the accused'; correct?

**Mr Alsbury:** Can I just refresh my memory?

**Dr HORTON:** I could take you—yes, please do for a moment. I can take you back if that helps.

**Mr Alsbury:** No, that issue is not specifically documented.

**Dr HORTON:** Well, not documented; correct?

**Mr Alsbury:** It does refer to the significant ramifications of charging the councillors on their future employment as local government politicians.

**Dr HORTON:** Where is this?

**Mr Alsbury:** That is paragraph 14 under 'public interest considerations'.

**Dr HORTON:** Yes. Well, what about the future? It is going to have the effect that they are going to be removed from office; is that right?

**Mr Alsbury:** Well, that is right, yes. That was what that was referring to.

**Dr HORTON:** Moreover, that if a majority of councillors are charged such that the council will be unable to form a quorum it would result in the disbanding of the elected council?

**Mr Alsbury:** I agree that is not specifically mentioned.

**Dr HORTON:** Not mentioned.

**Mr Alsbury:** Well, no, it is not mentioned; that is right.

**Dr HORTON:** That, I suggest to you, is an important public interest consideration.

**Mr Alsbury:** It is an important consideration. But as I said, where the charge is a serious one public interest considerations very rarely mean that you do not pursue a prosecution. It is like a police officer laboriously going through public considerations when they are considering charging a rape or a grievous bodily harm or an attempted murder. The offences are serious offences—

**Dr HORTON:** Let's not make this about something it is not for a minute. I have not sought to draw any analogy between other types of charges in other types of cases. I am merely looking at the one that is before you.

**Mr Alsbury:** Yes.

**Dr HORTON:** When you say 'very rarely', you are just speaking from your experience, are you?

**Mr Alsbury:** I am, yes.

**Dr HORTON:** You do not hold a commission to prosecute?

**Mr Alsbury:** No, I do not.

**Dr HORTON:** Have you worked as a prosecutor?

**Mr Alsbury:** I certainly have.

**Dr HORTON:** You certainly have, did you say?

**Mr Alsbury:** Yes, I have for many years.

**Dr HORTON:** Within the CCC or outside?

**Mr Alsbury:** Outside the CCC.

**Dr HORTON:** Yes.

**Mr Alsbury:** In England and Wales, the DPP in Queensland, the Department of Transport and Main Roads.

**Dr HORTON:** So when you say 'very rarely', you are speaking from that experience?

**Mr Alsbury:** Yes.

**Dr HORTON:** I see. Now, these matters, the ones I have just described, are ones which deserved—in fact, required—specific mention in what you are presenting to another experienced prosecutor to be taken into account in this important decision; correct?

**Mr Alsbury:** When you say 'another experienced prosecutor', are you referring to Mr MacSporran?

**Dr HORTON:** I am.

**Mr Alsbury:** I cannot agree with that. That was understood by both of us, and I cannot agree that it necessarily had to be documented.

**Dr HORTON:** I see. But to be clear, your basis for not articulating was that you took it to be understood by you—that is okay—but also just took it to be understood by Mr MacSporran?

**Mr Alsbury:** Yes.

**Dr HORTON:** I see. But it did not require any communication between you for that to be understood, made plain?

**Mr Alsbury:** Certainly not in writing, and I cannot recall whether we specifically discussed it when considering this documentation.

**Dr HORTON:** Yes. I put to you this proposition, Mr Alsbury, for comment. When we in public administration have a requirement that a person turn their mind—give active intellectual consideration—to something, we require that ordinarily to be in writing for this reason: the act of writing is connected directly to the thought, so the reflection of it in writing is the act the law recognises of something, at least on its face, having been given consideration; do you agree?

**Mr Alsbury:** I do agree with that as a general proposition, yes.

**Dr HORTON:** So it is good in public administration if you are considering something, even that is understood, if it is important, to articulate it?

**Mr Alsbury:** Yes.

**Dr HORTON:** And, when making a decision which affects people, ought be reduced to writing and a record kept?

**Mr Alsbury:** Yes, ideally it should be.

**Dr HORTON:** Again, I am putting to you not 'ideally', just should be good public administration—not ideal public administration, just good public administration.

**Mr Alsbury:** It is, but I write many, many documents and, unfortunately, they are not all perfect. That is all I can say.

**Dr HORTON:** And are you happy for others to be held to your standard of not perfection?

**Mr Alsbury:** I am, because, as the saying goes, no-one is perfect. We can only aspire to that.

**Dr HORTON:** Thank you. Your memorandum goes to the chair and there is a meeting, is there, at which the chair—

**Mr Alsbury:** Yes.

**Dr HORTON:**—approves. You write a memorandum—I think a cover sheet; is that right?

**Mr Alsbury:** Yes.

**Dr HORTON:** And you said in that cover sheet that this matter was urgent, on page 318.

**Mr Alsbury:** Yes, I do.

**Dr HORTON:** It says—

Enter details regarding reason for urgency.

That is in the form, footnote 2. You say—

Yes

Why is there no reason there?

**Mr Alsbury:** I do not know. I have missed that.

**Dr HORTON:** What is the reason?

**Mr Alsbury:** I cannot remember the reason for it being urgent.

**Dr HORTON:** We will come back to that in a moment. I will take you through a possibility that I want to suggest to you about the urgency. The recommendation you make is at page 318, and it begins with the words—

To remove any doubt ...

**Mr Alsbury:** Yes.

**Dr HORTON:** The endorsement the chairperson gives is there for you to read at 317.

**Mr Alsbury:** Yes.

**Dr HORTON:** The committee has heard some evidence about this. Your recommendation differs from the terms of the endorsement which appears from Mr MacSporran; correct?

**Mr Alsbury:** Did Mr MacSporran read out what his handwriting said, by any chance?

**Dr HORTON:** Can I read it for you?

**Mr Alsbury:** Yes, please.

**Dr HORTON:** It is—

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

**Mr Alsbury:** Yes.

**Dr HORTON:** That on its face for a moment, just limited to its face, seems to be different from what you had recommended or offered up for approval?

**Mr Alsbury:** I do not think it is.

**Dr HORTON:** Read your recommendation—

... the request is for you to approve the matter being referred to a police officer ...

**Mr Alsbury:** I see, all right. Sorry, I thought you were talking about the number of charges. Yes, it is different.

**Dr HORTON:** Did you take that as being different from what you had sought to be approved?

**Mr Alsbury:** No. I must say I cannot even remember whether I paid particular attention to the difference. But looking at it now, I consider it to be an acceptable shorthand to indicate that he has agreed with my recommendation.

**Dr HORTON:** I understand. At the meeting concerning these charges, did you raise again your concerns that you had expressed in the 3 April 2019 email to which I took you earlier?

**Mr Alsbury:** They had been raised along the way but I cannot remember if I—well, I had gotten past those concerns by that time, which is why I gave the advice that I gave. They were obviously issues thrown into the mix and obviously issues that potentially the prosecution would have to confront at trial, but overall my view was that there were reasonable prospects of success.

**Dr HORTON:** Can I take you through another part of the memorandum and ask you some questions about this matter?

**Mr Alsbury:** Sure.

**Dr HORTON:** 309 and 310, which are the last two pages of Detective Sergeant Francis' memorandum.

**Mr Alsbury:** Yes.

**Dr HORTON:** Have you read them recently?

**Mr Alsbury:** Yes, I read them yesterday.

**Dr HORTON:** I just want to draw your attention, while you bear those in mind, to the preceding page 308, at paragraph 'a.'

**Mr Alsbury:** So under 'Standard of Proof considerations'?

**Dr HORTON:** Yes, just note that—

The risk of reputational harm to persons of and the CCC is acknowledged.

**Mr Alsbury:** Yes.

**Dr HORTON:** And then note the 'Public interest test' in 'c.'

**Mr Alsbury:** Yes.

**Dr HORTON:** I want to ask you about this public interest and your reaction to it. That public interest, as he states, is not simply 'this is an important or very serious alleged offence' but it says much more. Do you agree?

**Mr Alsbury:** I do.

**Dr HORTON:** And much of what is there said is fairly characterised as emotive. If you need examples of that, I can take you to it.

**Mr Alsbury:** Well, could you, please?

**Dr HORTON:** Yes. Towards the end of the page you will see the second last paragraph about halfway through—

Her integrity—

Ms Kelsey—

is of the highest calibre. Her evidence is corroborated almost to completion either with file notes, personal notes, emails, council records, documents and witness statements. Ms Kelsey has co-operated with the CCC, her early versions and statements corroborate each other flawlessly.

On the one hand, there is that comment. Then—

Mrs Kelsey ... 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 Jeckle and Hyde existence. He destroys evidence ... and encourages others to do the same.

I want to suggest to you that that is emotive.

**Mr Alsbury:** I do not know if I would agree it is emotive. It is probably more colourful than it needs to be.

**Dr HORTON:** Was it your role, did you think, to counsel Detective Sergeant Francis when you saw this draft?

**Mr Alsbury:** No, I did not think that was my role.

**Dr HORTON:** To say to him, 'Listen, take this memorandum back and you need to approach these things more impartially, actually impartially, and you need to use language which does not give rise to an apprehension that you're not being impartial.' That was no part of your role?

**Mr Alsbury:** I did not even consider that as an issue.

**Dr HORTON:** You did not think they reflected that this could be influenced by personal feelings of the prosecutor concerning the offender or the victim?

**Mr Alsbury:** I did not consider that as an issue, but there were a number of people who were involved in this decision, so if there were sort of personal feelings involved by Detective Francis then they would have been balanced out by other people considering the issues.

**Dr HORTON:** Yes, one would hope, but I want to go back to your evidence that your expression of reservation, for the moment, on 3 April 2019, you said never found agreement with others; correct?

**Mr Alsbury:** I was referring specifically to my assessment of how the councillors performed in the hearings.

**Dr HORTON:** I see, and limited only to that; is that right?

**Mr Alsbury:** I am sorry?

**Dr HORTON:** And limited only to that?

**Mr Alsbury:** That was the bit that I think you were asking me about. I cannot remember, but that is what I was specifically referring to when it did not find agreement.

**Dr HORTON:** Did you at that time or about that time express any other like reservations to do with the prospective charges?

**Mr Alsbury:** There were other reservations in that email expressed, if I remember correctly.

**Dr HORTON:** So did they find agreement with anyone else?

**Mr Alsbury:** I do not know if they found agreement, but they were taken on board. I certainly was not expressing a final view, but I was expressing a view that there needed to be more thinking about this. It was a concern I had at the time and I was certainly going to go away and do more thinking about it. I do not recall if anyone came and said, 'We agree with you on that. Thanks for letting us know,' or, 'We don't agree with you. What are you talking about?' I do not recall anyone specifically challenging me on those things.

**Dr HORTON:** The way to do it was, wasn't it, to express it through the observations document which I think, as you have said, was the ordinary way this would have been done?

**Mr Alsbury:** Well, I do not know if that would have been the purpose of an observations document.

**Dr HORTON:** I see. When we see at page 59 reference to the purpose of the email being to ultimately obtain legal advice regarding the prospects of success in relation to a charge relating to the sacking of Kelsey, is this the 'legal advice—observations' document which you referred to?

**Mr Alsbury:** No, no. I ended up not pursuing that request for legal advice.

**Dr HORTON:** I see. Would that have been internal legal advice or external legal advice?

**Mr Alsbury:** It was meant to be—what I was talking about effectively was the observations at that time when I wrote that.

**Dr HORTON:** So this was the opportunity to have injected into the meeting to occur on 24 April some considered limb-by-limb or element-by-element analysis of the evidence which went to each?

**Mr Alsbury:** That discussion was had and it was had not just at the meeting on the 24th but over a period of time. What those discussions did was focus our consideration on where we really had the issue, and that was proving dishonesty in relation to whether we were going to charge fraud or misconduct in relation to public office. We had to prove that element of dishonesty. That is what we were really focused on.

**Dr HORTON:** Who is 'we' for the minute?

**Mr Alsbury:** It was the investigating team: Ms McIntyre, myself and Mr MacSporran.

**Dr HORTON:** Where do we find the records of this taking place?

**Mr Alsbury:** I know there are some emails where I expressed that view to Mr Kennedy, who is the Director of Corruption, Legal. He also agrees with that. So that is where it is expressed in writing. I cannot tell you where else it might be expressed in writing.

**Dr HORTON:** I see. You cannot point to any—at the minute, in the bundle or otherwise—systemic consideration given the kind you have suggested in writing in a systemic, considered way?

**Mr Alsbury:** I think Detective Francis' 54-page memorandum addresses that.

**Dr HORTON:** I see. You suggest that Mr Francis' 54-page memorandum does all the necessary tasks with respect to an elemental analysis of the prospective offences?

**Mr Alsbury:** No, I did not suggest that. He does not go and say, 'This evidence is relevant to the element of dishonesty and this evidence is relevant to another element,' but that is what we were really focused on because that is where our challenge was.

**Dr HORTON:** Yet the documents do not reveal that focus.

**Mr Alsbury:** No, they do not. No, they do not.

**Dr HORTON:** And, Mr Alsbury, they should.

**Mr Alsbury:** I do not know if that is correct, to be honest.

**Dr HORTON:** And they should, for example, in the 'legal advice—observations', which ought to have been addressed and which you ought to have caused to be progressed and made available to the meeting.

**Mr Alsbury:** I do not agree with that either.

**Dr HORTON:** And that in doing so, that document should have fairly and impartially presented strength and weaknesses including any reservations you held—reservations about the ability of the prosecution side of the equation to prove each of the elements.

**Mr Alsbury:** Ideally, those things should have been spelt out in the document, but they had certainly been raised by me and understood by others. I had in my own mind got past them, if you like.

**Dr HORTON:** Again, I am not working the room with 'ideally'. I am saying 'should have in good public administration'.

**Mr Alsbury:** Well, I am going to say ideally they should have. I mean, unless you are going to refer me to some manual or some case law that says this, I mean, we are just giving opinions.

**Dr HORTON:** I see. Unless it is a legal requirement or in an organisational manual, you would not recognise it as a matter that you can answer saying, 'Yes, that would be good practice'?

**Mr Alsbury:** I am saying ideally that should be done and in future I will do it, now that this has been raised.

**Dr HORTON:** And so do I take it that you have already put in place practices as a result of this to ensure that there would be, in a case like this, legal observations?

**Mr Alsbury:** The legal observations now are done all the time.

**Dr HORTON:** I see.

**Mr Alsbury:** I cannot think of a matter that has come across my desk in the last couple of years that did not have legal observations.

**Dr HORTON:** But on your evidence, as I understand it, they were usually done but just were not done in this case?

**Mr Alsbury:** That is correct, yes.

**Dr HORTON:** Is there an explanation you give for why it was not done in this case besides simply saying you did not require it?

**Mr Alsbury:** I did not require it because the issues that we needed to focus on had been raised in Detective Francis' memorandum.

**Dr HORTON:** But they have not. You said this area of focus you talked about, using your words, was the proof of dishonesty. Correct me if I am wrong: in the 54-page memorandum we do not get a systematic analysis of that. We get, 'Here's all the evidence,' but where is the analysis that you point to?

**Mr Alsbury:** I think there is an analysis of that issue, but it is not elementised as you would suggest.

**Dr HORTON:** In light of the absence of the 'legal advice—observations', in light of the deficiency you have identified or the factors you have identified to do with Mr Francis' memorandum, was it not incumbent upon you then, in the material you presented to the chairman, to do some of that at least yourself, particularly in the memorandum which appears and to which I have taken you at 319?

**Mr Alsbury:** Yes. I will accept that I should have dealt with those issues, although they had been raised prior to that.

**Dr HORTON:** Now, there was the question of urgency, which I said I would come back to. I want to take you through a few documents and explore that with you.

**Mr Alsbury:** Sure.

**Dr HORTON:** Before we leave where you are, would you look at page 323 in case it jogs your memory, the third last paragraph? Is that a possible or one possible explanation for the urgency you are asserting in the cover sheet to the chairman?

**Mr Alsbury:** Is this the paragraph that says, 'It is recommended that this investigation memo' et cetera?

**Dr HORTON:** No, this is page 323, Mr Alsbury.

**Mr Alsbury:** Oh, sorry.

**Dr HORTON:** I am sorry, the third last paragraph—

With the QIRC matter hearings finalised, lawyers for Kelsey have provided a submission they have lodged with QIRC for determination on 2 May 2019.

**Mr Alsbury:** Sorry, I was looking at the wrong paragraph. I do recall conversations with the chairperson and we were talking about timing of charging in the context of the QIRC proceedings. We identified—this is the chairperson and I—that we were liable to be criticised no matter what we did. So if we charged before the QIRC proceedings, we would be accused of trying to influence the QIRC proceedings. If we charged after, we would be accused, if they had been successful for Kelsey, of just sort of trying to ride on the coat-tails of that and using that decision to bolster our own case. If she had not been successful, we may have been accused of some sort of sour grapes or something like that. The decision was made that we would charge before because we were ready to charge.

**Dr HORTON:** I see. So you were not going to prefer one or other—before or after—but you were ready to go. That was the decisive consideration?

**Mr Alsbury:** Sorry, can you repeat the question?

**Dr HORTON:** You were saying you would be criticised whatever you did?

**Mr Alsbury:** Yes.

**Dr HORTON:** So as a result you just chose to go when you were ready?

**Mr Alsbury:** That is correct, yes.

**Dr HORTON:** But no other consideration influenced when you went?

**Mr Alsbury:** No.

**Mr CRANDON:** Excuse me, Chair. Just a very quick question. You were almost word for word what Mr MacSporran said in relation to those matters. Have you discussed this with him in relation to that? It was almost identical wording.

**Mr Alsbury:** Yes. Well, I did not listen to Mr MacSporran's evidence, but when the complaint was initially made I think we did discuss this issue, yes.

**Mr CRANDON:** He has used those words before us as a committee as well.

**Mr Alsbury:** Yes.

**Mr CRANDON:** Did you both come to those conclusions? Was it the ELT that came to those conclusions?

**Mr Alsbury:** No. Mr MacSporran and I had discussed it at the time. I do not know whether anyone else was present.

**Mr CRANDON:** Thank you.

**Dr HORTON:** Mr Alsbury, would you turn to page 93, please? It is an email to which I do not suggest on its face you were privy. You will see there Mr Mark Andrews says to others—

We really need to pinch Smithy & and a decent portion of The Fab7 prior to 2 May.

This is on 26 March. Were you aware of this pressure?

**Mr Alsbury:** No, I was not, and I do not know why Detective Andrews is saying that, to be honest.

**Dr HORTON:** Is it not reflective or getting at the same point that is being made at 323 of the bundle to which I took you, because the QIRC hearings had been finalised and there is something happening for determination on 2 May?

**Mr Alsbury:** I do not see that as suggesting that that is a reason to charge by that date. It certainly makes that point, that the matter is coming up on 2 May.

**Dr HORTON:** Yes. Well, this began as an exploration of why you asserted at page 318 to the chairman this was an urgent matter. My question to you is: if it was a matter of indifference to you whether it was before or after, why is this 'urgent' as listed by you on 23 April 2019?

**Mr Alsbury:** Yes, I do not know why I put that.

**Dr HORTON:** In this material that you had regard to in order to brief up, so to speak, to the chairman on the decision whether to refer to a police officer for charging, did you ever obtain or gain access to the submissions made by parties other than Ms Kelsey in the QIRC proceeding?

**Mr Alsbury:** Are you talking about me personally?



**Dr HORTON:** Yes.

**Mr Alsbury:** Yes. No, I did not.

**Dr HORTON:** You had, I think, access to the submissions made on behalf of Ms Kelsey in the QIRC; correct?

**Mr Alsbury:** Yes, that is right.

**Dr HORTON:** Did you ever think that you ought have, to get a complete picture, the submissions of other parties in that proceeding?

**Mr Alsbury:** No. I was looking at Ms Kelsey's submission for a specific purpose, and I did not consider looking at other submissions.

**Dr HORTON:** What was that purpose?

**Mr Alsbury:** The purpose was to look at the explanations that the councillors had given for terminating Ms Kelsey and how they performed when those reasons were examined during the QIRC proceedings.

**Dr HORTON:** Did you not think there was a risk that when you read the submissions of Ms Kelsey's lawyers to analyse those matters you might be at risk of seeing those matters through the lens of Ms Kelsey and her advocates?

**Mr Alsbury:** I did not think that. They were very comprehensive and comprehensively referenced. When we subsequently looked at the transcripts, I found the submissions to be accurate.

**Dr HORTON:** You might know, Mr Alsbury, that the purpose of an advocate's submission is to persuade.

**Mr Alsbury:** Yes.

**Dr HORTON:** Would you not think it safer, given the nature of the document you are looking at—that is, a piece of advocacy—to look at what the advocacy is against Ms Kelsey?

**Mr Alsbury:** Yes, I see your point and I would agree with that.

**Dr HORTON:** The material presented to the chairman, I want to suggest to you, including your material and that of DS Francis, is one-sided in advocating for a positive decision to charge or to refer the matter for charging.

**Mr Alsbury:** I do not think that is right at all. I made clear in my advice to the chairperson that it had taken me some time to come to that view, and that was referring to the previous conversations we had had in relation to issues in relation to the matter.

**Dr HORTON:** Mr Alsbury, do not take my questions to be accepting that 'consensus' means 'right'. It seems to be that what you are saying is that everyone agreed with the position that was being presented to the chairman that was around you at the time; correct?

**Mr Alsbury:** I am sorry, can you repeat that?

**Dr HORTON:** You seem to be saying that everyone involved in the briefing-up of the decision to Mr MacSporran on or about 24 April was in agreement with what was being presented?

**Mr Alsbury:** Yes. They were certainly in agreement with the recommendation that was being made.

**Dr HORTON:** You would be aware organisationally of the risk of groupthink; correct?

**Mr Alsbury:** Yes, I am.

**Dr HORTON:** You would be keen, would you not, where possible that contrary views were properly raised, expressed and put before that person who is going to make an important public decision?

**Mr Alsbury:** When you say 'contrary views', whose views are you talking about?

**Dr HORTON:** For example, yours of 3 April 2019?

**Mr Alsbury:** Yes, and they were discussed with the chairperson. It is difficult in an organisation—sorry, I withdraw that.

**Dr HORTON:** For example, public interest considerations which weighed against charging fraud?

**Mr Alsbury:** Sorry, what is your question?

**Dr HORTON:** You asked me what types of things—contrary views—and I said, 'Contrary view 1, 3 April 2019, Mr Alsbury; contrary view 2, countervailing public considerations'. That is where we are at at the moment.

**Mr Alsbury:** I think those issues were considered. In terms of getting countervailing views in terms of the weight that might be attributed to that, I mean, we could have requested external legal advice or referred it to the DPP, I suppose, but they are the only real ways we can get contrary views.

**Dr HORTON:** Third, having regard to looking through the submissions made by others—not just Ms Kelsey—in the QIRC proceeding for possibly different perspectives.

**Mr Alsbury:** I agree that is something we could have done, but I was looking at those submissions for a specific purpose, as I have explained.

**Dr HORTON:** Thank you. Just further on this timing point which we were embarking on, you were involved, I think you said—and we went to the minutes that you took, the notes—on 6 August 2018 where reinstatement is mentioned by Ms Kelsey?

**Mr Alsbury:** Yes.

**Dr HORTON:** In effect—tell me if this is a fair summary—as something she would like?

**Mr Alsbury:** Yes, that was the tenor of what she was saying.

**Dr HORTON:** Yes. I just want to take you through a bit of a chronology in terms of what happens afterwards. I am going to switch between the two bundles now, I am sorry, so you might want to have both available. In the larger bundle, bundle 1, at page 293—and I am not suggesting you are mentioned in this document from Rob Hutchings to the chair—with reference to something we spoke about this afternoon, and that is between Mr Hutchings and Dan, who we can assume for a minute is Dan Williams of MinterEllison, Ms Kelsey's lawyer—

**Mr Alsbury:** Yes.

**Dr HORTON:**—who says—

He was especially interested in the prospect of the appointment of an administrator as he sees it as the only practical solution now.

Were you aware of this expression of interest by Ms Kelsey's lawyer?

**Mr Alsbury:** I was not at the time. I have obviously seen these documents since you have sent them to me.

**Dr HORTON:** Was it ever raised with you?

**Mr Alsbury:** No. The issue about an administrator was obviously an issue after the councillors were charged, but this is in August 2018, so months before that. I do not recall it being raised with me at this time.

**Dr HORTON:** Now go to the other bundle, would you, at pages 9, 10, 11? Your name is not mentioned on any of these documents I am about to take you to immediately now. I want to suggest to you that research is being done or work is being done within the commission working out what offences would automatically suspend councillors as being disqualifying offences.

**Mr Alsbury:** Yes, and again I saw this in the context of preparing for this matter.

**Dr HORTON:** Were you aware of it at the time?

**Mr Alsbury:** No, no, I was not.

**Dr HORTON:** And that you might see on page 10 at the top goes to the chairman and he has said—

... to have touched upon issues you—

assume for a moment Rob Hutchings and Alan MacSporran—

both discussed yesterday.

**Mr Alsbury:** Yes.

**Dr HORTON:** Were you party ever to a discussion, let us just say, in August 2018 as to what offences might be charged which would cause the accused councillors to be disqualified from holding office?

**Mr Alsbury:** No, I was not.

**Dr HORTON:** The effect of charges of the kind there set out were, I want to suggest to you, more than if a number of councillors were charged such that the council could no longer constitute a quorum the council would be disbanded; correct?

**Mr Alsbury:** Sorry, can you repeat that?

**Dr HORTON:** The effect of these provisions here being discussed at 10 is for and directed to the purpose of knowing what offences would be charged—correct?—which would result in disqualification of the accused?

**Mr Alsbury:** That seems to be the advice that is being given.

**Dr HORTON:** And the legal effect is: if the council, after the laying of the charges on so many councillors, is unable to constitute a quorum then the council is disbanded and an administrator appointed?

**Mr Alsbury:** Yes.

**Dr HORTON:** Do you have any knowledge now, or did you at the time, of the charges being motivated or any way informed by the desirability of securing the disqualification of the accused?

**Mr Alsbury:** No.

**Dr HORTON:** Had you known—let us leave aside motive for a minute—that is an effect—I am sorry; I will take this in steps. Did you know at the time you were recommending the charges on 24 April 2019 that the effect of those charges would be to disqualify the accused?

**Mr Alsbury:** Yes.

**Dr HORTON:** And that ultimately, because of the numbers charged, that would result in the appointment of an administrator?

**Mr Alsbury:** I do not specifically recall moving on to that next step, but I am sure I was aware of that. Yes, I probably would have been aware of it at the very least because of the Ipswich council.

**Dr HORTON:** But not something you mention as an effect relevant to the consideration of whether to lay the charges when you write the relevant memoranda for the 24th meeting?

**Mr Alsbury:** That is correct; I did not mention it.

**Dr HORTON:** What is the HPRM? This is not a trick question, because I think you know—

**Mr Alsbury:** Yes. I think it stands for Hewlett Packard records management. It is our records management system.

**Dr HORTON:** I see. I ask that because at page 9 it said that this research is to go up into the HPRM.

**Mr Alsbury:** Okay. Yes, that just means that it is going to be filed—

**Dr HORTON:** Kept.

**Mr Alsbury:**—in our records management system.

**Dr HORTON:** Thank you. I am just checking, Mr Alsbury, that I have covered the things I need to cover with you. Chair, they are my questions of this witness.

**CHAIR:** Thanks, Mr Horton. I might ask a quick question to start with in relation to that document that was just referred to about the quorums and disqualifying offences. It looks as though it was prepared for Mr Hutchings because it was addressed to him from Mark Docwra; is that how you say it?

**Mr Alsbury:** Docwra.

**CHAIR:** Yes. If I heard correctly, you indicated you were not aware of this advice being prepared at the time it was being prepared?

**Mr Alsbury:** Thank you for the question, Mr Krause. That is correct; I was not aware.

**CHAIR:** But presumably someone would have asked Mr Docwra to do it and that would, in your view, because it is addressed to Mr Hutchings, be Mr Hutchings?

**Mr Alsbury:** It seems that way, Mr Krause. Yes, I am just looking at the email, yes.

**CHAIR:** Okay.

**Mr SULLIVAN:** Mr Alsbury, just following up from the line of questioning that counsel assisting had in relation to your previously expressed concerns that I think you confirmed today focused particularly on the issue of prospects of success—I am paraphrasing you; I am not putting words in your mouth—I think you said that by the time the April meeting came around or the April memo came around you had moved on or moved past those concerns. Again, it is whatever the record says but

something to that effect, and I think you said partly in your discussions internally or in your thinking, it was because you turned your mind to that whether it was for a charge of fraud or for maladministration in office—or whatever the correct terminology is—both would require the proof of dishonesty.

**Mr Alsbury:** Yes.

**Mr SULLIVAN:** So was your thinking at that time that you had concerns about proving dishonesty but it did not matter which way you went because you still had those concerns, or had you moved on from those concerns? That is a clunky question, but do you understand what I am saying?

**Mr Alsbury:** Thanks for the question, Mr Sullivan. I do not think I do understand what you are saying, so I apologise.

**Mr SULLIVAN:** Okay. Part of the justification in saying why you were comfortable and putting forward your memo of April was that there was internal discussion around that both fraud and other options to charge would still require proof of dishonesty and that was the crux of going to prospects of success. That is fair?

**Mr Alsbury:** That was the big issue. That was the big issue. It is often the issue in cases like this and it certainly was the issue here.

**Mr SULLIVAN:** And in becoming comfortable or in moving on, as I think you said, through that issue, at that point of recommending in April to the chair the preferred charges that you recommended—the preferred offences that you recommended—were you comfortable in doing so because your fears had been allayed in proving dishonesty or because those fears existed but it did not matter which way you went; you still were going to have to face that challenge?

**Mr Alsbury:** No, my fears had been allayed. So to put it another way, I had formed the view that there were reasonable prospects of securing a conviction. If I can be permitted to go on and hopefully not make a speech, the requirement that there be reasonable prospects of securing a conviction is not the same as the requirement that it be an absolute lay-down misere 100 per cent certainty.

**Mr SULLIVAN:** I understand, yes.

**Mr Alsbury:** Circumstantial cases are necessarily cases where there are competing inferences that can be drawn. What you have to look at is the evidence as a whole and, as I said, you are not saying it is a sure-fire win; you are just saying that there are reasonable prospects.

**Mr SULLIVAN:** I understand, Mr Alsbury, but in becoming comfortable that there were reasonable prospects, had you specifically turned your mind that in this type of case that would include proving beyond reasonable doubt defences that the Crown would have to negate?

**Mr Alsbury:** Yes.

**Mr SULLIVAN:** You were comfortable that there was evidence to do that?

**Mr Alsbury:** Yes, I was.

**Mr SULLIVAN:** You found that evidence from where?

**Mr Alsbury:** In the evidence that the investigators had collated, expressed in Detective Francis' memo, but I also went into the brief of evidence and read statements, reviewed transcripts, intercepted telephone calls, those sorts of things.

**Mr SULLIVAN:** That is not relevant to be able to prove something, if it is intercepts or if it was material that was taken by the CCC's powers, but I think you said earlier too that one of your specific concerns and the opinion that you had was the performance of the dismissed councillors during the QIRC matter. Wouldn't the performance or credibility or believability—whatever you want to call it—of those witnesses go to the absolute core of prospects, specifically what the Crown would have to negate?

**Mr Alsbury:** It certainly is a very relevant feature. As I said, not everyone agreed with me on that. But by the same token, people can present well but still be being dishonest. So you also have to look at other evidence in relation to what they say, other evidence that is inconsistent with that, but that was a factor that I certainly had to weigh up.

**Mr SULLIVAN:** Intellectually I enjoy this sort of engagement, Mr Alsbury, and I wonder: was that discussion actually held at the meeting on 24 April? Before I ask that question, I do not see it in the papers. Could you either draw it to my attention in the memo or was it discussed expressly in that meeting?

**Mr Alsbury:** I cannot say it was discussed in that meeting, but it was discussed in a meeting.

**Mr SULLIVAN:** Do you remember when that meeting was and with whom?

**Mr Alsbury:** I know I discussed it with the chair, yes.

**Mr SULLIVAN:** In terms of the crux of whether the case would get up or not being how the witnesses performed because of the believability issue?

**Mr Alsbury:** I think that was implied. We were just sort of discussing the case as a whole and different aspects of it.

**CHAIR:** Mr Alsbury, as a follow-on from that, in evidence yesterday and also before this committee previously, the chair has said that the transcripts of the QIRC proceedings were not reviewed in full but the submissions of Ms Kelsey's closing submissions were what gave the flavour to the CCC, if you could call it that, about those proceedings.

**Mr Alsbury:** Yes.

**CHAIR:** On what basis would you have been informed in your discussions with the chair that you just alluded to in answer to Mr Sullivan's question? Was it just on the basis of what you had read from Ms Kelsey's submissions or just what you had heard around the traps?

**Mr Alsbury:** Thanks for the question, Mr Krause. Are you talking about the performance of the councillors?

**CHAIR:** Yes.

**Mr Alsbury:** I was talking about the coercive hearings that we did at the CCC.

**CHAIR:** I am sorry if I have had my wires crossed there, but I thought that Mr Sullivan was talking about the QIRC.

**Mr SULLIVAN:** I may have had my wires crossed too.

**CHAIR:** You were asking about the QIRC hearings?

**Mr SULLIVAN:** Yes.

**CHAIR:** Maybe we should re-put the question then in relation to discussions that were had around 24 April which are not documented—or there is nothing documented about the credibility or reliability of the councillors as witnesses in that document we were referring to. I do not have it in front of me right now, but the memo that we were talking about setting out the public interest considerations. Mr Sullivan asked if you had discussions. You said, 'Yes, we had discussions with the chair about the credibility of those witnesses.'

**Mr Alsbury:** Yes.

**CHAIR:** Before the charges were laid you did have those discussions?

**Mr Alsbury:** Yes.

**CHAIR:** Did you reflect on their performance at all in the QIRC?

**Mr Alsbury:** I did, yes, but based on the submissions.

**CHAIR:** Of Ms Kelsey's counsel?

**Mr Alsbury:** That is correct, yes.

**CHAIR:** Not the transcripts? Not their submissions?

**Mr Alsbury:** That is so, yes.

**CHAIR:** Before I go to another party, I just wanted to ask you as well in relation to the memo from Mr Docwra, which I spoke about before, about reprisal, disqualifying offences and quorum. At the top of that email it refers I think to discussions between Rob Hutchings—'as you both discussed yesterday'—and was addressed to 'Alan', Mr MacSporran. So it is alluding to a discussion between Rob Hutchings and Alan MacSporran about those matters and then sending some advice. I know you said you were not aware of that memo, but were you a party to that discussion, to the best of your recollection?

**Mr Alsbury:** No, I was not.

**CHAIR:** Any other questions? I know Michael has a question.

**Mr CRANDON:** Just to be clear, Alan MacSporran, according to that document that the chair has just been referring to, was very aware of those disqualifying offences by councillors, clearly, because I see here that in an email dated 9 August 2018 it says—

Alan,

Rob has asked me to forward you with a copy of my email below touching upon issues you both discussed yesterday.

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

They were across this email, very clearly. They had been discussing it the day before or the day of the email. Would that normally be something that you would be involved in, a discussion like that—a fairly serious consideration that is being given to a matter like this?

**Mr Alsbury:** Thanks for that question, Mr Crandon. Not necessarily, no. You can see in relation to this matter that there were a number of discussions that went on without me, and that is not unusual.

**Mr CRANDON:** I just wanted to turn to a couple of other things, one of which I have already canvassed with the chair, and that relates to the comments, the authorisation if you like, by the chair that he agrees with the recommendation to 'charge Smith x 3 plus 7 relevant councillors with one count', which is my rough way of saying how it was put. That was on 24 April, I believe.

**Mr Alsbury:** Yes.

**Mr CRANDON:** Let me go back a step. I just want to confirm: were you involved in investigation Arista?

**Mr Alsbury:** The answer is no, I was not involved in the investigation because I had a conflict of interest.

**Mr CRANDON:** Did you read the report at all?

**Mr Alsbury:** Yes, I certainly did. I proofread the report quite a number of times.

**Mr CRANDON:** You proofread it, so you read the chair's comments. Let me quote a couple of things—

It is about how messages from the executive leadership are communicated, understood, acted and reported on within an agency.

**Mr Alsbury:** Yes.

**Mr CRANDON:** That is fairly clear. To quote again—

Senior officers claimed not to know that, within their organisation, 'aspirations', when expressed by those higher up the chain of command, were taken as direct orders.

**Mr Alsbury:** Yes, I remember that.

**Mr CRANDON:** It is pretty damning on the QPS in a number of areas in relation to the report and certainly in relation to the chair's foreword.

**Mr Alsbury:** Yes, it is.

**Mr CRANDON:** With that in mind, I note Sergeant Francis was fairly keen two days later, on 26 March, to get things happening. In fact, his comment back to others was—

Yup time critical

That is on the 26th and it relates to the 2 May QIRC matter.

**Mr Alsbury:** Yes.

**Mr CRANDON:** Once again, correct me if I am wrong: you answered counsel's question around those comments of the chair, that you gave little thought to them?

**Mr Alsbury:** Are you talking about where he has approved it?

**Mr CRANDON:** Yes.

**Mr Alsbury:** I did not look at it and think, 'That's not exactly what I recommended; I'm going to take it back to him' or anything like that. I understood that he was approving what I had recommended.

**Mr CRANDON:** Is there something back from Sergeant Francis to say, 'I've made the decision to go through the process of charging'?

**Mr Alsbury:** I do not think there is that. I think that the documentation in relation to that would be the charge documentation.

**Mr CRANDON:** Should there have been something back to say—if we are to take it as you put it in your cover sheet to the chair and then with the other documentation behind it, it is meant to be for it go down to him and for him to then consider whether or not charges should be laid.

**Mr Alsbury:** Yes.

**Mr CRANDON:** Even though the chair said, 'Yes, I approve it for them to be laid.' Would you not expect something to come back up to say, 'Okay, thanks for that. Yes, I have looked at it. Yes, I am going to lay charges'?

**Mr Alsbury:** I have never considered this issue, to be honest. Often the seconded police officer has already formed a view and they form their view first before it actually gets referred to the chairperson. In some cases we have civilian investigators investigating matters, so then obviously after the chairperson gives his approval it does get referred to a seconded police officer who has not had much involvement with it before. I think the charge documentation reflects the decision of the police officer to charge, but in relation to whether there should be additional documentation within the commission then I can have a think about that. I have not considered it before.

**Mr CRANDON:** I am sorry, can you say that again? Can you repeat what you just said, that last part?

**Mr Alsbury:** It was a bit rambling, I am sorry. I will not go back to the start. I would think the charge documentation documents the decision by the seconded police officer to charge. But as to whether there should be other documentation, I can have a think about that.

**Mr CRANDON:** And get back to us?

**Mr Alsbury:** Yes. Yes.

**Mr CRANDON:** To be honest, I am confused—and some would say that that is not unusual for me. We are talking about a matter that is going to bring an end to the careers of eight people. You are going to lay charges that are going to cause a council—and this is in the full knowledge of the chair—to be sacked. There is no other choice because there is no quorum. There were no points where a confirmation came back, but there is a point where the chair says, 'Yes, go ahead and do it. I authorise it.' And yet he still holds to the view that he did not intend for that—that it was the sergeant who made the ultimate decision, even though that is not what it says on the documents.

You, as part of the ELT and in the line going back down, did not pick up on the fact that he was instructing that sergeant to go ahead with these matters, bearing in mind Arista, where exactly that point—the danger of forcing something back down the line or expecting someone to take something as a direction—with that clearly in everyone's mind—because date wise things are around the same time. Do you have any view on that in relation to you not thinking about the terminology used by the chair and why there is not something that came back up the line from the sergeant to say, 'Yes, I am going to charge'?

**Mr Alsbury:** Mr Crandon, what the chair wrote would never have been taken as a direction to the seconded police officer to charge. The police officers at the CCC would not have had a bar of that. They take their responsibilities very seriously. So Detective Francis would have considered the matter independently before he made the decision to charge.

**Mr CRANDON:** Thank you, Chair.

**CHAIR:** Mr Alsbury, I want to go back to your evidence about reprisal proceedings. This is probably some time ago now, but I have not had a chance to ask it until now. It relates to the decision not to engage in the section 49 PID process in terms of the commission seeking injunctive relief for the PID, public interest discloser. Peppered throughout the documents there are a number of references—a few—where people have indicated that a consideration needs to be the appearance of impartiality and independence on the part of the commission.

**Mr Alsbury:** Yes.

**CHAIR:** Was that, to your knowledge, one of the considerations about why the section 49 injunctive relief was not sought?

**Mr Alsbury:** I do not think that so much related to that issue. My recollection is that related to the issue about, for example, how we were going to respond to the attendance notice and deliver documents to the QIRC rather than the party and insist that all the parties be advised of the notice. I am sorry; I am not trying to be obtuse. If I could be referred to the documents, it might help me.

**CHAIR:** That is okay. I will move on to another matter in that case. From all the documents we have seen and a lot of the evidence we have heard as well, it seems pretty clear that there has been pretty much unqualified support by the commission for Ms Kelsey in relation to the PID matter in the QIRC. Great lengths were gone to to assist, and that is reflected in the correspondence. From what I am picking up, a lot of the reason for that was related to the criminal charges and corruption charges that have been brought, which are still pending and which I do not wish to get into. It was about ensuring that that proceeded and supporting the person who brought them to your attention. I am talking about the Smith charges, which are still pending.

My question is, though: was it actually necessary—and I would like to have an explanation about this—for your commission to actually throw the entire institutional weight of the CCC behind Ms Kelsey in the QIRC proceedings, which are actually quite distinct to the issue of the PID and the

charges that flowed out of that? Why was that step taken, because they are two different issues? You already had the PID. You already had a great deal of evidence collected—TI evidence and other evidence under coercion—in relation to those charges. Why was the decision taken to throw all of the weight of the CCC into the QIRC process?

**Mr Alsbury:** Thanks for the question, Mr Krause. I am glad you asked it. The support for Ms Kelsey was not connected to the criminal investigation or the criminal offences. It was because of that obligation she had to notify us of suspected corrupt conduct and also her status as a public interest discloser that we felt, given our corruption jurisdiction, that we should support her in some way. I do not think it is fair to say we threw the whole weight of the commission behind Ms Kelsey. In fact, some might say we did not do enough for Ms Kelsey. I go back to what I said before: I think we were measured. For example, we did not disseminate documentation to Ms Kelsey. We always put it into the hands, where we did disseminate documentation, of bodies that could make decisions based on their legal rights and based on court procedures, and gave them the ability to argue about admissibility and things like that. So I would not agree, with the greatest of respect, that we threw the weight of the commission behind Ms Kelsey.

**CHAIR:** We have a lot of documents in front of us which are commission documents and we have been talking to you and Mr MacSporran for the last couple of days, and there was certainly no backing away from the fact that there was a great deal of support given to her. It was not a necessary step, though, was it, to fulfil your corruption-fighting mandate to bring charges against the other person for misconduct in public office? You already had that evidence.

**Mr Alsbury:** The support of Ms Kelsey had nothing to do with gathering evidence in our criminal investigation. In answer to your question, we could have said to MinterEllison and Ms Kelsey, 'Stop bothering us. We do not want a bar of this,' but I do not think that would have been an appropriate course for the Crime and Corruption Commission to take. We are there to improve the integrity of public sector agencies and we do not do that by sending a message to public officers and public interest disclosers, 'Hey, tell us about corruption that is going on in your organisation, but just be mindful when you do; you are not going to get any support from us.'

**CHAIR:** Do you see yourself in that respect as almost a type of legal aid for these parties? It seems to me if you had the resources to do it you would have done it—provided financial assistance?

**Mr Alsbury:** I do not know if we would have, to be completely honest. I would only be speculating. I do not think we would have provided financial resources directly to Ms Kelsey, but you raise a good point: there is no legal aid.

**CHAIR:** But that is a completely separate question, though, with respect to your conduct here, and it is a policy question for government.

**Mr Alsbury:** I agree it is a policy question for government.

**CHAIR:** In my view, it is not something the CCC should be engaged with, except at a general level, not in the midst of a corruption investigation and not in the midst of someone else's industrial action.

**Mr Alsbury:** Can I just say that we tried to fill a hole, for want of a better term, where we thought it was consistent with the performance of our functions.

**CHAIR:** The prevention one?

**Mr Alsbury:** Yes.

**CHAIR:** Yes. The prevention function is fairly wide sometimes, isn't it?

**Mr Alsbury:** Yes, it is.

**CHAIR:** That is an open question.

**Mr Alsbury:** But it is very important. It is very important.

**CHAIR:** I want to ask you about the Public Records Act investigation.

**Mr Alsbury:** Yes.

**CHAIR:** 3 October 2018—the delivery of documents. In your evidence earlier on—it might have even been before lunch—you said there was a public records investigation. I want to ask who the target of that was when it went to Logan City Council and the documents were given there. Was it the Logan City Council or Silvio, the acting CEO, the seven or the five?

**Mr Alsbury:** Are you talking about the target of the investigation into the destruction of the public records?



**CHAIR:** Yes.

**Mr Alsbury:** It was six councillors—the six who had deleted the documents from their devices.

**CHAIR:** What nexus did Logan City Council have to that—I am sorry, 3 October 2018, yes, they were there, my apologies. I was getting my chronology mixed up. It was not in relation to any of the other councillors?

**Mr Alsbury:** No.

**CHAIR:** Has there ever been an investigation of that?

**Mr Alsbury:** Sorry?

**CHAIR:** Has there ever been an investigation into destruction of public records by any of the other councillors?

**Mr Alsbury:** Not that I know of. Can I just make the point: had Detective Francis fronted up on 3 October and the acting CEO said, 'Oh, yeah, all these records have been lodged,' then there would not have been an issue and that would have been the end of it. That is a pretty good reason in and of itself for Detective Francis to attend in the way that he did.

**CHAIR:** That dissemination on 3 October: what function was that performed under?

**Mr Alsbury:** He was carrying out an investigation under the commission's corruption jurisdiction.

**CHAIR:** The Public Records Act comes under that jurisdiction?

**Mr Alsbury:** The definition of 'corrupt conduct' is in section 15, so it is not a situation where these offences come under the jurisdiction and these offences do not. It fit within the corrupt conduct jurisdiction.

**CHAIR:** Mr Alsbury, going back to my earlier question about why they did not seek injunctive relief under section 49 of the Public Interest Disclosure Act, was one of the reasons the commission chose not to do that and to do all these other things because they were keen to stay in the shadows, so to speak—work behind the scenes—rather than be out there directly in the public eye, supporting one party in an industrial matter over another?

**Mr Alsbury:** No, I do not think that is the case at all.

**CHAIR:** Do we have the State Archivist advice about those things?

**Mr Alsbury:** It certainly has been provided to you, yes. I should say the former State Archivist.

**CHAIR:** Yes. There is a matter there, too. Members, are there any other questions from the bench? I will go to Mr Crandon while I look for my next one.

**Mr CRANDON:** Coming back to my line of questions around things going down or coming up et cetera, can I refer you to page 13 of the fraud folder within volume 2. It is an email from Mark Andrews.

**Mr Alsbury:** Yes, I have that, thank you, Mr Crandon.

**Mr CRANDON:** I note your comments a short while ago and also, I believe, the chair's comments were similar, that Sergeant Francis would not cop being told what to do—and that is my way of putting it, that he would be making the decision et cetera.

**Mr Alsbury:** Yes.

**Mr CRANDON:** I note in this email from Mark Andrews dated 7 September 2018 to another of his colleagues, Mark Reid, and copying in David Preston—it is a follow-on of an email from Mark Andrews to a whole range of people, including Sergeant Francis, and Mark Andrews is Detective Senior Sergeant Operations Leader—he says, as you can see there—

Mark—I sent this to Presto on Monday so we were prepared for a meeting with ED.

Who is ED?

**Mr Alsbury:** That is me. Back then—

**Mr CRANDON:** That is you?

**Mr Alsbury:** Yes.

**Mr CRANDON:** It continues—... prepared for a meeting with ED & Chair (this week—pre 6th Sept)—

of course, the first one was sent on 1 September—

if required, so we could elaborate on the attached to seek approval to charge. (all investigators are of the opinion that we are good to go with what we already have & the brief will continue to build as we interview further persons)

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

It stated 'to seek approval to charge'. This is for a meeting with you and the chair. It would seem that operations leader Detective Senior Sergeant Mark Andrews was of the opinion that he had to get approval to charge from you and the chair—that is my interpretation—and yet you are saying the opposite.

**Mr Alsbury:** I am sorry if I have given an ambiguous answer. They do need approval from the chairperson to charge, but it is not a direction to charge.

**Mr CRANDON:** That then takes us back to the original comments by the chair which he indicated to us were sloppy note taking or comments. It turns that around to being somewhat factual—that he is now approving. Those words that he has written on that piece of paper are correct. He is saying you have approval to charge. Is that what you are saying?

**Mr Alsbury:** He is saying that. I think the issue that was raised before is that he did not write, 'I am giving you approval' or 'I am approving referral to a seconded police officer to consider charging' or something like that. He just said 'approval to charge'.

**Mr CRANDON:** He said, 'Agree with the recommendation to charge Smith x 3 and 7 relevant councillors with one count'. He is actually directing them; is he not?

**Mr Alsbury:** No, he is not.

**Mr CRANDON:** Mark Andrews thinks that he has to have that. That is what he says.

**Mr Alsbury:** He does have to have approval. Can I explain it this way: you need the chair's agreement and you need a seconded police officer to be willing to charge. If you do not have both those things, no-one gets charged.

**Mr CRANDON:** It is chicken and egg; we are chasing our tail here.

**Mr Alsbury:** No, not at all.

**CHAIR:** At the top of page 318 of volume 2 is your cover sheet, which was endorsed. It states—

... it has taken me some time to arrive at that conclusion—

that is, to charge—

and I don't consider the cases against these councillors to be overly strong in light of evidence that may well be given in response to the prosecution case.

You expressed doubts about the strength of the case at the point of that recommendation?

**Mr Alsbury:** What I was saying is that it is not a lay-down misere—it will be a difficult case. Notwithstanding that, my view was that there were reasonable prospects.

**CHAIR:** In light of the other documents we have discussed, especially the one about gathering evidence about what are disqualifying charges, do you concede that it is possible people might draw the conclusion that these charges of fraud were only laid in order to get those councillors out of council?

**Mr Alsbury:** If people were to draw that conclusion, it would be the wrong conclusion.

**CHAIR:** Who else has been offered support of the magnitude offered by the CCC to Ms Kelsey?

**Mr Alsbury:** As far as I know, no-one else.

**CHAIR:** Has the CCC ever sought legal assistance from the government on behalf of a party in other civil proceedings like they did for Ms Kelsey?

**Mr Alsbury:** As far as I know, no.

**CHAIR:** It is quite an extraordinary turn of events.

**Mr Alsbury:** It was quite an unusual matter, but, yes, I agree with you it is an extraordinary turn of events.

**CHAIR:** If there are no other questions from members, I turn to Mr Horton.

**Dr HORTON:** I have a couple of questions arising, but would the committee prefer to break? I will be very short when we resume.

**CHAIR:** If you have them to mind, Mr Horton, you should ask them now.

**Dr HORTON:** They go to the timing—the urgency point. I think we were at the point in the answers you gave to me that you could not recall why you had said, yes, it is urgent on the cover sheet.

**Mr Alsbury:** Yes.

**Dr HORTON:** I want to raise with you this possibility and give you a chance to comment. At the time I want to suggest to you that final submissions were scheduled for the QIRC proceeding on 2 and 3 May 2019—

**Mr Alsbury:** Yes.

**Dr HORTON:**—and, contrary to your suggestion that you were relevantly indifferent about whether it was before or after the proceeding had concluded, there was a desire to charge because it would assist Ms Kelsey if the councillors were removed in that her restatement case, mentioned in the meeting of 6 August 2018, would be better if that had occurred?

**Mr Alsbury:** No, I disagree with that. I have been thinking about the urgency issue. I cannot remember, but it is probably, given how I know things work, that given the decision had been made that if we were ready we would charge beforehand then it may have been taking a bit longer to actually get the material together, which basically pushed us up against that date and then it became urgent. I am only guessing—and some of these documents bear this out: things sometimes take longer than people initially say they take.

**Dr HORTON:** Is it, though, an explanation that already it had been decided that the commission would do whatever it legitimately could do to assist Ms Kelsey and for that to have infiltrated the thinking about the criminal case and for that to have motivated the decision to charge 408C when it was charged—namely, at that time before final submissions were scheduled in the QIRC?

**Mr Alsbury:** No.

**Dr HORTON:** One more opportunity: you said to me that you might wish to explain at some time the reprisal charge. Have you done that already as you have gone? I am not encouraging you to give a long explanation, but if there was something you wished to give briefly, you could do that.

**Mr Alsbury:** I can give a very short explanation by simply referring you to page 319 and the heading 'A charge under the Public Interest Disclosure Act 2010 (the PID Act)?'

**Dr HORTON:** And that is what you would wish to draw attention to?

**Mr Alsbury:** Yes.

**Dr HORTON:** They are the questions I have of this witness, Chair.

**CHAIR:** On page 93 of volume 2: Andrew Francis to Mark Andrews, David Beattie and David Preston—

... time critical

Mark Andrews's email reads—

We really need to pinch Smithy & a decent portion of The Fab7 prior to 2 May.

It was pretty clear in their mind what they had to do. Are you saying to this committee that you were not aware of any time imperative in relation to laying charges and making arrests before 2 May? It was just these police?

**Mr Alsbury:** I am just speculating that someone had said we will be ready by a certain time. There was an understanding that that would be before 2 May and because we were going to be ready we would charge. Then things took longer than expected and we were being pushed up against that date. I cannot explain Detective Andrews's comment in that email, I am afraid.

**CHAIR:** We will have to ask him about that. We asked the chairperson about this: how many times, to your knowledge, has a police officer not laid a charge when recommended to, as you put it and as the chair put it, by the chairperson?

**Mr Alsbury:** I can think of two occasions.

**CHAIR:** Which are?

**Mr Alsbury:** I am reluctant to—can I talk about them in very general terms?

**CHAIR:** Yes. If there are confidentiality requirements—

**Mr Alsbury:** Yes.

**CHAIR:**—or it is in the public interest for not giving the specifics, that is fine. If you want to give an answer in general terms—

**Mr Alsbury:** One related to a fraud type matter. The other related to a matter—I think it involved allegations relating to the inappropriate use of information, some sort of computer hacking and misuse charge, from memory.

**CHAIR:** Were those matters of a significance or gravity of a situation like would cause the dissolution of a council or involve the very public arrests of people?

**Mr Alsbury:** No.

**CHAIR:** No.

**Mr Alsbury:** They would have been significant to the people who were charged if they were charged.

**CHAIR:** Indeed, yes. That is quite a different scenario, though, to this situation with eight councillors.

**Mr Alsbury:** In terms of the types of charges and the ramifications, yes, I agree with that.

**CHAIR:** Is the recommendation always made by the chair or is it sometimes made by yourself or other parties within the CCC?

**Mr Alsbury:** The answer is almost always. I can think of one occasion where it was delegated to me because of a conflict-of-interest situation.

**CHAIR:** I think I know which one that was. Can you think of any time when the chairperson has recommended a charge and it has not been laid by a police officer?

**Mr Alsbury:** I am sorry, they were the examples I was talking about before.

**CHAIR:** Yes. I am sorry. I did not realise I was that specific in the first question. I think I might have just referred to recommendations more generally. I get your answer. Thank you.

**Mr CRANDON:** I am glancing through some of the terminology that has been used. Whilst I was waiting I skipped back to page 95. Where you did not give any consideration or appear not to have given any consideration to matters before the QIRC, it would seem that Makeeta McIntyre did—

I have had the opportunity to consider the QIRC transcripts of the evidence given by each of the Third to Ninth Respondents in the QIRC proceedings.

She would appear to have been across the various transcripts—I just make that observation—whereas you have not considered them, as I understand your testimony, and nor has the chair considered those. He had only looked at the other matters.

To my question—you may have already answered this question whilst I was digging around looking for other things. On Tuesday, 26 March, the very relevant day—that is the day, I believe, that everything came down—I note that David Beattie talked about a document that is a 'must read'. This is on page 93. Mark Andrews emailed—

The attached outline (which Donny will attach to his Memo) is a must read.

David Beattie replied—

Totally agree, a must read. I've emailed bits I cut and pasted from it where Minter Ellison have submitted the respondents gave false evidence.

When's the QIRC decision?

Then we see another email from Mark Andrews—

2 May is set for submissions in QIRC, which will include this doc & who knows how long before a decision—I'm guessing months, at least.

We really need to pinch Smithy—

and this what the chair referred to—

& a decent portion of The Fab7 prior to 2 May.

Then—

Yup time critical

Clearly all of those officers and everybody involved in that conversation were focused on 2 May and the QIRC hearings. Is that something that you were not aware of at any time?

**Mr Alsbury:** No, I was not aware that they had such a focus on this date.

**Mr CRANDON:** It was not just the date; it was the fact that it was the QIRC hearings.

**Mr Alsbury:** Yes. I have speculated as to why that may have been, but I cannot say with any certainty.

**Mr CRANDON:** And you do not believe the chair would have been aware either?

**Mr Alsbury:** He would not have been aware of these emails, but we had had those discussions about we would be criticised either way and if we were ready before the QIRC then that is when we should charge.

**Mr CRANDON:** So he was aware of 2 May?

**Mr Alsbury:** He would have been aware of 2 May, I imagine. Yes.

**Mr CRANDON:** Were you aware of 2 May?

**Mr Alsbury:** I cannot recall, but I am sure I would have been.

**CHAIR:** I think you said earlier, Mr Alsbury, you did not think the dissemination to council on 2 October 2018 without a dissemination authority needed to be reported to the committee under section 329. I cannot quite recall what your reasoning was for that. But then the documents were retrieved after that.

**Mr Alsbury:** Yes.

**CHAIR:** Why were they retrieved again?

**Mr Alsbury:** During questioning I said I did not know for sure but I could guess. My guess is because Ms McIntyre raised the issues about there not being a dissemination authority and their being delivered with LPP material in them.

**CHAIR:** Doesn't the fact that they were actually collected for those reasons—I know you are only guessing—especially the absence of a dissemination authority, give rise to the reasoning that that should have then been alerted to the committee up the chain as a 329, for breach of inappropriate conduct?

**Mr Alsbury:** I do not believe it was improper conduct under 329. That is all I can say about the matter. I think the delivery to the council was authorised under I think it was then section 62(1), from memory.

**CHAIR:** So you do not think the absence of a dissemination authority would have been one of the reasons for it being collected then?

**Mr Alsbury:** It was because Ms McIntyre had expressed her view—this is my guess—

**CHAIR:** But not having a dissemination authority is not a 329 matter, in your view?

**Mr Alsbury:** If it is needed then, yes, I am sure it is a 329 issue. What I am saying is there should have been something in writing to record that, but my reading of the legislation is there did not have to be.

**CHAIR:** Mr Alsbury, we get 329s regularly—

**Mr Alsbury:** Yes, I know.

**CHAIR:**—in relation to some very, very minor things—

**Mr Alsbury:** Yes, I know.

**CHAIR:**—like someone sending a document to someone with a wrong email address. It can happen to anyone. We get it. We have to consider whether further action needs to be taken. Yet you are of the view that disseminating documents which may include material that should not have been disseminated, and arguably required a dissemination authority, does not meet the threshold for 329, even though an administrative officer misdirecting an email does meet the threshold for being reported to us. Can you see the difficulty that all of us have in accepting that?

**Mr Alsbury:** I can see the difficulty in that you get relatively minor matters. This matter, in my view, is not subject to 329, but that is my interpretation of the situation. I know, or I strongly suspect, Ms McIntyre disagrees with me, but we will always have different views about these things.

**CHAIR:** Thank you, Mr Alsbury. Mr Horton, if there is nothing else?

**Dr HORTON:** Nothing further, thank you, Chair.

**CHAIR:** It is bang on 3.30 pm.

**Dr HORTON:** Would you consider standing Mr Alsbury down, not because it is presently anticipated that he will return but just because that might be the standard with the CCC witnesses? Then they can be excused in due course if the committee has finished with them.

**CHAIR:** You do not have any other questions at all for Mr Alsbury at this point?

**Dr HORTON:** No.

**CHAIR:** In that case, Mr Alsbury, we will stand you down. If we would like to talk to you again, we will let you know, of course.

**Mr Alsbury:** I am happy to help.

**CHAIR:** Thank you. It being 3.30 pm, we will take a break either way but, Mr Horton, do you intend to move on?

**Dr HORTON:** I did, if it was in the committee's interest to do so, with Mr Hutchings after the break.

**CHAIR:** We will do that. It has been a longer session, so we will come back at 3.50 pm.

**Proceedings suspended from 3.30 pm to 3.51 pm.**

**CHAIR:** We will resume the hearings in the inquiry now. Mr Horton, did you wish to proceed with another witness today?

**Dr HORTON:** Yes, please, with Mr Rob Hutchings, also of the CCC, whom I would seek to call now.

**Mr Rob HUTCHINGS** (accompanied by Mr Peter Dunning QC and Mr Matthew Wilkinson)

*Witness was sworn—*

**Dr HORTON:** You are Rob Hutchings; is that correct?

**Mr Hutchings:** I am.

**Dr HORTON:** Would you just briefly describe during 2018 what your position description was at the CCC?

**Mr Hutchings:** In 2018 it was director of Legal Services.

**Dr HORTON:** To whom did you directly report?

**Mr Hutchings:** I would have reported to the CEO at that time.

**Dr HORTON:** I see. And who reported under you to you?

**Mr Hutchings:** I had three assistant directors reporting to me and a senior lawyer for TI.

**Dr HORTON:** Yes, and what were their names?

**Mr Hutchings:** The assistant directors were Mark Docwra, David Coghlan and Geoff Kennedy, and the TI lawyer varied over the time. I cannot remember who it was in 2018.

**Dr HORTON:** Where in the organisational structure in relation to you is Ms Makeeta McIntyre?

**Mr Hutchings:** Makeeta was a lawyer in corruption operations and she sat under Geoff Kennedy.

**Dr HORTON:** I see. So she reported to you, but directly to Geoff Kennedy, but ultimately to you?

**Mr Hutchings:** Correct.

**Dr HORTON:** I see. Thank you. Now, you were involved in discussions with MinterEllison in connection with Ms Kelsey's claim in the QIRC?

**Mr Hutchings:** I was.

**Dr HORTON:** Can I just try to pinpoint for the committee's benefit the genesis, the beginning, of that contact?

**Mr Hutchings:** Yes.

**Dr HORTON:** You have two bundles in front of you. I understand you may have had a chance to at least look through some of them?

**Mr Hutchings:** Yes, I have.

**Dr HORTON:** The larger is called volume 1.

**Mr Hutchings:** Yes.

**Dr HORTON:** You have your left hand on it now. Might we just go to page 57? Is this the genesis of your dealings with MinterEllison concerning the QIRC matter?

**Mr Hutchings:** It is likely the genesis, yes. It is early in 2018, which is my memory of when my involvement started.

**Dr HORTON:** Had you had prior contact with Mr Dan Williams of MinterEllison before 23 February?

**Mr Hutchings:** I may have but I may not have made a note of it. But this was likely one of the earliest discussions I had with him.

**Dr HORTON:** Did you know Mr Dan Williams in any other context previously?

**Mr Hutchings:** No.

**Dr HORTON:** Now, at the fourth paragraph there you recorded having conveyed to Mr Williams the 'considerable sympathy' for Ms Kelsey's position; is that correct?

**Mr Hutchings:** Yes.

**Dr HORTON:** Can the committee take it that what you refer to there was in fact conveyed to you in those terms by the chair and by the CEO?

**Mr Hutchings:** Yes.

**Dr HORTON:** And later we have seen some notes—correct me if I am wrong—that it was regarded there was a common interest between the CCC and Ms Kelsey in her pursuit of her QIRC matter.

**Mr Hutchings:** I would not use the term 'common interest' in the legal sense, but I would use an alignment of interests, given the fact that we had decided to undertake an investigation into councillor conduct, mayor conduct and reprisals.

**Dr HORTON:** When you take issue with me using the word 'common', is that because you are thinking of a potential of the context of, say, something being common interest privilege?

**Mr Hutchings:** Correct.

**Dr HORTON:** You are saying it would not satisfy that test but maybe in a layperson's sense or a general sense?

**Mr Hutchings:** In a layperson's sense it is a commonly aligned interest, yes.

**Dr HORTON:** And we have, albeit later in the events of things, the chair, I think, emailing you saying, when he went on leave on or about 4 September 2019—

Rob,

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

**Mr Hutchings:** Yes. Is that in here?

**Dr HORTON:** It is. I do not need you to go to it unless you want to. Page 633.

**Mr Hutchings:** I do not need to go to it, no.

**Dr HORTON:** We are trying to establish consistently that the chair expressed to you that the organisation should do whatever it legitimately could for Ms Kelsey.

**Mr Hutchings:** Correct.

**Dr HORTON:** Did you understand that to be limited to assisting her in connection with her QIRC proceeding?

**Mr Hutchings:** Well, my involvement was primarily that. I had sporadic involvement in the investigation as it unfolded, but my understanding at the time was that the QIRC proceeding was the primary way in which we might assist her, but it also happened to be relevant to our investigation.

**Dr HORTON:** Yes. Do I take it, then, that you are saying the sympathy, the shared interest and the doing whatever the organisation legitimately could for Ms Kelsey was something that was not limited only, on your understanding, to the QIRC proceeding?

**Mr Hutchings:** No, it was not. There were areas in which the playing field between Ms Kelsey and the council was not level.

**Dr HORTON:** I see.

**Mr Hutchings:** And we felt strongly about trying to level that playing field.

**Dr HORTON:** Yes. And levelling it beyond simply her prosecution of that proceeding?

**Mr Hutchings:** Well, levelling it in the sense that the councillors, the council and the mayor were very, very well resourced and she was not.

**Dr HORTON:** When you say 'very, very well resourced', what is the source of the facts upon which you express that opinion?

**Mr Hutchings:** I had been told that the councillors, six or so of them, and the council itself and the mayor each had separate legal representation in the QIRC, and I had been told by Dan Williams that Ms Kelsey was funding her own legal action in the QIRC entirely off her own bat.

**Dr HORTON:** Just sticking with 'very well resourced' for the minute, which is the councillor/mayor side of the equation, they had separate representation. What are the other facts upon which that opinion is based?

**Mr Hutchings:** Well, I would have probably noticed that from the court documents that had been filed and I had become aware that there were three sets of lawyers.



**Dr HORTON:** Yes?

**Mr Hutchings:** On examining some of those court documents.

**Dr HORTON:** Yes. So are they the only two facts from which you concluded that the councillors and mayor were 'very, very well resourced'?

**Mr Hutchings:** What the committee needs to understand is that at the time there was no written policy, as far as I was aware, that would have allowed Ms Kelsey to obtain financial assistance to run this action. She did not fall within the public servants guideline. What happened was the councillors apparently—this is my understanding—were able to make decisions about their own legal representation in matters involving them as parties in the QIRC.

**Dr HORTON:** What is the source of the facts that you rely upon for that opinion that they were able to make a choice about their legal representation?

**Mr Hutchings:** That they were not—sorry?

**Dr HORTON:** What is the fact upon which you rely for the opinion that the mayor and councillors were able to make a choice about their legal representation?

**Mr Hutchings:** My understanding was that there was a system in place within local government that was different to the system in state government about legal representation and indemnity.

**Dr HORTON:** I see.

**Mr Hutchings:** I was aware that the councillors, the council and the mayor did not fall within the state government indemnity process, of which I am quite familiar, and accordingly the insurance arrangements that were put in place for councillors, the council and the mayor were funded not upon an independent assessment of their entitlement to that funding but were funded, as I understood it, by reference to a decision of councillors themselves.

**Dr HORTON:** So was it your belief that they—the councillors and mayor—had no personal financial cost in the conduct of their defence of the QIRC proceeding?

**Mr Hutchings:** I did not know that for a fact but I knew that there were insurance arrangements, and I think Dan Williams had told me that this was the situation, and it stood to reason that there was a separate arrangement that allowed these people to be legally represented by private firms using ratepayers' funds. That was my understanding.

**Dr HORTON:** Well, ratepayers' funds or insurers' funds, for the minute. Do you know which?

**Mr Hutchings:** I do not know which.

**Dr HORTON:** It matters, doesn't it?

**Mr Hutchings:** Not really, because the ratepayers' funds are used to pay the insurance. The issue is not really who is paying; the issue is who is deciding who gets the benefit. And our concern was that the councillors, who were themselves parties to this proceeding, were making decisions about whether they should be legally funded.

**Dr HORTON:** Perfectly normal; is it not?

**Mr Hutchings:** Not in the state context, Mr Horton.

**Dr HORTON:** These people were being sued in the QIRC and they were alleged to have done things which at least inform the possibility, as we know, of the laying of charges later. And you are suggesting in some way, are you, that is adverse to them, that that was not a good state of affairs?

**Mr Hutchings:** What? That they should have legal representation?

**Dr HORTON:** And be able to choose.

**Mr Hutchings:** No, no. My issue was not whether they had the choice or whether they had legal representation; it was who was deciding about the fact of them getting legal assistance and the quantum of it being reasonable, which are factors that come into the state government's indemnity and legal assistance arrangements.

**Dr HORTON:** Right, so you want to make a comparison to the state arrangements for the minute.

**Mr Hutchings:** Yes, I am.

**Dr HORTON:** I am not quite understanding why for the moment, but we will come back to that. You want to say that you see it is bad in some way—leave aside the comparison—that these people in the QIRC are able to make the choice you have just described.

**Mr Hutchings:** To make the choice about their own legal representation—who they get and the circumstances in which it is given?

**Dr HORTON:** Yes.

**Mr Hutchings:** I cannot think of a more clear conflict of duty and interest.

**Dr HORTON:** Is that true? Just let me understand that. You cannot think of a more clear conflict than the one you have just described?

**Mr Hutchings:** I cannot.

**Dr HORTON:** Not overstating things a little for the moment, are you, Mr Hutchings?

**Mr Hutchings:** Sorry?

**Dr HORTON:** You are not overstating things just a little for a minute?

**Mr Hutchings:** No. What I am saying to you is: in circumstances where the QIRC proceedings were commenced and there was significant concern by us that the affidavits sworn and tendered in those proceedings may have been misleading, that they should continue to get the benefit of legal representation when they decided on the continuation of that.

**Dr HORTON:** That is quite a proposition. I just want to reflect on that for a moment and then I am going to ask you some questions about it. Who is 'us'?

**Mr Hutchings:** The chair, and the CEO at the time and me. All I can speak to is those discussions I had with them.

**Dr HORTON:** So in this proceeding which Ms Kelsey has commenced, you are expressing a view—'you', by which I mean the plural 'you'—about some merits taking place in that proceeding about some evidence given by the councillors and mayor; correct?

**Mr Hutchings:** Sorry? I am expressing a view about some merits, did you say?

**Dr HORTON:** Merits—well, the evidence given in the proceeding before a determination by the mayor and councillors; correct?

**Mr Hutchings:** Yes.

**Dr HORTON:** And that view, you say, that you have taken is adverse to the mayor and councillors?

**Mr Hutchings:** Based on the evidence we had, yes.

**Dr HORTON:** Yes, and that leads you to the view—and I am trying to unpack your view—that means the councillors should not be able to choose their legal representation.

**Mr Hutchings:** No. What I am saying is councillors, in circumstances where there is some suggestion or at least a perception that the evidence they are giving in the proceedings might not be truthful, should not be deciding upon their continued legal funding.

**Dr HORTON:** Mr Hutchings, that is absolute nonsense, and it is no part of your function at this stage in the proceeding to be, whether with a group of others or on your own, deciding those matters.

**Mr Hutchings:** Sorry, was that a question?

**Dr HORTON:** I am letting you comment on the assertion I have just made to you. That is a suggestion to you about what you have just explained to this committee.

**Mr Hutchings:** Well, it formed part of our thinking at the time.

**Dr HORTON:** Right. But you are very clear that the thinking you have identified is the base upon which you thought—with others, the chair and others—that there was an imbalance in the proceeding in the QIRC commenced by Ms Kelsey?

**Mr Hutchings:** Very significant imbalance.

**Dr HORTON:** Understood. And your conduct from there set out to correct that imbalance; correct?

**Mr Hutchings:** Within the bounds of fairness, impartiality and the law.

**Dr HORTON:** We will come to those three. You had regular dealings with Mr Williams in the course of Ms Kelsey's QIRC proceedings; is that correct?

**Mr Hutchings:** Correct.

**Dr HORTON:** By telephone and in person.

**Mr Hutchings:** Never in person but by telephone.

**Dr HORTON:** You had regular correspondence, exchanges—

**Mr Hutchings:** Sorry, I should correct that. At one stage I did meet him in a QIRC hearing that I went to.

**Dr HORTON:** And you had regular correspondence—exchanges of correspondence, email and by letter.

**Mr Hutchings:** Yes.

**Dr HORTON:** Ms Kelsey, in her proceeding, got to choose her legal representatives, didn't she?

**Mr Hutchings:** Yes, she was paying for it.

**Dr HORTON:** Right. And you wish to make something of that, do you, in your evidence?

**Mr Hutchings:** Mr Horton, she was the CEO of the Logan City Council. As I understand it, she asked the council to fund her action and it was not allowed.

**Dr HORTON:** And so she retained MinterEllison lawyers; correct?

**Mr Hutchings:** As I understand it, yes.

**Dr HORTON:** A top-tier firm; correct?

**Mr Hutchings:** Correct.

**Dr HORTON:** And she had Christopher Murdoch QC as her barrister; correct?

**Mr Hutchings:** Correct.

**Dr HORTON:** I see. All chosen presumably by Ms Kelsey; correct?

**Mr Hutchings:** Correct.

**Dr HORTON:** And all undoubted leaders in their fields.

**Mr Hutchings:** Correct.

**Dr HORTON:** So let us understand the imbalance that you are seeking here to correct. It is in connection with a litigant who has a top-tier legal firm and a QC acting for her?

**Mr Hutchings:** Yes.

**Dr HORTON:** And did, in fact, for the duration of the QIRC proceeding?

**Mr Hutchings:** Yes.

**Dr HORTON:** At a cost of \$2.5 million, as you understand it?

**Mr Hutchings:** I did not know the figure, but if that is what she—

**Dr HORTON:** Do you now know that to be the figure?

**Mr Hutchings:** No.

**Dr HORTON:** Right. We will take you to some documents. This imbalance you sought to correct in various ways: one, by cooperating with MinterEllison in the receipt, formulation and timing of the issue of a notice of attendance to produce issued by the QIRC.

**Mr Hutchings:** There were discussions about a notice to produce. Dan suggested a subpoena be issued and wanted to know what our attitude would be, and I said we would consider it on its merits—as we do for any other subpoena that we are given, of which we are given many.

**Dr HORTON:** Do you suggest here your treatment of this issue and your dealings with Mr Williams, whom you refer to as 'Dan', was no different from any other case in which such a request is made?

**Mr Hutchings:** No, I had been asked by the chair to specifically engage with Ms Kelsey's lawyer because of the attitude the commission had in respect of Ms Kelsey's circumstances.

**CHAIR:** That is the Crime and Corruption Commission, not the Industrial Relations Commission?

**Mr Hutchings:** No, the Crime and Corruption Commission.

**CHAIR:** Just to be clear.

**Dr HORTON:** When did the chair of the CCC tell you to specifically engage?

**Mr Hutchings:** Very early in 2018, either January or February.

**Dr HORTON:** And what you did from there in dealings with Mr Williams was, you thought, in discharge of the chair's mandate to you?

**Mr Hutchings:** Yes.

**Dr HORTON:** We will go through a few of these documents, Mr Hutchings. At page 63 of volume 1, the bundle you are in, on 12 April Mr Williams writes to you and requests the CCC's assistance; correct?

**Mr Hutchings:** Correct.

**Dr HORTON:** And he suggests a range of ways in which you might assist?

**Mr Hutchings:** Yep.

**Dr HORTON:** And he sets out circumstances which would justify your involvement?

**Mr Hutchings:** Yep.

**Dr HORTON:** Did you invite this letter to be sent to the CCC?

**Mr Hutchings:** I would have asked him to put it in writing, yes.

**Dr HORTON:** To put what in writing?

**Mr Hutchings:** His request for assistance.

**Dr HORTON:** I see. Did you discuss the terms which that request might set out?

**Mr Hutchings:** No.

**Dr HORTON:** Then on page 79, Mr Hutchings, Mr Williams writes to you—I am sorry, the partner is Dan Williams but the contact here is someone else. On page 79 it said—

It would be of great assistance if the CCC could provide to us—  
certain documents.

**Mr Hutchings:** Yep.

**Dr HORTON:** Again, did you invite Mr Williams to send this letter?

**Mr Hutchings:** I am not sure why he sent a second one; I cannot recall. But as we had more discussions, the nature of his client's case was made clear to us and this may have been a clarification of that for our benefit.

**Dr HORTON:** I am going to ask you more than once as we go through this. Did you ever get the impression in the course of these dealings that you were being, for want of a better word, groomed by Mr Williams to assist his client in a way that was becoming improper?

**Mr Hutchings:** No.

**Dr HORTON:** By 'groomed', I am trying to say persuaded subtly with the art, no doubt, of a very experienced, persuasive person.

**Mr Hutchings:** I understand what you mean by the word 'groomed' in that context, and I do not think that was what was going on.

**Dr HORTON:** Thank you. We will come back; I will ask you more than once. Did you in any way suggest to Mr Williams what documents were in the CCC's possession that he might request in paragraph 1 and 2 of his letter of 15 May 2018?

**Mr Hutchings:** No.

**Dr HORTON:** I see. You think that was entirely his guess?

**Mr Hutchings:** He knew we were conducting an investigation. That is as much as he would have known at that stage.

**Dr HORTON:** I see. But you have been in discussions from at least 23 February—and if we look at your note of 23 February not a passing discussion but a one-page file note and since—but all he knew was there was an investigation?

**Mr Hutchings:** Is there a page you want me to go to?

**Dr HORTON:** The one I took you to at the beginning, your 23 February note to file, page 57.

**Mr Hutchings:** Yep, sorry.

**Dr HORTON:** That is what I understood you to be saying was more or less the genesis.

**Mr Hutchings:** Yep.

**Dr HORTON:** You are saying by the time we get to 15 May all he knew is that you had an investigation?

**Mr Hutchings:** Sorry, I missed that.

**Dr HORTON:** Despite the fact that your discussions have commenced in February 2018 and we are now in 15 May, you are saying all he knew was that the CCC had an investigation underway?

**Mr Hutchings:** Yes.

**Dr HORTON:** I see. Then you suggest at page 81 to Mr—I am sorry, internally to Paul Alsbury and Makeeta McIntyre that Dan—Mr Williams—had indicated one method was to have QIRC issue a notice to produce; correct?

**Mr Hutchings:** Yes.

**Dr HORTON:** So this suggestion comes from Mr Williams?

**Mr Hutchings:** Yes.

**Dr HORTON:** And you inquire whether there is a particular time the notice might be issued that might result in the CCC not objecting to it?

**Mr Hutchings:** Yes.

**Dr HORTON:** Do you see that?

**Mr Hutchings:** Yep, I see that.

**Dr HORTON:** Is that something you have done ever in your role in the CCC besides this occasion?

**Mr Hutchings:** Sorry, what in particular? Asking—sorry, what in particular, Mr Horton?

**Dr HORTON:** Seeking to know information that you might tell an outsider about a time when your organisation might be less likely to object to the issue of a notice to produce?

**Mr Hutchings:** No.

**Dr HORTON:** Can you see that reading it, as we do now at least—and I will give you an opportunity to explain—that could look improper?

**Mr Hutchings:** It could.

**Dr HORTON:** Do you have an explanation for why you say it is not improper?

**Mr Hutchings:** I am just recording what he asked me.

**Dr HORTON:** You are not, Mr Hutchings. Read on.

**Mr Hutchings:** Mm-hmm.

**Dr HORTON:** You make a request in the last paragraph—

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

The only inference available, I want to suggest to you, from that is that that is seeking to procure from Mr Alsbury and Ms McIntyre information about when, given what is above, the CCC might be less likely to object?

**Mr Hutchings:** I am asking them that, yes.

**Dr HORTON:** Yes. And why would when make any difference to whether the CCC, in exercise of its functions and powers, object?

**Mr Hutchings:** I cannot recall exactly why the timing of it might have been relevant at that stage. It may have been that there were some coercive processes happening at that stage in the investigation and I was sending it over to Makeeta and Paul to consider whether this would be something that would be considered.

**Dr HORTON:** You are not a mere conduit, Mr Hutchings; you are a lawyer. You are not a mere conduit, Mr Hutchings; you are a lawyer.

**Mr Hutchings:** Mm-hmm.

**Dr HORTON:** I want you to reflect, if you would overnight, on what were the possible reasons why the commission might, in terms of the 'when' question, be less likely to object to a notice to produce, because I am going to ask you more about it tomorrow. It is an important point, Mr Hutchings. Now, Mr Hutchings, a meeting occurs on 31 May 2018. It is with MinterEllison—Mr Williams, Mr Murdoch QC, both lawyers for Ms Kelsey—with you and Mr Francis; is that correct?

**Mr Hutchings:** Sorry, was that—what date did you say?

**Dr HORTON:** Page 89, if you want to refresh your memory.

**Mr Hutchings:** Yes.

**Dr HORTON:** This is a meeting you attended; correct?

**Mr Hutchings:** Yes.

**Dr HORTON:** By telephone?

**Mr Hutchings:** Yes.

**Dr HORTON:** But maybe the CCC people may have been together?

**Mr Hutchings:** Yes.

**Dr HORTON:** I see. Is this your note?

**Mr Hutchings:** No.

**Dr HORTON:** I see. Your note I think might appear at 93.

**Mr Hutchings:** My very incomplete note, yes.

**Dr HORTON:** Mr Hutchings, notice an important difference here. The first point of your note says these words: 'not exactly common interest'.

**Mr Hutchings:** Yep.

**Dr HORTON:** Whereas a few pages before, on 89, the memo writer here has said 'have common interest protect Kelsey.'

**Mr Hutchings:** Yes.

**Dr HORTON:** Do you see that?

**Mr Hutchings:** Yes.

**Dr HORTON:** I wanted to point out your qualification. Is that the same or similar qualification as you wanted to explain at the outset or do you think it is a different recording of what you understand was said in substance?

**Mr Hutchings:** I cannot explain why those two records are different.

**Dr HORTON:** Nothing may turn on it, in light of your earlier evidence, I suggest, Mr Hutchings, provided we understand the difference between the uses in which you as a lawyer would use the word 'common'.

**Mr Hutchings:** Yes.

**Dr HORTON:** Then if you turn to page 90, about halfway down the page, 'summons'. In that paragraph there are three lines to it, and at the bottom of those three lines appears the words—

scope + time need discussing

**Mr Hutchings:** Yes.

**Dr HORTON:** Do you recall who said that? And what was the issue being considered?

**Mr Hutchings:** No, I do not recall who said that.

**Dr HORTON:** Is it possible it was discussion as to the scope of the summons?

**Mr Hutchings:** It looks like it was, yes.

**Dr HORTON:** Can I raise for you two possibilities about this? One is a possibility that what was being discussed or to be discussed with MinterEllison was framing the scope of what was going to be requested in the summons. The second possibility is a discussion about: whatever the scope of this notice to produce or summons was, you had power in the commission to resist it and therefore not to give anyway documents which were within the full scope of the notice. Do you understand the distinction?

**Mr Hutchings:** Yes.

**Dr HORTON:** Do you know which one of those two this was, or is there another option?

**Mr Hutchings:** I cannot say. I do not recall the specific, but there is a transcript of that telephone conversation.

**Dr HORTON:** Of the meeting?

**Mr Hutchings:** Yes. Do you have that?

**Dr HORTON:** I do not think I do, but it might be my oversight, Mr Hutchings.

**Mr Hutchings:** I have it here if you want it.

**Dr HORTON:** Thanks, in due course. Just keep it there for a moment, if you would, but thank you. Mr Hutchings, I have drawn your attention already to the fact that MinterEllison had framed the categories they seek in one of their earlier letters before this meeting, and if you compare the notice as issued it is not very different from that letter. I wanted to draw that to your attention.

**Mr Hutchings:** Right.

**Dr HORTON:** Then, Mr Hutchings, at page 97 you write to Mr Alsbury and Ms McIntyre. There is a hope expressed by you you can disseminate the WhatsApp sessions to the parties to the QIRC proceedings 'tomorrow'. We know that does not happen but just read on. The second paragraph is what I want to ask you about. You understand that—

... while this timing might have some forensic advantage in light of the hearings commencing next week, the overriding concern is one of urgency for Sharon Kelsey's sake.

**Mr Hutchings:** Yes.

**Dr HORTON:** Whose forensic advantage and what are the hearings?

**Mr Hutchings:** It looks like I was referring to a forensic advantage for Kelsey.

**Dr HORTON:** Yes. What would that be?

**Mr Hutchings:** The fact that the hearings were commencing imminently meant that it was likely to be my concern to get the WhatsApp documents to the QIRC so that they had the best possible chance of ascertaining the truth.

**Dr HORTON:** I see. Then you go on to say—I am sorry. You put earlier in the sentence the word 'while'—

... while this timing might have some forensic advantage ... the overriding concern is one of urgency for Sharon Kelsey's sake. I do not understand the use of the word 'while'. Tell me if I am being too pedantic.

**Mr Hutchings:** No, I do not understand the use of it either.

**Dr HORTON:** They both seem to be directed to the same point, which is: it would help her forensically, her hearings and commencing next week and it is urgent.

**Mr Hutchings:** I may have meant that coincidentally it may have some forensic advantage, but we were motivated to do it in any event.

**Dr HORTON:** Yes. Then you go on to say you have gone into some detail in the dissemination authority—draft one, presumably?

**Mr Hutchings:** Yes.

**Dr HORTON:** To 'justify'?

**Mr Hutchings:** Yes.

**Dr HORTON:** We do not want to read too much into that word, but are you using that word because you are having to construct a case or because you are giving the reasons?

**Mr Hutchings:** No, the dissemination documents are written with a view to balancing the competing interests for and against disclosure, and the use of my language there is probably just a bit loose. It is not the only dissemination I have been involved in, and the form of the document makes it clear that those are relatively detailed exercises.

**Dr HORTON:** Understood. Then you are merely making the material available to the QIRC. Is this part also—this desire to have them before the QIRC—of correcting the imbalance, as you saw it, between the parties?

**Mr Hutchings:** Yes.

**Dr HORTON:** So the imbalance now does not seem to be a financial one?

**Mr Hutchings:** No.

**Dr HORTON:** The imbalance now has grown into a different sort of or bigger imbalance; is that correct?

**Mr Hutchings:** It was always our intention to assist her in any way we could within the bounds of the law and acting fairly and impartially.

**Dr HORTON:** I see. Now, page 103 is an email from you to I think the CEO; is that correct?

**Mr Hutchings:** Correct.

**Dr HORTON:** 18 June 2018. You say—

Ultimately, the decision on if and when material is provided—

is one for—let's say Paul Alsbury for the minute—

**Mr Hutchings:** Yes.

**Dr HORTON:** In conjunction with the chairperson.

**Mr Hutchings:** Yes.

**Dr HORTON:** That is a true statement, I take it, of the organisational responsibilities?

**Mr Hutchings:** A statement of my what responsibilities?

**Dr HORTON:** A true statement of the organisational responsibilities of those gentlemen?

**Mr Hutchings:** Yes. What I would say about that was that the SEO Corruption has the day-to-day and operational responsibility for the corruption function and the chairperson obviously takes an interest in all matters. So ordinarily what would have been happening about disseminations was that they would go to the head of Corruption.

**Dr HORTON:** And he would sign them?

**Mr Hutchings:** He would sign them.

**Dr HORTON:** And in fact we see that happening here. We will come to that. The 'in conjunction with the chairperson' is what I am interested in. Why 'in conjunction with the chairperson' in this case?

**Mr Hutchings:** I would have probably phrased it that way because the chairperson was obviously interested in Ms Kelsey's predicament, and I had every expectation that Mr Alsbury would keep Mr MacSporran informed about significant events like this.

**Dr HORTON:** We see that happening, I think—we will come to meetings. But was it a practice, in your experience at the CCC—I know you were there for a while—of the chairperson taking an interest in the proceeding of a party in a tribunal commission like this QIRC?

**Mr Hutchings:** It was not common, no.

**Dr HORTON:** This is a special case, I think.

**Mr Hutchings:** This is a special case for a lot of reasons.

**Dr HORTON:** It got the attention of the director of Legal Services, reporting and keeping advised the SEO Corruption and the chair?

**Mr Hutchings:** Yes.

**Dr HORTON:** In fact we see through the documents—we will go through them—a great deal of attention given to the matter by some of the most senior people in the organisation including the chair himself?

**Mr Hutchings:** Correct.

**Dr HORTON:** It must have taken a considerable amount of your time, Mr Hutchings, to deal with these matters.

**Mr Hutchings:** I would not use the word 'considerable', but I was involved in that liaison role and I was involved in various aspects of TI, because the TI responsibility rested with me, and I was involved in discussions with investigators and lawyers about steps that were being taken along the way in the investigation.

**Dr HORTON:** On page 107 there is a letter from MinterEllison to you dated 20 June 2018.

**Mr Hutchings:** Yes.

**Dr HORTON:** You are being told by Mr Williams—

... it is imperative that all relevant materials are provided to the parties promptly.

**Mr Hutchings:** Yes.

**Dr HORTON:** Is this the usual way in which lawyers of private parties engage with you?

**Mr Hutchings:** Well, I cannot speak for all lawyers of private parties, but we would have not given that much attention, that demand.

**Dr HORTON:** Telling you that something is imperative, that you do something as an imperative?

**Mr Hutchings:** We would not have viewed it as imperative.



**Dr HORTON:** I see. Now page 109: this, I want to suggest to you, is an example of the chair, Mr Alan MacSporran QC, being conjoined—that is, something being done in conjunction with him—in connection with the decision whether the document should go to the QIRC in response to a summons; correct?

**Mr Hutchings:** Yes, it looks like it was setting up a meeting, yes.

**Dr HORTON:** At page 110 you suggest a discussion about the option of a summons issued by the court?

**Mr Hutchings:** Yes.

**Dr HORTON:** Yes, in connection, I think, with having received a letter from Mr Williams at 11.43. So 15 minutes later I think you send it on to Paul Alsbury and the chair?

**Mr Hutchings:** Yes.

**Dr HORTON:** Fifteen minutes after receiving Mr Williams's letter. A meeting takes place on the 20th, I think—on page 113—with you, the chair and Ms McIntyre. Are there fuller notes of this meeting?

**Mr Hutchings:** If there are, I have not been able to find them.

**Dr HORTON:** I see. And are these your notes that we see here?

**Mr Hutchings:** I think that might be Paul Alsbury's writing. They are not mine.

**Dr HORTON:** Thank you. Now then, Mr Hutchings, at page 117 you give some legal advice in respect of the preferable course, as you describe it, in the last paragraph?

**Mr Hutchings:** Yes.

**Dr HORTON:** You think that it is lawful to give the information? It is lawful to give the information to the QIRC in response to any prospective summons?

**Mr Hutchings:** Yes.

**Dr HORTON:** So you invite the parties—you conclude in the last paragraph that it is okay to invite the parties to have the QIRC issue a subpoena and the admissibility will then be debated?

**Mr Hutchings:** Correct.

**Dr HORTON:** And then you might see, Mr Hutchings, just to complete what I had suggested to you earlier about the scope of the subpoena, at page 119—the middle of the page—you express that you—

... don't have any ... concern about the width of the subpoena given—

I am sorry; you have it there, Mr Hutchings—119?

**Mr Hutchings:** Yes.

**Dr HORTON:** Right in the middle of the page, because of—

... the operation of s.213 ...

That means you could decline anyway to comply with that bit of it which was too wide?

**Mr Hutchings:** Correct.

**Dr HORTON:** And then at 123—I think this might be a note of yours—you telephone Mr Williams and say what I think is probably the effect of your advice, or the conclusion.

**Mr Hutchings:** Yes.

**Dr HORTON:** It states—

... clear preference would be to provide the material to the commission ...

**Mr Hutchings:** Yes.

**Dr HORTON:** Pursuant to some sort of process?

**Mr Hutchings:** Correct.

**Dr HORTON:** At page 125 Ms Valeska seems to express a different view of things arising from a discussion with you. Is this on 25 June? You might see there in her first line—page 125.

**Mr Hutchings:** Yes.

**Dr HORTON:** Did this advice come to you?

**Mr Hutchings:** Yes.

**Dr HORTON:** Perhaps it came to you the same day that you made the call referred to in the previous note?

**Mr Hutchings:** Yes.

**Dr HORTON:** Did you have it before you made the call?

**Mr Hutchings:** Probably.

**Dr HORTON:** And you had commissioned this advice, had you, to check that point?

**Mr Hutchings:** Zora was more familiar with the details of the T(IA) Act than I, so I—that was her job at the time—actually, I cannot say that. She was in that role for a long, long time.

**Dr HORTON:** And she is a lawyer who worked under you; correct?

**Mr Hutchings:** Yes, directly for a while doing TI work, TI advice.

**Dr HORTON:** I think it is fair to say, isn't it, that she really expresses a contrary view to you about the—

**Mr Hutchings:** I have not noticed that here. You might be able to direct me to that. I have not had a chance to read this again in detail recently.

**Dr HORTON:** Certainly. Page 127 states—

... whilst the calls had been given in evidence in an exempt hearing, I could not see how the CCC—

**Mr Hutchings:** Yes.

**Dr HORTON:**— could give the calls to Ms Kelsey...

**Mr Hutchings:** Yes.

**Dr HORTON:** This may be being directed to a different issue, but is this—

**Mr Hutchings:** That is a reference to TI calls, I would imagine, which is in a very different category to WhatsApp evidence.

**Dr HORTON:** I see. So this is not concerned with the WhatsApp material?

**Mr Hutchings:** Well, she is talking about lawfully intercepting information. That would be TI product.

**Dr HORTON:** I understand. Okay, we might come back to that in terms of the delivery of material that goes to council.

**Mr Hutchings:** Okay.

**Dr HORTON:** In any event, a summons issues, and before you have received it you have commenced collating documents in order to comply with it; is that correct?

**Mr Hutchings:** Look, I may have. I cannot recall precisely what I was doing about that in practical terms.

**Dr HORTON:** Thank you. Then we see later, just for completeness, the dissemination authority, Mr Hutchings, signed by Mr Alsbury on page 201. That is just for completeness.

**Mr Hutchings:** Yes.

**Dr HORTON:** And then, Mr Hutchings, a complaint was made to the CCC—I will ask a question first. Did anyone advise Ms Kelsey's lawyers of the documents that were in possession—the CCC's possession—in connection with the issuing of the subpoena?

**Mr Hutchings:** Sorry, can you ask me that question again?

**Dr HORTON:** I will; I am sorry. I will show you a document—page 237. McInnes Wilson writes to Paul Alsbury and Makeeta McIntyre seeking clarification whether prior to the serving of the attendance notice, which is that notice to produce, the CCC had voluntarily advised Ms Kelsey of the existence of the documents which are the subject of the attendance notice.

**Mr Hutchings:** I see that.

**Dr HORTON:** And the response from—first of all, did you voluntarily advise Ms Kelsey or her lawyers of the existence of the documents which are the subject of the attendance notice before it issued?

**Mr Hutchings:** I was very careful not to ensure—to ensure that we did not tell Mr Williams what we had, because at that stage the investigation was in its early stages. I was aware obviously that we had WhatsApp material, I think, and I was obviously aware that there was TI material but would never tell someone in Mr Williams's position about the details of that, about the existence of that.

**Dr HORTON:** Thank you. And then at 251 you will see that Mr Alsbury sends just that back to McInnes Wilson, as a completion of that exercise, Mr Hutchings.

**Mr Hutchings:** Yes.

**Dr HORTON:** The QIRC rules that the material that is being produced in response to the notice of attendance to produce should not be received by it; is that correct?

**Mr Hutchings:** I understand that is the case, yes.

**Dr HORTON:** No, it sets aside the notice but in doing so, at paragraph 155 of the ruling, the Industrial Commissioner there makes a number of conclusions. Are you familiar with those?

**Mr Hutchings:** No.

**Dr HORTON:** Did you read those conclusions at the time they were given?

**Mr Hutchings:** No.

**Dr HORTON:** Good. Overnight I am going to ask you to read paragraph 155 of that ruling, because it is relevant to what comes next and what I would like to go to. Chair, is that a convenient time? I can proceed if the committee would wish to.

**CHAIR:** Thank you, Mr Horton. Mr Horton, I wondered if we might be able to clarify one thing before we finish for today. The file note on volume 1, page 89: perhaps Mr Hutchings might be able to assist the committee in indicating who was the author of that file note. I do not think it was clear. Mr Horton, do you know who authored that?

**Dr HORTON:** I do not. I think Mr Hutchings said it might be Mr Alsbury.

**Mr Hutchings:** No, no, no. I do not think that is Mr Alsbury. My guess would be that it would be Makeeta McIntyre's, but it would only be a guess.

**Dr HORTON:** I think her writing is like yours—rather neat.

**Mr Hutchings:** I do not know about that.

**Dr HORTON:** So it could be Makeeta McIntyre's. Makeeta McIntyre does not appear as one of the participants to the meeting, which might be a reason it is reasonable to infer they are her notes?

**Mr Hutchings:** Yes.

**CHAIR:** Do any members have any questions at this point in the proceedings?

**Mr CRANDON:** I have a couple of quick ones, thank you, Chair. Mr Hutchings, just a couple of quick questions for you. Did you know Ms Kelsey before these proceedings in any way?

**Mr Hutchings:** No.

**Mr CRANDON:** Not personal—

**Mr Hutchings:** Not at all.

**Mr CRANDON:** Do you know if anyone else at the CCC knew Ms Kelsey? Are you aware of anyone else's involvement with her in any way, personal or—

**Mr Hutchings:** No.

**Mr CRANDON:** Because she was, as I understand it, an officer of one of the CCC-like organisations down—was it Victoria?

**Mr Hutchings:** I am not sure, but I think it was New South Wales. I ended up googling her after I had been asked to take on this role and noticed she had worked for an integrity agency, yes.

**Mr CRANDON:** How well did you know Dan Williams of MinterEllison?

**Mr Hutchings:** Never met him.

**Mr CRANDON:** Never met him before then. I just wanted to ask you in your experience as a legal professional: you commented on Ms Kelsey asking the council to fund her matter or consider funding her matter, and it rings a bit of a bell for me in that she was actually commencing litigation against the council.

**Mr Hutchings:** Correct.

**Mr CRANDON:** You do not see that there is a clash there in anyway—that there might be some suggestion that if they did fund it that somehow it would look like some sort of a bribe, or you do not see any issues in that regard?

**Mr Hutchings:** No, that never occurred to me, but the issue about the inequity in funding—

**Mr CRANDON:** As you understand it.

**Mr Hutchings:** As I understood it, was probably raised with me by Mr MacSporran and Mr Smith initially and then probably also by Mr Williams.

**Mr CRANDON:** Would you think that it would be improper for someone to offer to fund litigation against themselves, as in the council in this case agreeing to fund?

**Mr Hutchings:** No.

**Mr CRANDON:** No? Ms Kelsey is suing the council.

**Mr Hutchings:** My view of it was this: Ms Kelsey may well have been the applicant in the court proceedings, but she was effectively defending her position. Her defence of her position was required because she was statutorily obliged to make the section 38 notification to the CCC when she formed a reasonable suspicion of corrupt conduct about the mayor. So even though she might have been the applicant in the court proceeding, she was effectively a defendant.

**Mr CRANDON:** Okay. So you do not see there is any issue there?

**Mr Hutchings:** No.

**CHAIR:** Mr Hutchings, a section 38 notification? Section 38 under which act?

**Mr Hutchings:** Crime and Corruption Act.

**CHAIR:** About possible corrupt conduct?

**Mr Hutchings:** About suspected corrupt conduct.

**CHAIR:** That is separate from the Public Interest Disclosure Act?

**Mr Hutchings:** Yes, it is. She had the statutory obligation as the public official for the Logan City Council to make the notification to the CCC when she formed that reasonable suspicion of corrupt conduct about the mayor.

**CHAIR:** It does not necessarily match up with the industrial relations proceedings, though, does it?

**Mr Hutchings:** It exactly matches if a reprisal is taken against her for doing that.

**CHAIR:** Thank you. Mr Tantari?

**Mr TANTARI:** Mr Hutchings, do you understand what the obligation on Ms Kelsey would have been under the Local Government Act in regard to that disclosure?

**Mr Hutchings:** No.

**CHAIR:** There being no other questions from members today, we will stand down Mr Hutchings for the day. We will see you back here in the morning at 9.30. Thank you for your time here today, yourself and Mr Dunning.

Before we close proceedings today, I would like to make a statement as the chair of the committee and for the record. This morning the chairperson of the CCC used an opportunity afforded to him by me to clarify statements from yesterday to read into the record certain material. The material quoted contained unparliamentary language. Given the position of the chairperson and his professional experience, I expect he would have known that reading such material out at a public hearing was not in accordance with standing orders. In seeking to place proceedings back on track this morning, I overlooked the need to seek Mr MacSporran's withdrawal of these statements, but I will be doing this at a later time.

I seek to caution all witnesses in this inquiry, including remaining witnesses from the CCC, that the use of profanities in parliamentary proceedings in almost all cases is a breach of standing orders. It will not be tolerated even if quoting directly from documents. In respect of remaining CCC witnesses, any such use of language will, following this warning, be considered gross disorder. On that note, I adjourn the committee for today. We will resume at 9.30 in the morning.

**The committee adjourned at 4.46 pm.**