



# ***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**

**THURSDAY, 19 AUGUST 2021**

**Brisbane**

## THURSDAY, 19 AUGUST 2021

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**The committee met at 9.31 am.**

**CHAIR:** Good morning, everybody, and welcome back to day 3 of this inquiry in the Legislative Council chamber. I am Jon Krause, the member for Scenic Rim and chair of the committee. Other committee members are here today except for Dr Mark Robinson, who is attending to other committee business this morning within the precinct. I note that Mr Barry O'Rourke, the member for Rockhampton, has apologised for the week and is substituted by Ms Jonty Bush, the member for Cooper.

The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. In line with general rules relating to parliamentary proceedings, I remind witnesses to please refrain from using unparliamentary language, even if directly quoting material. The proceedings are being recorded by Hansard and broadcast live on the parliament's website.

We have made declarations earlier this week, but before we begin are there any additional declarations of interest before today's proceedings? No. Thank you, members. This morning we will continue to hear from Mr Rob Hutchings. Mr Horton, if you continue with your questioning from yesterday, that would be good.

**Dr HORTON:** Thank you, Chair.

**Mr Rob HUTCHINGS** (accompanied by Mr Peter Dunning QC and Mr Matthew Wilkinson)

**Dr HORTON:** Mr Hutchings, where we left off yesterday afternoon, I understand, you were going to go away and read paragraph 155 of the ruling in the Industrial Commission; correct?

**Mr Hutchings:** Correct.

**Dr HORTON:** Had you read that ruling before?

**Mr Hutchings:** No.

**Dr HORTON:** At the time that ruling was given, on 24 August 2018, did you regard the CCC as being bound by it?

**Mr Hutchings:** In practical terms, it was probably the impediment that would have prevented that evidence going in. As to the other options that were available to the CCC, we would have had some other legal options potentially, but I do not recall turning my mind to them at the time.

**Dr HORTON:** Please turn to page 335 of volume 1, the larger of the bundles, Mr Hutchings.

**Mr Hutchings:** Yes.

**Dr HORTON:** Is this a note under your hand?

**Mr Hutchings:** Yes.

**Dr HORTON:** 30 August 2018.

**Mr Hutchings:** Yes.

**Dr HORTON:** You ask yourself—I am sorry. Is this a note to yourself or is this a meeting note?

**Mr Hutchings:** I am embarrassed to say I cannot tell from that.

**Dr HORTON:** In any event, you are having, it seems, the mental process of asking about the QIRC decision?

**Mr Hutchings:** Yes.

**Dr HORTON:** Can I take it that the decision that you are asking yourself about here is the one in which the ruling appears at paragraph 155, that you read last night?

**Mr Hutchings:** That looks to be the case, yes.

**Dr HORTON:** It was given six days before this file note.

**Mr Hutchings:** Yes.

**Dr HORTON:** You ask whether the QIRC decision is 'binding on us'.

**Mr Hutchings:** Yes.

**Dr HORTON:** And whether the commission is a 'court of record'.

**Mr Hutchings:** Yes.

**Dr HORTON:** What did you resolve on that point?

**Mr Hutchings:** I do not remember.

**Dr HORTON:** It is section 429 of the Industrial Relations Act, the significance of it being a court of record?

**Mr Hutchings:** Sorry, I missed the first part.

**Dr HORTON:** What is the significance of the Industrial Relations Commission being a court of record?

**Mr Hutchings:** I would imagine it would then be one we would need to take significant notice of and be very well aware of before we took any further steps.

**Dr HORTON:** It is more than that, isn't it? It is the phraseology, maybe now rare, that lawyers use to ask whether the decision forms part of the body of precedent of Queensland law; correct?

**Mr Hutchings:** Yes.

**Dr HORTON:** And when we talk about precedent, we would say to be bound by that precedent; correct?

**Mr Hutchings:** Yes.

**Dr HORTON:** So it is not 'would have to take significant heed of'; it is in law, isn't it, whether we are or are not bound by that determination of law?

**Mr Hutchings:** Yes.

**Dr HORTON:** I see. Then you ask yourself—

We are aware but not consider it binds us.

That is further down.

**Mr Hutchings:** Yes.

**Dr HORTON:** Is that a true reflection of your state of mind on that day?

**Mr Hutchings:** I wrote it down. I cannot recall what the context of this was, so I simply cannot remember what my state of mind was on that day.

**Dr HORTON:** Was your state of mind at or about the time the ruling was handed down that you considered it did not bind the CCC?

**Mr Hutchings:** I cannot remember, but this may have just been questions that were asked in a meeting or topics to be discussed.

**Dr HORTON:** Just release yourself from the note for a minute.

**Mr Hutchings:** Okay.

**Dr HORTON:** As a principle, did you consider, after the decision was handed down, that it did not bind the CCC on the matters that it ruled upon?

**Mr Hutchings:** I simply do not remember.

**Dr HORTON:** I see. It would be important as a director of Legal Services to have formed a clear view on that matter, would it not?

**Mr Hutchings:** If I was asked to, yes, but this is not a matter where I was asked to advise on every single aspect of it.

**Dr HORTON:** And you had not read the ruling.

**Mr Hutchings:** I had not read the ruling.

**Dr HORTON:** It would be rather hard to know whether it bound you, I guess, if you had not read the document.

**Mr Hutchings:** Yes.

**Dr HORTON:** Documents have been provided by this stage to the QIRC and the QIRC has made rulings in connection with them, so far as you are concerned at this time; correct?

**Mr Hutchings:** Yes.

**Dr HORTON:** It would be incumbent upon you as a director of Legal Services of the CCC, having been involved in that transaction, to read the ruling of the Industrial Relations Commission on that topic, would it not?

**Mr Hutchings:** Mr Horton, I was not an operational lawyer; I was a corporate lawyer and I was asked to involve myself—I was asked to be involved in this matter by the chair in respect of an aspect, which was liaising with Ms Kelsey's lawyers. I was also asked to give occasional advice on various aspects, as I mentioned yesterday, about TI for example. I was not the general adviser in relation to this matter on every aspect of it.

**Dr HORTON:** For those reasons, is your answer to my question 'no'?

**Mr Hutchings:** Yes, it is no.

**Dr HORTON:** Part of your answer drew on you being an organisational lawyer, not a—what was the word you used? A general—

**Mr Hutchings:** There is a very distinct delineation at the CCC between operational lawyers and corporate lawyers.

**Dr HORTON:** I see. You are a corporate lawyer?

**Mr Hutchings:** Yes.

**Dr HORTON:** That means, let me understand, that you were not required to read the ruling unless you were told by the corporation to do it?

**Mr Hutchings:** Unless I was asked to give advice on it. I would have considered it was necessary to read it.

**Dr HORTON:** I see. Your note of 30 August 2018 does not reveal to you circumstances in which you were required, either by reason of your general duty as a lawyer or by reason of having been asked by someone in the corporate body, to turn your mind to these questions?

**Mr Hutchings:** No, because the head of Corruption, Mr Alsbury, is an eminent lawyer himself, a very experienced prosecutor. If he wanted advice on this, he would have asked me.

**Dr HORTON:** Mr Hutchings, it is your duty as a lawyer to have read the QIRC decision, given that you had been involved in the exchanges with Ms Kelsey's lawyers for its issue to your body. I offer that for your comment.

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

**Dr HORTON:** Given the advice you had given to your own corporation—here I am referring to the CCC, using your words 'corporate lawyer'—about whether you should do that, should respond to the summons?

**Mr Hutchings:** My reaction to all this is that it is consistent with my general approach in this matter which was that, regardless of the decision, we had done what we set out to do, which was to give Ms Kelsey the assistance that was appropriate. The decision ultimately was really of very little significance to me.

**Dr HORTON:** Because your mandate was to help Ms Kelsey?

**Mr Hutchings:** By providing the documents to the commission, not to her. It was always our intention that the QIRC would be the decision-maker on whether these documents would be admitted into evidence in the QIRC proceeding.

**Dr HORTON:** But presumably you understood the instruction to help Ms Kelsey and to correct the imbalance you described yesterday as being within the bounds of the law?

**Mr Hutchings:** Correct.

**Dr HORTON:** Did you understand the mandate which we had spoken about yesterday to be broader than doing whatever could be done within the measures of the law?

**Mr Hutchings:** No.

**Dr HORTON:** That is, you are not to exceed the lawful authority; correct?

**Mr Hutchings:** Correct.

**Dr HORTON:** So you would want to know what the boundaries of the law are in order to know how far you could help Ms Kelsey without doing so illegitimately or illegally; correct?

**Mr Hutchings:** Of course.

**Dr HORTON:** You as a lawyer, above all things, for your own purposes—leave the corporate issues away—would want to know at night, if no other time, that what you were being asked to do in the mandate did not exceed the boundaries of law?

**Mr Hutchings:** Correct.

**Dr HORTON:** And your duty as an admitted solicitor of the Supreme Court of Queensland; correct?

**Mr Hutchings:** Correct.

**Dr HORTON:** So you would need, I am putting to you squarely, in your duty as a lawyer, to have read the QIRC decision because otherwise you would not know what the lawful bounds of the mandate to assist Ms Kelsey were?

**Mr Hutchings:** My response to that is that I was not required at that time to look at it, and I do not recall being required post that time to know what the reasoning was. I had been told what the decision was and I was content to accept the QIRC's decision on admissibility.

**Dr HORTON:** That is not what your note says, Mr Hutchings. You say—

We are aware but not consider it binds us.

That is not an acceptance, I want to suggest to you, of its ruling on admissibility?

**Mr Hutchings:** Mr Horton, I have already told you I cannot recall the providence of this file note and I am embarrassed about that—it does not have much detail in it, I accept that—but it may not necessarily record my state of mind. As I said to you, it may be a list of topics for discussion.

**Dr HORTON:** I am giving you the opportunity to reveal your state of mind at the time, even more generally—

**Mr Hutchings:** Well, Mr Horton, this—

**Dr HORTON:** Let me finish. I am giving you an opportunity; please take it. I am giving you an opportunity to reveal your state of mind to the committee free, if you like, of the file note. You are at liberty, Mr Hutchings, to reveal your state of mind as at 30 August 2018.

**Mr Hutchings:** Mr Horton, it was almost three years ago. I do not recall my state of mind.

**Dr HORTON:** Thank you. At no stage since 30 August 2018 did you consider you were required, by reason of a legal duty or by reason of being told to do so by your organisation, to read the ruling that I asked you to read last night?

**Mr Hutchings:** As I said to you, my view on the reasoning was ambivalent. I did not consider it to be something I needed to know.

**Dr HORTON:** Because, as I understood it, the word you used was you were not 'required' to?

**Mr Hutchings:** No, because we had achieved what I had been asked to do, which was to endeavour to level the playing field.

**Dr HORTON:** And that endeavour failed; is that correct?

**Mr Hutchings:** Yes.

**Dr HORTON:** And you were not yourself interested in reading why the endeavour failed?

**Mr Hutchings:** All lawyers need to accept decisions of judicial authorities. There was very little I could do about it.

**Dr HORTON:** But you did not read the decision, Mr Hutchings; correct?

**Mr Hutchings:** Correct.

**Dr HORTON:** So you did not yourself know from your own reading what the reasons were?

**Mr Hutchings:** No.

**Dr HORTON:** Highly risky activity for a senior lawyer; correct?

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

**Dr HORTON:** It is fundamental basics as a senior lawyer that decisions which touch and concern activities in which we have been involved be read by us?

**Mr Hutchings:** Mr Horton, when I needed to know something in detail, I either got advice or I looked at it.

**Dr HORTON:** You needed to know it now, Mr Hutchings.

**Mr Hutchings:** I needed to know about TI law, so I went to the expert, Ms Valeska. I needed to know about aspects of the QIRC and its processes so I found out about that. At the end of this exercise, when a decision about admissibility had been delivered by the QIRC, I accepted the umpire's decision.

**Dr HORTON:** I see. We will go on to explore that. The decision is handed down on 24 August 2018; correct?

**Mr Hutchings:** Yes.

**Dr HORTON:** Page 331—four days later you receive an email from Mr Williams, MinterEllison, 28 August 2018?

**Mr Hutchings:** Yes.

**Dr HORTON:** It reads—

We also ask that the CCC consider providing the documents to the Logan City Council and/or to the individual Councillors.

You received that letter—question?

**Mr Hutchings:** I received that email, yes.

**Dr HORTON:** And your understanding of that was that the reason for Mr Williams's request was so that Logan City Council would be amenable, liable, susceptible to disclose the documents in the QIRC proceeding?

**Mr Hutchings:** Yes.

**Dr HORTON:** At this stage, your legal duty did not arise in you to think, 'I better go and read a ruling that has just been handed down that is referred to in Mr Williams's email of 28 August'?

**Mr Hutchings:** Well, it could not have been relevant to this issue because that was a decision about admissibility in the QIRC proceeding. This was a different issue about placing relevant documents in the hands of the council.

**Dr HORTON:** You saw the two as having no bearing on each other?

**Mr Hutchings:** Look, I can see that they would be somewhat related, yes, but this was a different issue and also related to the question of public records.

**Dr HORTON:** Okay. I am struggling for the minute with 'somewhat related' and 'different', but could you be more specific?

**Mr Hutchings:** Well, you are asking me whether I should have exercised my professional judgement and not done anything in light of the commissioner's decision.

**Dr HORTON:** I am saying to you—really, I am being much more square than that. I am saying to you: your legal duty and your organisational responsibility dictated that you yourself read the ruling of the commissioner about the notice to produce which you had helped bring about the issuing of and the response to?

**Mr Hutchings:** Yes, and my response is the same. We had two different aspects of this. One was responding to a notice to produce, and the QIRC ruled on that. The second was placing documents the council should have already had in their hands, in some part—not the TI product but in respect of the other material. These councillors should have given these documents themselves to council.

**Dr HORTON:** Where did you say that?

**Mr Hutchings:** I am saying it to you now and it is my testimony.

**Dr HORTON:** In the 1,200 pages that are before you—they may not be the complete record—where do we see you saying this at the time?

**Mr Hutchings:** Rather than insinuate that I have left something out or not recorded a very important issue, I think the actions of the CCC would demonstrate that we were in fact concerned to ensure that documents councillors should have given to council as public records were not in fact in council's hands and needed to be, in the interests of keeping the parties to this proceeding honest.

**Dr HORTON:** We are slipping between the 'I' and the 'we'. When I am asking you questions for the minute and I say 'you', I am talking about you as an individual.

**Mr Hutchings:** Okay.

**Dr HORTON:** 'You' singular. Are you able to my answer my question on that basis?

**Mr Hutchings:** What I have just answered was actually my view.

**Dr HORTON:** If you turn to page 341, there is an email. You are not party to it, on the face of it. It reads—

We'll deliver them—

the documents, I presume it is—

to ... Silvio Trinca—

at the council—

tomorrow, as soon as you give us the go ahead & nice letter from the SEO.

Would it have been the ordinary course that the SEO here—I take it that that is Mr Alsbury—

**Mr Hutchings:** Yes.

**Dr HORTON:**—would have had to authorise the delivery of those documents to the council?

**Mr Hutchings:** Probably, but if he did not actually authorise it he would have more than likely known about it.

**Dr HORTON:** Are you speculating 'more than likely known'?

**Mr Hutchings:** I am speculating. I did not have anything to do with that.

**Dr HORTON:** Have you made inquiries since 11 September 2018 about whether he did know?

**Mr Hutchings:** No.

**Dr HORTON:** Have you made inquiries or do you know since this time whether in fact there was such a letter?

**Mr Hutchings:** In reading these hundreds of documents before this hearing I may have seen such a letter. Yes, I may have seen such a letter. I cannot quite remember right now.

**Dr HORTON:** Go to page 349, please—an example only, I think, of what you had spoken about as being some belief that the WhatsApp and other records that you believe may be missing go back to the LCC for consideration and opinion.

**Mr Hutchings:** Yes.

**Dr HORTON:** I understood you before to be saying a motive for providing these documents to the council was that they should be with the council anyway; correct?

**Mr Hutchings:** Correct.

**Dr HORTON:** This email—I know you are not involved in it—is suggesting something a little different, is it not?

**Mr Hutchings:** It may be. I do not—

**Dr HORTON:** I am asking this because you said really the view of 'you' singular was the same as the view of 'you' plural about this matter—that is, that the documents ought go back to council because in effect it was the proper repository of them?

**Mr Hutchings:** Correct.

**Dr HORTON:** I am exploring with 'you' singular what 'you' plural have expressed in the documents which I understand to be the ones that express the purpose that you are alluding to.

**Mr Hutchings:** All I can say is that email, which I was not a party to, does reflect the general approach that I had had to that date.

**Dr HORTON:** I see, but it is different, is it not, from what you suggested before? It is saying, 'We are going to send them back to the council for consideration and opinion for the CEO', not 'for holding in council's repository of records'. It does not say that?

**Mr Hutchings:** It is different. I do not actually know what is meant by 'opinion from the CEO'.

**Dr HORTON:** And I would not ask you about it, but you seem to say that the 'you' singular view was the same as the 'you' plural view on the issue of delivery of these documents back to council and the reasons for that.

**Mr Hutchings:** Can I just make clear that sometimes investigations take different courses and I am not told of every time the course deviates. If there was some different consideration that had to be taken into account and the opinion of the CEO is relevant for some reason, I may not have been told what that was.

**Dr HORTON:** You were not involved in that question?

**Mr Hutchings:** Not as far as I can remember, no.

**Dr HORTON:** No-one came to you and said, 'Should these documents go back to LCC in order to gain an opinion from its acting CEO?'

**Mr Hutchings:** Not that I can remember, no.

**Dr HORTON:** Did anyone consult you on or immediately before 3 October 2018 about the delivery of those documents back to the council?

**Mr Hutchings:** I would have been aware that it was on the cards by my intermittent discussions with investigators who worked on the same floor as me.

**Dr HORTON:** Yes. Can you be any more specific in your recollection of from who and when you were advised?

**Mr Hutchings:** I had a lot of discussions with Mark Andrews and some with Andrew Francis. They may have been told me—probably did tell me—that this was the plan.

**Dr HORTON:** Do you have records of those conversations?

**Mr Hutchings:** No.

**Dr HORTON:** On 3 October 2018 the documents leave the CCC building, as we now know; correct?

**Mr Hutchings:** If that is the date, yes.

**Dr HORTON:** And they are delivered by Detective Sergeant Francis in the company of Detective Sergeant Newman to Mr Trinca at the Logan City Council?

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

**Dr HORTON:** Was a dissemination authority, to your knowledge, given for that to occur?

**Mr Hutchings:** I do not know.

**Dr HORTON:** Was the CCC lawfully obliged to have such dissemination authority before that dissemination occurred?

**Mr Hutchings:** It would depend on whose documents they were. If they were always the council's documents and should have always been in the hands of the council, I do not imagine there would be any need for a dissemination.

**Dr HORTON:** And is that your assertion today here before the committee?

**Mr Hutchings:** Yes.

**Dr HORTON:** That they were documents which always should have been with council and which therefore did not need a dissemination authority?

**Mr Hutchings:** Subject to my qualification before that some of the documents if previously there had been documents delivered in the form of TI product—and I might be talking about a different issue here—but what I am talking about is if there were public records that should have always been in council's possession—

**Dr HORTON:** You mean a record which has the quality of such under the Public Records Act?

**Mr Hutchings:** Correct—for example, encrypted telecommunications applications records.

**Dr HORTON:** Had you formed the view at any time on or before 3 October 2018 that the documents being delivered or to be delivered to the council on that occasion were public records for the purpose of the Public Records Act?

**Mr Hutchings:** That was an issue that was live.

**Dr HORTON:** I am sorry, my question was: had you determined that to be the case?

**Mr Hutchings:** No, I had not determined that.

**Dr HORTON:** Had you been asked to determine that?

**Mr Hutchings:** I may have been asked to give that some consideration. I cannot remember.



**Dr HORTON:** Did you?

**Mr Hutchings:** I think I did.

**Dr HORTON:** Where do we find the written record of your consideration?

**Mr Hutchings:** I do not know. I do not have one.

**Dr HORTON:** Did you make one?

**Mr Hutchings:** I cannot remember.

**Dr HORTON:** Normally legal advice is given in writing, Mr Hutchings.

**Mr Hutchings:** I am not asserting I gave legal advice about it. I was asked potentially about the issue because I know it was a live issue. My memory of three years ago is that it was a live issue within the investigation team.

**Dr HORTON:** But you cannot say for certain to this committee, it seems, that you did give advice that what was to be delivered to the council on 3 October were public records for the purpose of the Public Records Act?

**Mr Hutchings:** No.

**Dr HORTON:** Do you know of anyone who did?

**Mr Hutchings:** No.

**Dr HORTON:** I want to suggest to you that you did not and no-one did, which is why, at least in one person's view, the council is being asked to give an opinion.

**Mr Hutchings:** The council has been asked to give an opinion?

**Dr HORTON:** I took you to the email.

**Mr Hutchings:** That might be why, yes.

**Dr HORTON:** So no-one in the CCC had formed a view, to your knowledge, that the records to be delivered on or about 3 October 2018 were indeed in the commission's view, on advice, public records?

**Mr Hutchings:** Sorry, that was a very long question, Mr Horton. Could you ask it again?

**Dr HORTON:** Certainly. No-one in the CCC, to your knowledge, had formed the view at any time on or before 3 October that the records to be delivered on that date were indeed public records?

**Mr Hutchings:** Well, I cannot say that.

**Dr HORTON:** To your knowledge, Mr Hutchings—you can speak about your knowledge.

**Mr Hutchings:** What I can speak about is my recollection of what the definition of a public record is.

**Dr HORTON:** I am not asking you what your view of the definition is.

**Mr Hutchings:** Can I just finish?

**Dr HORTON:** I can read the definition in the act.

**Mr Hutchings:** I have let you finish. Could I just finish?

**Dr HORTON:** No. I am sorry. It was not responsive to my question. On 3 October there is a delivery. Those documents contain, as we now know, material which is legally professionally privileged; do you agree?

**Mr Hutchings:** Which documents, Mr Horton?

**Dr HORTON:** The documents delivered on 3 October 2018.

**Mr Hutchings:** I was not aware of what the documents were.

**Dr HORTON:** I see. No-one asked you to look at the documents or to advise about them before they went on 3 October 2018?

**Mr Hutchings:** Not to my recollection.

**Dr HORTON:** To your knowledge, was anyone, any lawyer, asked to do so?

**Mr Hutchings:** I do not know.

**Dr HORTON:** You would know, wouldn't you, if that had happened because you are the director of Legal Services?

**Mr Hutchings:** No, I would not know.

**Dr HORTON:** I see.

**Mr Hutchings:** I am a corporate lawyer generally, but I have some operational responsibility in respect of TI only—which I have been trying to explain. The position here is: this investigative team had lawyers on it.

**Dr HORTON:** Who were the lawyers on the investigative team?

**Mr Hutchings:** I understand it was Makeeta McIntyre and I do not know who else. There may have been another lawyer assisting.

**Dr HORTON:** Makeeta McIntyre does not sit underneath you in the hierarchy of the CCC?

**Mr Hutchings:** As we explored yesterday, at the time I was director of Legal Services she reported through Geoff Kennedy to me.

**Dr HORTON:** I see.

**Mr Hutchings:** After my role changed, she did not.

**Dr HORTON:** As at 3 October, what was the position?

**Mr Hutchings:** I cannot remember.

**Dr HORTON:** The documents are delivered to council and your organisation sought their retrieval in early November 2018; correct?

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

**Dr HORTON:** Were you involved in the decision to seek the retrieval?

**Mr Hutchings:** No, I do not think so. I may have been told about it.

**Dr HORTON:** I see. Do you say it was no part of your responsibilities to be involved in the retrieval?

**Mr Hutchings:** I did not get involved in operational matters like that as a matter of course.

**Dr HORTON:** Were you asked then or since about whether there was internal authority given for the dissemination of the documents on 3 October 2018?

**Mr Hutchings:** I think I asked Mr Alsbury yesterday in passing whether there was in fact a dissemination and I think his answer was he thought there was.

**Dr HORTON:** Did you ask to see it?

**Mr Hutchings:** No.

**Dr HORTON:** Then, Mr Hutchings, MinterEllison writes to you. They wrote to you about the issue of the notice to produce. They wrote to you about the delivery to council. How can you say it is no part of your responsibilities to pursue the lawfulness and appropriateness of acting in response to MinterEllison's request to you, Mr Hutchings?

**Mr Hutchings:** Sorry, can you ask that question again?

**Dr HORTON:** I will break it down. MinterEllison corresponded at some length with you about the means by which the CCC might give documents to the QIRC; correct?

**Mr Hutchings:** Yes. They asked us to produce documents, and there was a conference in which we discussed the manner in which that might occur.

**Dr HORTON:** No, Mr Hutchings. There were exchanges over a period of time between you and Mr Williams about the various possibilities of the way in which the CCC might make documents available in the QIRC proceeding.

**Mr Hutchings:** Yes.

**Dr HORTON:** You in the end settled upon—in effect, agreeing to—that MinterEllison would request the QIRC to have issued to your organisation a notice of attendance to produce; correct?

**Mr Hutchings:** No. We did not agree to any proposal. We took our own course. We decided how we would achieve the object that we were seeking to achieve.

**Dr HORTON:** I see. In any event, you respond to the notice to produce, despite the fact that the CCC might lawfully have declined to produce documents to it?

**Mr Hutchings:** Correct.

**Dr HORTON:** After the ruling on 24 August 2018, MinterEllison writes—pretty soon after—to you, Mr Hutchings, seeking delivery of the documents back to council; correct?

**Mr Hutchings:** Correct.

**Dr HORTON:** You would wish to tell the committee that, despite your involvement in the way I have just described and I think you have accepted—correct?

**Mr Hutchings:** Yes.

**Dr HORTON:**—that you did not regard yourself as having organisational responsibility for overseeing or involving yourself in questions of lawfulness and appropriateness about the delivery of these documents back to council?

**Mr Hutchings:** No, because there were already enough lawyers involved in this.

**Dr HORTON:** MinterEllison write to you again, don't they, after the retrieval of the documents from the council on or about 8 November 2018 seeking the documents that were provided back to council; correct?

**Mr Hutchings:** Yes.

**Dr HORTON:** That is by letter of—I cannot quite put my hand on it—15 November. Page 415, Mr Hutchings. This letter is directed to your attention and to Mr Alsbury's attention and goes to others as well, but I am interested for the moment that it says, 'Dear Mr Alsbury and Mr Hutchings'. Can you explain why, if you do not have involvement at this stage in these matters, Mr Williams is directing this to you?

**Mr Hutchings:** No, I did not say I did not have involvement in this. I said that there were operational decisions being made all the time that I was not involved in. Mr Williams had a history of dealing with me, so he has obviously copied me into it. Can I just read the letter?

**Dr HORTON:** He has not copied you in, by the way, Mr Hutchings. He has sent it to you and to Mr Alsbury.

**Mr Hutchings:** Okay. He sent it to me, yes. I have read the letter.

**Dr HORTON:** It is the first paragraph and the third paragraph which are of primary interest for the purpose of my questions, Mr Hutchings. This request is made to you and Mr Alsbury in the context of an outstanding application for disclosure in the QIRC proceedings by Ms Kelsey; correct?

**Mr Hutchings:** Yes.

**Dr HORTON:** The third last paragraph requests that you 'please return the documents, or copies of' them, to the council.

**Mr Hutchings:** Yes.

**Dr HORTON:** Four days later, on 19 November 2018, page 423, you have a conversation—I am sorry, a message is left for you by Mr Williams on your telephone.

**Mr Hutchings:** Yes.

**Dr HORTON:** You will see the message is transcribed on page 424.

**Mr Hutchings:** Yes.

**Dr HORTON:**

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

**Mr Hutchings:** Yes.

**Dr HORTON:** Again, just explain to us what your understanding is of your involvement at this stage for you to be the one receiving that call.

**Mr Hutchings:** I am just reading this for the first time since 2018. I am just trying to recall—

**Dr HORTON:** It is six lines, Mr Hutchings, there on page 424.

**Mr Hutchings:** I see that now, yes. I actually have no recollection of that. What did you want to know about that?

**Dr HORTON:** It rather looks like you are very involved in this issue.

**Mr Hutchings:** Well, I was on the periphery of this issue from an operational sense, but I was obviously Mr Williams's contact still, so that is all I can say about that.

**Dr HORTON:** Did you ever say to Mr Williams, 'Please stop contacting me. I am on the periphery of this'?

**Mr Hutchings:** No.

**Dr HORTON:** Did you ever say, 'Contact Mr Alsbury or the lawyers concerned with this more directly than me. I am on the periphery of this'?

**Mr Hutchings:** I do not think I said that but I know he did, on occasion.

**Dr HORTON:** I am sorry—that you did?

**Mr Hutchings:** I know—sorry. I do not think I said that to anyone, but I know that Mr Williams did have engagement with either Mr Alsbury, Ms McIntyre or the investigators from time to time.

**Dr HORTON:** Did you say to him, 'Mr Williams, you have to understand, I am a corporate lawyer not an operational one, so you should direct your correspondence to the operational people'?

**Mr Hutchings:** If he wanted something specific or if we wanted something specific from him, that would have happened, but I never said that to him.

**Dr HORTON:** You did not say that to him?

**Mr Hutchings:** No.

**Dr HORTON:** I understand. Then shortly afterwards, 15 November, Mr Alsbury says to you in an email, page 417—

I have no problem sending them back.

and, in effect, states two conditions you will read there at the top of the page. This is in response to you asking Mr Alsbury—

Do we have a position on this?

**Mr Hutchings:** Yes.

**Dr HORTON:** Now, you are involved at this stage, yes? You are directly involved in this, yes?

**Mr Hutchings:** Well, I am involved because I am given the task of being the conduit to MinterEllison.

**Dr HORTON:** I see.

**Mr Hutchings:** I am asking the operational area, 'Do we have a position on this?' because I was not the arbiter of what the position was at that stage, given the fact that these investigations take a course that I may not be intimately aware of.

**Dr HORTON:** Okay. Then on page 421, MinterEllison to you and Mr Alsbury, 16 November 2018, bottom of the page, Mr Hutchings, the last three lines—

... it would be of great assistance if you could please advise if you will agree to our request to return the relevant documents to Council.

There is no misunderstanding, I want to make clear: MinterEllison's motive is to put these documents in the hands of council so that council might be liable to the obligation of disclosure in the QIRC.

**Mr Hutchings:** Correct.

**Dr HORTON:** There is no doubt in your mind of its motive?

**Mr Hutchings:** No.

**Dr HORTON:** And that is a motive which accords with the CCC's desire to correct the imbalance?

**Mr Hutchings:** Correct.

**Dr HORTON:** And that is the purpose for which MinterEllison's request is acted on?

**Mr Hutchings:** Well, I cannot speak to whether we acted on MinterEllison's request because I was not making those decisions, but if we did return them to council it would have been consistent with our object, which was to level the playing field and to keep the parties honest.

**Dr HORTON:** Now, did it occur to you at this stage, now that you are a conduit on this question, again, that you should go back and read that QIRC decision?

**Mr Hutchings:** No.

**Dr HORTON:** If you had gone back and read it, I want to suggest now, having read it overnight, you would have taken, as a lawyer, as an officer of the court and as an organisational lawyer, a different course from that which you at this time embarked upon.

**Mr Hutchings:** I cannot say what I would have done.

**Dr HORTON:** Thank you. You have a ruling from a court of record which says, among other things, at the paragraph you read last night, that 'the use by' Ms Kelsey, for the moment, 'of material combined under compulsion may jeopardise the fair conduct of substantive proceedings and risk interfering with the administration of justice'.

**Mr Hutchings:** Yes.

**Dr HORTON:** Correct?

**Mr Hutchings:** Yes.

**Dr HORTON:** This ruling was never challenged; correct?

**Mr Hutchings:** Not by Ms Kelsey, no. Not at all, as I understand it.

**Dr HORTON:** Correct me if I am wrong on my legal understanding: this ruling, these conclusions, stand as authoritative principles for what they purport to determine?

**Mr Hutchings:** They stand as authority for a ruling on the facts and circumstances of that matter.

**Dr HORTON:** Yes. As you stand there now, having read the ruling again last night—

**Mr Hutchings:** Yes.

**Dr HORTON:**—does it cause you concern—

**CHAIR:** Dr Horton, I think it was the first time he had read the ruling, actually.

**Dr HORTON:** I am sorry, yes. Last night you said was the first time?

**Mr Hutchings:** Correct.

**Dr HORTON:** Yes, I am sorry. I think I am getting my times mixed up. Mr Hutchings, does it not cause you concern, now having read the ruling, that what you were doing was involving yourself in something which may jeopardise the fair conduct of the substantive proceedings and risk interfering with the administration of justice?

**Mr Hutchings:** No.

**Dr HORTON:** Thank you. Now, what you are doing at this stage, I want to suggest to you, is, as I think that you have accepted, acting in accordance with a mandate you had, in conjunction with the chair, to assist Ms Kelsey and correct the imbalance?

**Mr Hutchings:** Correct.

**Dr HORTON:** So, in that sense, you understood yourself to be carrying out the chair of the CCC's instruction; correct?

**Mr Hutchings:** Correct.

**Dr HORTON:** And that included here, I think as you have accepted, delivering this material, both in October and November of 2018, to council?

**Mr Hutchings:** Well, as I said, the delivery of the material to council was not something I was directly involved in. I was obviously aware of it, but it was not something that I was driving. It was clearly something that the investigative team was doing.

**Dr HORTON:** Thank you. I understand the assertion. Then, Mr Hutchings on page 431, Mr Alsbury, with the contact officer of Makeeta McIntyre, sends a letter to the council which, as you will see from page 432, the last two lines, encloses the documents?

**Mr Hutchings:** Yes.

**Dr HORTON:** Requested?

**Mr Hutchings:** Yes.

**Dr HORTON:** Now, to your knowledge, the council had not requested the documents; correct?

**Mr Hutchings:** To my knowledge that is right, yes.

**Dr HORTON:** So the request could only be—I want to invite your comment on this—the request made by MinterEllison to which I took you earlier?

**Mr Hutchings:** I do not know about that, because that would not have been the way the letter would be written if it was directed to the council.

**Dr HORTON:** Could you suggest another possible alternative?

**Mr Hutchings:** Well, the language of the letter written to the acting chief executive officer of Logan City Council is—

I enclose the documents requested.

**Dr HORTON:** I just have not seen any request. Are you aware of one?

**Mr Hutchings:** No. I cannot explain it.

**Dr HORTON:** Have you seen one in the bundles before you?

**Mr Hutchings:** I cannot explain that.

**Dr HORTON:** On page 437—this goes back to a point you made earlier about putting these documents back in their proper repository—the last two lines—

It is our belief that the messages or chats are public records—

said by Mr Alsbury to Makeeta McIntyre, 12 December 2018. I am showing you this because you had mentioned this as a possible motivator for what was done.

**Mr Hutchings:** Yes.

**Dr HORTON:** Mr Hutchings, I want to take this topic up with you. In the documents and the oral evidence there is a disconnect in some respects, I want to suggest to you, in this sense in your evidence: the documents speak in some cases of a Public Records Act purpose for these documents going back to council; correct? You have seen that?

**Mr Hutchings:** Yes.

**Dr HORTON:** And I think you had indicated that. But you seem to accept that, notwithstanding that, so far as you were involved, one of your material reasons for acting as you did was that these documents ought be before the QIRC by way of disclosure obligations in order to help correct the imbalance?

**Mr Hutchings:** Correct.

**Dr HORTON:** I am just giving you a chance to explain this. Why do we not see anywhere in the documents the tension I have just asked you about being systematically treated or considered? I will be more specific about that if you wish.

**Mr Hutchings:** Why do we not see that? Was that the question?

**Dr HORTON:** Do we see, first of all, the systematic treatment of the balance or tension of those two issues: Public Records Act purpose and disclosure being required in QIRC?

**Mr Hutchings:** Well, what I would like to have is a much more contemporary understanding of what all these letters were that went at the time so that I could answer that properly. But my recollection was that the two objects were complementary, both consistent with our objective, and I would not routinely record for posterity that we were undertaking activity that would be—that would achieve the same objective—or two activities that would achieve the same objective.

**Dr HORTON:** Thank you. Now, the documents, of course, go back to council. I think there are some documents, for completeness, that are in fact disclosed in the QIRC proceeding. Is this a true fact, to your knowledge: Ms Kelsey withdrew her application for disclosure on 4 December 2018 in the QIRC?

**Mr Hutchings:** I am not certain of that.

**Dr HORTON:** Were you in any way involved in the letter that appears at 465 sent by Mr Alsbury to the council on 12 February 2019 drawing the council's attention to its disclosure obligations? The reason I ask is: I am trying to understand why there is a pressing of the council to disclose, if it be true that Ms Kelsey had already discontinued her request for disclosure months earlier.

**Mr Hutchings:** I do not remember, but I may have had some involvement in this. Paul may have come to me and asked me to look at it. He did on occasion ask me to do that—look at some letters—but if you are trying to get to the issue of—

**Dr HORTON:** I am.

**Mr Hutchings:**—why we were pressing the council to make disclosure, it was because we were under no confident apprehension that they understood what they had to do in the proceeding.

**Dr HORTON:** Even though they are being advised by respected solicitors—represented by respected solicitors; correct?

**Mr Hutchings:** Even though.

**Dr HORTON:** And even though Ms Kelsey herself, I want to suggest to you, by her withdrawal of the 4 December 2018 application—on 4 December 2018—for discovery herself was not concerned.

**Mr Hutchings:** Well, as the state's peak integrity agency concerned with the conduct of units of public administration such as the Logan City Council, we were very interested in how they conducted themselves in this proceeding and we were very concerned to ensure that they discharged their duties of disclosure, so the fact that Ms Kelsey had chosen not to continue this disclosure fight was not really relevant to that.

**Dr HORTON:** At this point, if not before, the CCC has left assisting Ms Kelsey to being an opponent of the councillors and mayor in the QIRC proceeding.

**Mr Hutchings:** Sorry, you said she has left?

**Dr HORTON:** You, the CCC, have left.

**Mr Hutchings:** Sorry, I am having trouble hearing you.

**Dr HORTON:** I will speak louder, I am sorry. Up until now you said the mandate is to correct the imbalance.

**Mr Hutchings:** Correct.

**Dr HORTON:** And assist Ms Kelsey.

**Mr Hutchings:** Correct.

**Dr HORTON:** Now the CCC, with Ms Kelsey's abandonment on 4 December 2018 of the disclosure application, is now itself taking sides in the QIRC proceeding by taking the stance it does.

**Mr Hutchings:** I might rhetorically ask: what we would be expected to do in circumstances where we are aware that there may be an issue about the fulsomeness of council's disclosure in any court proceeding, regardless of whether Ms Kelsey has abandoned her fight?

**Dr HORTON:** Well, if you are happy for your rhetorical question to be your answer, then so be it. And although rhetorical, you might consider the answer to be: because doing what you were doing was jeopardising the fair conduct of the substantive proceedings and risking interfering with the administration of justice.

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

**Dr HORTON:** Which appears in the ruling at paragraph 155(e).

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

**Dr HORTON:** Because although not identical, the documents which were being delivered back to council were substantially the same as those which were the subject of the ruling.

**Mr Hutchings:** The obligation on council to make disclosure would have endured notwithstanding the commissioner's decision.

**Dr HORTON:** Can you think of any other occasion in your 10 years at the CCC when that organisation has concerned itself in ensuring compliance with disclosure obligations in civil proceedings?

**Mr Hutchings:** No, but these were very peculiar circumstances.

**Dr HORTON:** Peculiar. Can you point me to any power in a statute that gives the CCC public authority to involve itself in ensuring disclosure obligations in civil proceedings?

**Mr Hutchings:** If you gave me some time I could come up with a lot of sections.

**Dr HORTON:** You will have time in the break, Mr Hutchings. If there is more than one you might collect a record of them, and you can maybe state them into the record after the break when you have had a chance.

**Mr Hutchings:** Well, I can instantly tell you that section 34(d) requires us to act in the public interest.

**Dr HORTON:** I see.

**Mr Hutchings:** And we have an overarching responsibility to promote public confidence in the integrity of units of public administration.

**Dr HORTON:** What is the unit of public administration here?

**Mr Hutchings:** Logan City Council as an entity, rather than the councillors themselves.

**Dr HORTON:** Thank you. Now, you have some more time anyway with that over the break if you want to cite further sections. Could you turn, please, a bit further on in the bundle to 497. This is an email from you. It is sent on 15 February 2019 to many people, including the chair and Mr Alsbury.

**Mr Hutchings:** Yes.

**Dr HORTON:** And it is the 'wrap-up of discussions between Paul, Alan and myself since the receipt of this letter yesterday'. The letter, I think, is—help me out here—a letter from McInnes Wilson; is that correct?

**Mr Hutchings:** It may be a Fynes-Clinton letter from King & Company.

**Mrs McMAHON:** Yes, King & Company.

**Dr HORTON:** Maybe turn to 465, Mr Hutchings. That is the letter I took you to earlier: 'By the way Ms Kelsey's withdrawn her application'.

**Mr Hutchings:** It is not 465.

**Dr HORTON:** It is 469, I am sorry. I took you there earlier. Sorry for that confusion. So you have the letter and you have had discussions with the chair, the second in charge on corruption and you about the letter that has come on the 14th; correct?

**Mr Hutchings:** Yes.

**Dr HORTON:** So you must have turned your mind very squarely to this issue.

**Mr Hutchings:** Yes.

**Dr HORTON:** At this stage, Mr Hutchings, you are deeply involved.

**Mr Hutchings:** I have been asked to be, yes.

**Dr HORTON:** And you have been involved because you have been deeply involved from the genesis of your discussions with MinterEllison about the ways in which the CCC might assist Ms Kelsey in her QIRC proceeding.

**Mr Hutchings:** I have been involved, yes.

**Dr HORTON:** Now, the discussions that you are referring to there occur when—in the first line of your email?

**Mr Hutchings:** Well, presumably between—

**Dr HORTON:** It is—

... discussions had between Paul, Alan and myself—

**Mr Hutchings:** Presumably between 14 and 15 February.

**Dr HORTON:** Yes. Do we see anywhere, or do they exist, records of the discussions you had?

**Mr Hutchings:** I have not been able to locate any, no.

**Dr HORTON:** Is it likely any exist or were taken by you?

**Mr Hutchings:** They may do, but I do not have them.

**Dr HORTON:** At this stage, it did not strike you that you should read the ruling of the QIRC?

**Mr Hutchings:** No.

**Dr HORTON:** Yet you are now advising the chair and his second in charge on corruption about matters concerning the CCC's desire to have documents before the QIRC.

**Mr Hutchings:** Yes.

**Dr HORTON:** In fulfilment, I suggest to you, of the chair's mandate to assist Ms Kelsey and correct the imbalance.

**Mr Hutchings:** Yes.

**Dr HORTON:** This email, Mr Hutchings, is a defence of what has been done to date in that regard.

**Mr Hutchings:** Yes.

**Dr HORTON:** And asserts that—

... it is appropriate that we continue to take an interest in the approach they take.

**Mr Hutchings:** Yes.

**Dr HORTON:** That is the council, yes?

**Mr Hutchings:** Yes.



**Dr HORTON:** Mr Hutchings, as a senior lawyer and as a senior person in the CCC, was this not the occasion to have some reflective consideration about the possibility that what has been done may not have all been right?

**Mr Hutchings:** No. At no stage during the course of this matter did I ever consider that the course we had adopted was inappropriate.

**Dr HORTON:** And you, I think as you sit in there today giving evidence to the committee, knowing what you now know, do not contend any differently from the way you have just described?

**Mr Hutchings:** No.

**Dr HORTON:** That is, even now there was nothing done by the CCC which was not done right?

**Mr Hutchings:** The CCC makes mistakes. It is flawed in many respects, but in this occasion it adopted, in my view, the entirely correct approach.

**Dr HORTON:** And, more importantly, what had been done had been part of heading off the prospect of a miscarriage of justice.

**Mr Hutchings:** Correct.

**Dr HORTON:** But you did not know at that stage of the comments of the commissioner in the industrial commission about the risk of interfering with the administration of justice at paragraph 155(e)?

**Mr Hutchings:** No. What I did know was that a group of councillors for some reason chose to use an encrypted mobile messaging app commonly used by drug traffickers to conduct council business—

**Dr HORTON:** I use WhatsApp, Mr Hutchings. Is that an offence?

**Mr Hutchings:** And the use of that—the difference between perhaps, Mr Horton, your use of WhatsApp and the councillors' use of WhatsApp was that it came to our knowledge that they had endeavoured to destroy the WhatsApp records upon discovering that Ms Kelsey had commenced a public interest disclosure application in the Queensland Industrial Relations Commission. And I might again rhetorically ask: what should we have done?

**Dr HORTON:** What you should have done—I want to give you a full opportunity to comment on this before any break—is, first, to have made it your business to read the QIRC ruling of 24 August 2018; second, to have exercised your judgement and the detachment expected of senior lawyers to advise your organisation that what it was doing was at least possibly at odds with the ruling which bound the CCC as a public body. Do you have any comment on those?

**Mr Hutchings:** I disagree.

**Dr HORTON:** And next, no later than 15 February 2019, were you specifically asked to do so, but if not on that occasion, given the advice one is entitled to expect from a lawyer—organisational, operational, practising, non-practising—that your own lawyer will tell you the bad news and have a capacity in doing so to reflect in a detached way on both sides of legal and administrative judgement.

**Mr Hutchings:** That was not my legal judgement at the time and I disagree that that is what I should have done.

**Dr HORTON:** Chair, is that a convenient time? I am finished with that topic for the moment.

**CHAIR:** Yes. I think that is an appropriate time for a break. Were there a couple of things that you wanted Mr Hutchings to have a look at?

**Dr HORTON:** I think he is going to have a look at the provisions he says which underpinned the monitoring of compliance with disclosure in a civil proceeding—just a list of those.

**CHAIR:** Are you going to come back to that?

**Dr HORTON:** Not at the moment—just so Mr Hutchings and the CCC have had an opportunity to present all of those provisions that they say are relevant to this, exhaustively please, so that whatever is being said as a source, the power, is before the committee for consideration of whether that is indeed the case.

**Mr CRANDON:** Chair, if we are not going back to this particular aspect of things after the break, could I just ask a couple of tidy-up questions?

**CHAIR:** What we might do is take a 15-minute break and then come back with members' questions.

**Proceedings suspended from 10.38 am to 10.58 am.**

**CHAIR:** We will resume the hearing now and go to questions from members in relation to this—unless, Mr Horton, you had something you wanted to add straight-up?

**Dr HORTON:** No, thank you, Chair.

**Mr CRANDON:** I seek a couple of clarifications, if you would not mind going to page 335, which is your note that you could not recall—volume 1, 335. Could you just clarify some of your writing? I just cannot quite understand it. I just want to get an understanding of it. Before we go to the area I cannot understand, there appears to be a particular style where you have some comments that are simply comments and then others with question marks. I am asking: is that something that you do for you to alert yourself to it, or are you working through a process? You say, for example—Is the QIRC decision binding on us.

Court of record?

Do we need to be cognisant of it in our future actions?

And then—

We are aware but not consider it binds us.

That seems to be a statement. Would that be fair?

**Mr Hutchings:** That seems fair, yes.

**Mr CRANDON:** You have come to that? Could you tell me what the next sentence is, please? 'We have'—

**Mr Hutchings:**

We have historically on basis we can make derivative use.

**Mr CRANDON:** Okay. Thank you. And the 'by 7'; is that correct? Immediately below that, 'cross 7', 'by 7'?

**Mr Hutchings:** Sorry, that is a reference to two High Court decisions at X7 and IBAC.

**Mr CRANDON:** And IBAC?

**Mr Hutchings:** Yes.

**Mr CRANDON:** Okay. Thank you. And the little squiggle below that, is that just a squiggle or is that something that alerts you to something?

**Mr Hutchings:** Who knows what that is?

**Mr CRANDON:** You have no idea? That is fine. That is the first one. The second one is at page 331. I note Mr Horton was mostly talking about the last line of that email to you and you gave responses to it. But when you read through that particular email he makes it clear that Dan Williams is the writer. He says—

Given the notice was issued to the CCC, we write to advise the Commissioner set the attendance notice aside. We are instructed that Sharon will not appeal the decision and will instead prioritise bringing the matter to trial as expeditiously as possible.

**Mr Hutchings:** Yes.

**Mr CRANDON:** Then he goes on to say—

The decision is attached.

and he has highlighted that—

Please note that the decision has not yet been made available to the public (it has been provided to the parties only). The usual orders regarding suppression of particular information in this matter may also apply to the decision.

So he has made that available to you for you to be able to—but you have not read it? You did not go through the papers?

**Mr Hutchings:** No.

**Mr CRANDON:** Even though he provided it to you?

**Mr Hutchings:** Yes.

**Mr CRANDON:** This is an email to you. He provided it to you; you did not look at it?

**Mr Hutchings:** Yes.

**Mr CRANDON:** But then he makes two comments, doesn't he? The first one—

It may be open to the CCC to consider its standing to appeal given the potential impact of the decision on the CCC's powers.

**Mr Hutchings:** Yes.

**Mr CRANDON:** That to me seems like it is a direct reference to the line above—to the lines above where he has given the attachment. So it seems to me that he is putting it to you that you might want to consider that document and perhaps respond in relation to that next sentence, where he says you might want to consider the standing. Did you make any inquiry of any of your colleagues along those lines as to whether or not you might consider it your standing to appeal?

**Mr Hutchings:** No, I do not recall discussing that. But right from the start of this matter we were alive to section 48 of the Public Interest Disclosure Act and the standing it gave us ongoing to intervene in any reprisal proceeding in the QIRC. So that may be what he is referring to there.

**Mr CRANDON:** Okay—

It may be open to the CCC to consider its standing to appeal given the potential impact of the decision on the CCC's powers. You are not considering that is attached to that previous paragraph?

**Mr Hutchings:** Yes, it could be, but as we—sorry, I am probably being a bit pedantic and using lawyer language here, so I apologise for that. But when he refers to a decision having been made available and then the CCC appealing, I do not think we would have given that much air time because we would not have had standing to appeal that decision, but we would have had standing, as we do under section 48 of the PID Act, to bring an injunctive proceeding.

**Mr CRANDON:** Did you?

**Mr Hutchings:** No.

**Mr CRANDON:** So you did not give consideration to that, either?

**Mr Hutchings:** We did give consideration to that—a lot of consideration to that—but we decided not to.

**Mr CRANDON:** Okay then he goes on to—

We also ask that the CCC consider providing the documents to the Logan City Council ...

**Mr Hutchings:** Yes.

**Mr CRANDON:** There are two parts to his—but you only responded to one of those parts; you ignored the other?

**Mr Hutchings:** Did I?

**Mr CRANDON:** Sorry, in general terms, you responded to the second because you—being the collective CCC—have on more than one occasion attempted to get that material to the Logan City Council.

**Mr Hutchings:** Yes, I understand what the member is saying now. Yes, that is right. We only acted on one of those suggestions.

**Mr CRANDON:** Okay. Thank you. In relation to the documents again and the issue of legal professional privilege, for my benefit can you make me clear on what your understanding is of the dangers of disseminating documentation that has legal professional privilege documents in it—what the impact of that would be?

**Mr Hutchings:** The impact is: a lawyer has a duty to his client to maintain the privilege and that is a very, very seriously viewed duty. So if there were privilege—if there was a document that had privilege attaching to it, all lawyers consider that to be a very serious matter.

**Mr CRANDON:** All lawyers?

**Mr Hutchings:** All lawyers.

**Mr CRANDON:** Without any doubt, all lawyers?

**Mr Hutchings:** It would be one of the most fundamental legal concepts.

**Mr CRANDON:** So a pretty dangerous act taken by the CCC in providing that documentation to the Logan City Council in the way that it was provided?

**Mr Hutchings:** Sorry, which documentation?

**Mr CRANDON:** The documentation, I think 3 October was the first date. There were apparently—apparently—documents involved in that paperwork that was delivered to the Logan City Council by the sergeant that had legal professional privilege attached to it.

**Mr Hutchings:** I am not aware of that. I did not know that that was an issue.

**Mr CRANDON:** You are not aware of that? I thought counsel raised that earlier. That is it from me thanks, Chair.

**Mr SULLIVAN:** I would like to return to some of the questioning that Mr Horton started with before the break, if that is all right. I am not suggesting the questioning was incomplete. I am sure counsel assisting will not be offended. For the record, Chair, I am not claiming to be the biggest legal mind in this room—I am not even the smartest lawyer in my household—but I will continue, Mr Hutchings. You claimed, I think, when Mr Horton first put it to you in relation to the email that we have at 331 from Mr Williams to you—you went in your response almost immediately to the collective response of the CCC in placing the papers before the Logan City Council, which they were already entitled to, I think is close to what you said.

**Mr Hutchings:** I think what I might have said was the documents should have already been in the hands of council.

**Mr SULLIVAN:** So can you point to me in that email of 28 August where the issue of public records was raised?

**Mr Hutchings:** No. It is not raised.

**Mr SULLIVAN:** Can you point to me in your handwritten notes of the 30th—that is four days after; the email is four days after the decision and then your handwritten notes another two days later—where the issue of public records was raised in your notes?

**Mr Hutchings:** No. It is not raised there, either.

**Mr SULLIVAN:** In Mr Horton's questioning to you about that issue, you said originally that the production of the materials to the Logan City Council was an entirely separate matter to the QIRC decision.

**Mr Hutchings:** The delivery of documents to the Logan City Council—I will start again. The delivery to the council of documents they should have always had was a separate matter to whether the QIRC should admit those documents into evidence in the QIRC proceeding.

**Mr SULLIVAN:** So the email of 28 August you did not interpret as a way to try to overcome the decision of the QIRC in getting those documents before the QIRC?

**Mr Hutchings:** Well, we were not as calculating as that. What we were very concerned about was the council making full disclosure, as they are obliged to do.

**Mr SULLIVAN:** You have confirmed in that email of 28 August and in your notes of 30 August that the core issue was providing information to the council for the purpose of disclosure. That is what you are confirming?

**Mr Hutchings:** Yes.

**Mr SULLIVAN:** So from the start—not day 1; day 4, I will call it, 28 August—the purpose was to get the material to the council for the purpose of disclosure?

**Mr Hutchings:** Yes. I am not is sure why you call it day 4.

**Mr SULLIVAN:** Sorry, four days after the decision.

**Mr Hutchings:** Okay, yes.

**Mr SULLIVAN:** Thank you. The issue of the public records is not mentioned in that email nor your notes.

**Mr Hutchings:** No.

**Mr SULLIVAN:** When was the first time that issue was raised with you?

**Mr Hutchings:** From memory, it was when the team had decided that there was a necessity to deliver the documents in accordance—

**Mr SULLIVAN:** And do you have a recollection of when that might have been?

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

**Mr SULLIVAN:** I think you said you had discussions around it. Who was the first person who raised the issue of public records with you, or was it an issue that you came to in your own mind?

**Mr Hutchings:** My vague recollection is it was one of the police officers who were the investigators on the job. It may have been Mark Andrews.

**CHAIR:** Mr Hutchings, the document at 432 which we looked at—it was the letter from the CCC to Logan City Council in relation to the documents that were just being spoken about. I think it was the delivery in November. At the end of the letter it says that the documents are enclosed as requested.

**Mr Hutchings:** Yes.

**CHAIR:** There was some questioning about that earlier in relation to whether that actually referred to the documents that had been requested by MinterEllison. Is it possible that the documents were provided to Sharon Kelsey or Minters, as requested, prior to them going to the Logan City Council?

**Mr Hutchings:** I would very much doubt that. That was not ever something that we contemplated.

**CHAIR:** Because it seems throughout the documents there is quite intricate involvement between the CCC and Minters in relation to this matter of the documents and general assistance for Ms Kelsey. I guess one could contend that Ms Kelsey might have been made aware of the nature of those documents before they were actually disclosed in the QIRC materials.

**Mr Hutchings:** Not by me.

**CHAIR:** Not by you?

**Mr Hutchings:** No.

**CHAIR:** Not to your knowledge?

**Mr Hutchings:** And not to my knowledge generally.

**CHAIR:** So if this committee subpoenas MinterEllison in relation to whether or not they had received those documents before they were actually provided to the Logan City Council or anyone else, your view is there will not be anything found that demonstrates that they were delivered to them prior to that time?

**Mr Hutchings:** No. I think as much would be demonstrated without the need to go to a subpoena by the fact when there is a letter from Dan Williams which says, very late in the piece, that they have finally seen what is in those documents and it is a game changer for them and they are very upbeat about that.

**CHAIR:** Okay.

**Mr Hutchings:** That is, as I understand it, after this.

**CHAIR:** Okay. On page 497, the document we looked at earlier, Mr Horton questioned you about whether there was consideration given to the QIRC judgement—the Industrial Relations Commission judgement at this point—and you gave evidence to the committee this morning that you were still very confident that the approach taken by the commission was correct. It is in relation to the email that you sent to various parties on 15 February following one of the decisions that was made in the matter. I want to ask whether at any point you or anyone in the commission, to your knowledge, paused for thought about whether the various judgements that were given by the commission or the industrial court meant that you should not be doing what you were doing.

**Mr Hutchings:** Of course we did. Speaking for myself, I was told things about Ms Kelsey's credibility. I did not have an opportunity to assess that personally, but I had been told by Mr MacSporran, who is an eminent lawyer in Queensland and a good judge of character in my view, that Ms Kelsey was credible. I had also been told by Mr Forbes Smith, who was the former head of Corruption at the CCC and also one of the leading legal experts in this area of law, that he had met with Ms Kelsey as well and that he had assessed her as being credible. When one considers the breadth of the definition of a public interest disclosure, one does not need to set the bar very high to commence looking at these issues. Having commenced looking at these issues, if it then becomes clear to the investigating agency who has responsibility for maintaining very high standards of conduct of councillors and the council that evidence may have been destroyed subsequent to the commencement of the PID action, one must ask: what should the commission have done?

**CHAIR:** And you have asked that a number of times rhetorically.

**Mr Hutchings:** What I am reminded of in this situation was: when we were presented with this and this information about the possible destruction of evidence relevant to a matter in issue in that Kelsey proceeding, the commission was faced with a situation akin to that very famous Larson *Far Side* cartoon where a man is being forced by Satan in hell to choose between two doors—one marked 'damned if you do' and one marked 'damned if you don't'—and Satan is saying to the man, 'C'mon, you gotta choose one.'

**CHAIR:** Okay. Thank you, Mr Hutchings. I gather where you are going. You talk about the public interest and have spoken about that in your evidence here this morning.

**Mr Hutchings:** Yes.

**CHAIR:** The obligations on the commission, though, are also to act impartially and independently.

**Mr Hutchings:** Yes.

**CHAIR:** Do you concede that the depth of involvement in this matter could lead a reasonable person to conclude that you were not acting independently or impartially?

**Mr Hutchings:** Not at all, and for this reason: I would imagine that the public in Logan would have been very interested in knowing how council was conducting business. By that I mean utilising encrypted apps to conduct council business and then, to our knowledge, deleting the apps from their phones—unfortunately for them, unsuccessfully in one case. That is precisely the sort of thing, in the context of a PID action, where the CEO is being potentially the subject of a reprisal—bear in mind, we are dealing with potentialities here. We are an investigative agency. We are not the arbiter of fact here; we are just investigating matters. Where these things all align—and they are obviously creating a suspicion of corrupt conduct—we have a duty to further that investigation.

**CHAIR:** But you were not just furthering that investigation; you were actively assisting in another jurisdiction's dispute. After I have said that, I want to ask, in relation to the Public Records Act and Logan City Council: what action has been taken in relation to Logan City Council for their alleged failure to record public records?

**Mr Hutchings:** That would be a matter for the State Archivist, I assume, but—

**CHAIR:** No, you cannot say that given the extent of the CCC's involvement, involving themselves in the Public Records Act issue to the point where they delivered the documents to them for the purpose—so-called—of the potential recording of them under the Public Records Act. You cannot then go and say, 'That's a matter for the State Archivist.' That just does not—

**Mr Hutchings:** Well, our jurisdiction extends to investigating serious corrupt conduct—

**CHAIR:** So it does not relate to the Public Records Act?

**Mr Hutchings:**—and major crime.

**CHAIR:** Yes.

**Mr Hutchings:** What it relates to is investigating whether the standards fall below the standards that are commonly accepted by the public.

**CHAIR:** So you just said then that the Public Records Act does not fall within your purview.

**Mr Hutchings:** We are obviously interested in whether a unit of public administration is complying with the Public Records Act, but it is not one of our core investigative interests.

**CHAIR:** What function does that fall under?

**Mr Hutchings:** We have a variety of powers, and it starts with section 33 of our act where we have, for corruption, the function 'to raise standards of integrity and conduct in units of public administration'. In section 34—

It is the Parliament's intention that the commission apply the following principles ...

...

(d) Public interest—

where we have—

... an overriding responsibility to promote public confidence—

- in the integrity of units of public administration and
- if corruption does happen within a unit of public administration, in the way it is dealt with

Section 46A goes on to say that when you are dealing with a matter mentioned in section 33 the commission deals with the matter by assessing it, investigating it and 'taking the action the commission considers most appropriate in the circumstances having regard to the public interest principle set out in section 34(d)'.

**CHAIR:** So the action taken by the commission, in your view, is appropriate in the circumstances under those provisions?

**Mr Hutchings:** In my view, all actions taken by the commission in this matter were entirely appropriate given the suspicion that a reprisal was taking place against Ms Kelsey.

**CHAIR:** I thought I heard in evidence earlier this morning that either yourself or the commission had not turned their mind to the actual issue of whether the records delivered were in fact Public Records Act records at the time that they were delivered to the Logan City Council.

**Mr Hutchings:** That would be surprising if we had not. All I think I was saying was that I had not had a recollection of specifically being asked to provide advice on that, but I have been asked on other occasions to provide advice on that section of the Public Records Act which defines what a public record is and it is an exceptionally broad definition. So it is hard to conceptualise of a communication between council and councillors or between councillors themselves which would not be a public record, especially if it is done in conjunction with discussion about Ms Kelsey's future.

**CHAIR:** So with regard to the material that was provided, you said—or it has been noted—there was some legal professional privilege material within it initially?

**Mr Hutchings:** If there was, I was not aware what that was.

**CHAIR:** No, you are not aware of those particular contents?

**Mr Hutchings:** Look, if someone was to remind me of it, I might have been made aware of it at the time, but I am not saying I do not know what it was but I just cannot remember right now.

**CHAIR:** I think it arose out of the, if memory serves me correctly, subsequent delivery in November where there was a delivery made which had taken out particular material.

**Mr Hutchings:** Right; okay.

**CHAIR:** I think we can leave it at that for now. Mr Horton, do you have further topics to explore with Mr Hutchings?

**Dr HORTON:** On that very issue, one was the question of legal professional privilege that, Chair, you were just asking about which Mr Crandon asked about. You might turn, Mr Hutchings, to pages 417 to 419. The chair had just indicated that the question, in his recollection, arose in connection with the redelivery. With respect, these documents bear that out. We have more documents on this issue than just this obviously, Mr Hutchings, but these are the indications. I took you to this earlier—

... no problem sending them back.

That is at 417, but we—

... would need to make sure:—

remember I said that there were two conditions? The second one was the LPP—

**Mr Hutchings:** Yes.

**Dr HORTON:**—

2. The versions with potential LPP ... redacted were sent.

And then at 419, two-thirds of the way down the page—

... redact certain communications that may be considered LPP.

**Mr Hutchings:** Yes.

**Dr HORTON:** Now—

**Mr Hutchings:** Look, I am sorry. I just cannot remember what that was.

**CHAIR:** Mr Horton, I actually just want to ask a question about that. Should that not have been a matter for Logan City Council to determine? If they were the ones that you were giving these documents to to ostensibly consider if they were public records, would that not have been a matter for Logan City Council if that is the approach that was being taken?

**Mr Hutchings:** Possibly. As long as it was their privilege, I think they would have been very interested in that, but I am not sure whose privilege it was.

**CHAIR:** No. Maybe that is something we will explore, but can I just ask one other question too, Mr Horton? I understand all of this material that was delivered and then redelivered and then sought to be—urged to be—disclosed in correspondence was coerced material, as I understand it?

**Mr Hutchings:** Yes.

**CHAIR:** Arising from—

**Mr Hutchings:** Sorry to interrupt, but I put coercive material or coerced evidence into a different category to evidence obtained by a warrant but, yes, it was all in that category.

**CHAIR:** At least some of it was obtained under coercion—

**Mr Hutchings:** Yes.

**CHAIR:**—by the CCC.

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

**CHAIR:** Yes.

**Mr Hutchings:** The hearing's transcripts certainly were.

**CHAIR:** Do you concede that evidence obtained under coercion at the CCC should always be seen in a different light to any other record, especially when you are trying to place it in the hands of a public body ostensibly for consideration as a public record?

**Mr Hutchings:** I can understand why there might be some concern amongst people such as the committee about this issue. We were quite familiar with the state of the law in relation to this, given that it was highly relevant to us. At the time my recollection was that Justice Atkinson's decision in *Flori* represented the high-water mark of judicial consideration of this. There was a single-judge decision. Most of the decisions recently that have affected our operations are High Court decisions and we would generally await an appellate or High Court level decision before we understand what the law really is on these issues.

**CHAIR:** So the Supreme Court is not enough?

**Mr Hutchings:** No, I am not saying that the Supreme Court is not enough; what I am saying is the Supreme Court is enough for the facts of that case and we had a view that these facts and these sections of the act were different to those considered in *Flori* which was a relevant difference.

**CHAIR:** Okay, so you thought it was distinguishable?

**Mr Hutchings:** Yes.

**CHAIR:** Are there any other questions from members? If not, Mr Horton?

**Dr HORTON:** I just want to pick up from that point for a moment, Mr Hutchings, and stay on this issue for the moment before we move to the decision to charge fraud. I had asked you earlier about whether you regarded the QIRC decision as binding. I took you to your file note where you seem—at least in the thought that is there with the question mark, as Mr Crandon has pointed out, it seems to suggest you did not, but are you saying now really you treated the QIRC ruling, which contains paragraph 155, as distinguishable and properly to be distinguished in connection with any further delivery to the council of the documents?

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

**Dr HORTON:** So not binding on you in the sense you have described?

**Mr Hutchings:** Correct.

**Dr HORTON:** Do I understand your evidence to be it would have been different if that had been a decision of a Supreme Court judge?

**Mr Hutchings:** No, I am not saying that.

**Dr HORTON:** Do I understand your evidence to be it would have been different if it had been a decision of the Full Court of the High Court of Australia?

**Mr Hutchings:** If the decision had been about the Crime and Corruption Act powers then we would have obviously been bound by it, but we considered there was a relevant difference so it does not matter what court makes the decision.

**Dr HORTON:** And it did not matter that at least some of the documents being delivered to Logan City Council were the very same as those which the commissioner had before him when deciding the matter on 24 August 2018?

**Mr Hutchings:** No. The delivery to the council was designed to direct council's attention to documents and then potentially the issue of whether they should be disclosed.

**Dr HORTON:** Well, it was to put them in the hands—

**Mr Hutchings:** And it was a matter for the council whether they would then disclose them. So, I mean—yeah, I will leave it at that.

**Dr HORTON:** I understand the evidence you have given on that. You are asked to give some advice to Mr Alsbury about the delivery to the council on the second occasion in connection with his having signed a dissemination authority; do you recall that?

**Mr Hutchings:** I do not specifically recall it.

**Dr HORTON:** Have you had a chance before appearing here today to read through the bundles provided—the two bundles?



**Mr Hutchings:** I have been through it, but I would not say I have read every single word.

**Dr HORTON:** The CCC has obligations under section 329 of its act; correct?

**Mr Hutchings:** Correct.

**Dr HORTON:** Those obligations fall upon, correct me if I am wrong, the CEO of the CCC, among others?

**Mr Hutchings:** Yes.

**Dr HORTON:** That obligation is to notify certain persons of improper conduct?

**Mr Hutchings:** Yes.

**Dr HORTON:** And it is your responsibility, in your capacity—sorry, it was your responsibility in your capacity, when you were staff of the CCC, to advise the chief executive?

**Mr Hutchings:** Sometimes. Not all the time. It was not a matter of course.

**Dr HORTON:** Let me understand this. I did not ask for what you did in practice. I understood what it was your duty to do. Now, did you have a duty statement while you were at the CCC?

**Mr Hutchings:** I did. I had a position description, yes.

**Dr HORTON:** Did your position description include advising or reporting to the CEO?

**Mr Hutchings:** I recall it had a general duty that was to advise the commission on all matters relevant to its operations.

**Dr HORTON:** Did it contain the word 'sometimes'?

**Mr Hutchings:** No.

**Dr HORTON:** I see. Now, sometimes you did, in fact, give advice, did you not, to the CEO about the legal obligations the commission might have under the CC Act?

**Mr Hutchings:** Yes.

**Dr HORTON:** And on one occasion at least you gave advice to Mr Alsbury in connection with whether his dissemination to the council under his hand of the dissemination authority enlivened some obligation in connection with section 329?

**Mr Hutchings:** Yes.

**Dr HORTON:** I see. Thank you. Were you ever asked to give advice in connection with whether or not the delivery to the council on 3 October 2018 without a dissemination authority invoked the need to give notice under section 329?

**Mr Hutchings:** No.

**Dr HORTON:** The CEO never sought the advice from you?

**Mr Hutchings:** No.

**Dr HORTON:** And you never discussed that with her?

**Mr Hutchings:** No.

**Dr HORTON:** I see. I take it—and correct me if I am wrong, because I will ask you more questions if I am wrong—that you say you do not have sufficient knowledge of the facts to now form a view about whether s329(4)(d) of the CC Act required—if this were the case, the absence of a dissemination authority—for that dissemination to have been the subject of a 329 disclosure to the parliamentary commissioner or this committee?

**Mr Hutchings:** No, I was not asked to give any advice on that.

**Dr HORTON:** That was my last question before the question I put.

**Mr Hutchings:** Sorry.

**Dr HORTON:** I take it you say, do you now, you do not have sufficient knowledge of the facts to now be able to form a view about whether the delivery of the documents on that occasion without a dissemination authority invoked the need for reporting?

**Mr Hutchings:** No, but 329 was in the minds of every commission officer, well and truly, so I would be very surprised if 329 was ignored in—

**Dr HORTON:** No, I am sorry, my question was different. I am not asking about surprise or what is in the mind of other officers. This is to you, Mr Hutchings.

**Mr Hutchings:** Yes.

**Dr HORTON:** Am I right in assuming—just say no if I am wrong—that you do not now presently feel sufficiently apprised of the facts in connection with the 3 October delivery which was, I am asking you to assume, without a dissemination authority?

**Mr Hutchings:** I am not sufficiently apprised of the facts to make an assessment of whether 329(4)(d) would have applied.

**Dr HORTON:** Thank you. Now, would you turn to later in the bundle, pages 649 and 650. I am not suggesting you were party to this email. It is between Mr Beattie and the chair of your commission. What position, with respect to you, did Detective Sergeant Beattie hold in the commission at the time?

**Mr Hutchings:** No police reported to me.

**Dr HORTON:** Sorry?

**Mr Hutchings:** No police reported to me. I obviously knew him because he was seconded to the CCC as a senior investigator, but he did not have any formal organisational relationship to me.

**Dr HORTON:** Understood. On page 650—I do not know if you have seen the email before, but please just familiarise yourself with it. I just want to ask a question in particular about the paragraph—it is two paragraphs below the heading 'There is risk'.

**Mr Hutchings:** Yes.

**Dr HORTON:** Were you ever asked to advise in respect of this risk?

**Mr Hutchings:** I was. I was asked to give consideration to what our options would be, right at the start of this matter, by the chairperson and we had discussions about what the options were. Obviously bringing an injunction under section 48 of the PID Act was open to us, because we have ongoing standing in relation to that, but we did not pursue that course for a number of reasons.

**Dr HORTON:** Would you just look, please, at the words—

... the CCC has left itself exposed to being sued by Ms Kelsey to recover the cost of her private legal actions in the QIRC.

Were you ever asked to advise about that risk?

**Mr Hutchings:** No, but we were not exposed. That was never a worry for us.

**Dr HORTON:** Us? You are speaking for others as well?

**Mr Hutchings:** For the commission.

**Dr HORTON:** You are not speaking for Mr Beattie, obviously.

**Mr Hutchings:** No.

**Dr HORTON:** Well, to Mr Beattie it was, I am suggesting.

**Mr Hutchings:** Clearly.

**Dr HORTON:** Did Mr Beattie have a direct line of reporting to the chair?

**Mr Hutchings:** No.

**Dr HORTON:** If you cannot answer this just say so, but it is reasonable to infer that if someone writes to the chair, who does not have a direct line of reporting about what they are concerned about—the CCC being left exposed to being sued by someone—that would be a concern that that person holds?

**Mr Hutchings:** Well, clearly he held it, yes.

**Dr HORTON:** So, when you say 'us', I want to be clear: do you mean everyone in the commission besides Mr Beattie? I don't know who 'us' is. I am just trying to find out.

**Mr Hutchings:** What I would have meant by 'us' was myself and the chairperson.

**Dr HORTON:** I see. Now, on 6 August—we are going back a little bit because I am going to suggest this is a point in time at which some decisions seem to be made which influence a decision to charge, so that is why I am reversing back into 6 August. On 6 August a meeting occurs. Do you recall the one of which I am speaking?

**Mr Hutchings:** Okay.

**Dr HORTON:** You can refresh your memory if you want at 271. Were you at this meeting, Mr Hutchings? There are notes of Mr Alsbury there and he has kindly typed them out at pages 277 and 278. I want to suggest that you were not present.

**Mr Hutchings:** I do not recall ever seeing these notes before this inquiry so—

**Dr HORTON:** Assume for the moment present at the meeting were the chairperson, Sharon Kelsey and Mr Alsbury.

**Mr Hutchings:** Yes.

**Dr HORTON:** You will see mentioned—use the typewritten notes, if you would, for ease: 278. Ms Kelsey says she was looking at making another reinstatement application and—

- If gets reinstated—makes it feasible.

Was a sentiment of this kind conveyed to you by the chair or Mr Alsbury at or about this time?

**Mr Hutchings:** No.

**Dr HORTON:** At or about this time, were you understanding by any other source that it would assist Ms Kelsey if she could be reinstated as part of the QIRC proceeding?

**Mr Hutchings:** Of course I was aware of that because at one point she was, in fact, reinstated by order of the QIRC, but that was short-lived and the council—sorry, the parties to the proceeding opposing Ms Kelsey were successful in having her pay stopped.

**Dr HORTON:** Well, you have left out a very important fact that you would need to tell the committee for your evidence to be complete in what you have just said. You have left one important fact out. I want to give you the opportunity to tell the committee what the important fact is that you have missed out from that.

**Mr Hutchings:** I do not know. You will have to enlighten me, Mr Horton.

**Dr HORTON:** The interim reinstatement. First, her interim reinstatement was ordered, not her reinstatement; you agree?

**Mr Hutchings:** Sorry, interim reinstatement.

**Dr HORTON:** But more importantly, this is the fact I was mentioning: what happened, Mr Hutchings, to that decision? What was done with it?

**Mr Hutchings:** You will have to remind me.

**Dr HORTON:** It was appealed. What happened on the appeal, Mr Hutchings?

**Mr Hutchings:** I do not know.

**Dr HORTON:** What did Justice Martin of the Supreme Court—well, I think of the Industrial Court but also a judge of the Supreme Court. What did Justice Martin do with that interim reinstatement decision?

**Mr Hutchings:** I do not know.

**Dr HORTON:** He set it aside. Did you know that?

**Mr Hutchings:** No.

**Dr HORTON:** Did you read Justice Martin's—

**Mr Hutchings:** I think I did know that, now that you have reminded me of it, yes.

**Dr HORTON:** Did you read Justice Martin's decision?

**Mr Hutchings:** No.

**Dr HORTON:** Have you read Justice Martin's decision in preparation for giving evidence today?

**Mr Hutchings:** No.

**Dr HORTON:** I am keeping you on this chronology. 6 August is important, I am going to suggest to you, in what I am now putting to you—volume 1, 293. You met with or spoke with the chairman on 8 August?

**Mr Hutchings:** Looks like it, yes. I emailed him.

**Dr HORTON:** Yes. You had spoken to Al that afternoon.

**Mr Hutchings:** Yes.

**Dr HORTON:** What had you spoken about?

**Mr Hutchings:** I spoke to Dan—sorry, no: 'I let Dan know what we spoke about this afternoon'. Right.

**Dr HORTON:** Yes, you did.

**Mr Hutchings:** Yes.

**Dr HORTON:** What did you speak about with AI?

**Mr Hutchings:** I cannot remember. I cannot remember.

**Dr HORTON:** It was about how you might help get Ms Kelsey reinstated.

**Mr Hutchings:** Was it? I do not recall.

**Dr HORTON:** I am giving you an opportunity to disagree, explain, qualify.

**Mr Hutchings:** Well, I cannot remember.

**Dr HORTON:** I see. You tell the chair—

He—

Dan—

was especially interested in the prospect of the appointment of an administrator as he sees it as the only practical solution now.

Is that a correct record of what you did?

**Mr Hutchings:** That is what I wrote so, yes.

**Dr HORTON:** And Mr Williams must have told you that, did he?

**Mr Hutchings:** Must have, yes.

**Dr HORTON:** What do you do once you are in receipt of that knowledge?

**Mr Hutchings:** I do not know. I do not recall what happened after that.

**Dr HORTON:** You ask Mr Docwra to do some research, perhaps; is that possible?

**Mr Hutchings:** Possible, yes.

**Dr HORTON:** Mr Docwra works or reports directly to you; is that right?

**Mr Hutchings:** Yes.

**Dr HORTON:** He is one of those lawyers you mentioned who does report to you?

**Mr Hutchings:** Yes.

**Dr HORTON:** Is he operational or corporate?

**Mr Hutchings:** At the time he was corporate but he had a very, very recent and strong operational background before moving to the corporate area.

**Dr HORTON:** The operational/corporate role—

**Mr Hutchings:** Being integrity services, which was the part of the organisation which is the primary intake for corruption allegations.

**Dr HORTON:** The organisational/operational concept seemed to have some fluidity, at least in respect of Mr Docwra.

**Mr Hutchings:** No, I did not say that. I said he had moved jobs.

**Dr HORTON:** I see. So as at 8 August 2018, what is the label we give to him now? Operational?

**Mr Hutchings:** He was assistant director for corporate legal, as I understand it. I could be wrong about that but that is my recollection.

**Dr HORTON:** That is all right. Well, it might assist you: he is assistant director, General Legal.

**Mr Hutchings:** General Legal, yes.

**Dr HORTON:** Is that operational or is it corporate?

**Mr Hutchings:** That is corporate.

**Dr HORTON:** I see. And you ask him to do some research; correct?

**Mr Hutchings:** Yes.

**Dr HORTON:** Tell us, would you, what you asked him to do.

**Mr Hutchings:** I think there is an email.

**Dr HORTON:** Yes.

**Mr Hutchings:** But I cannot immediately find it.

**Dr HORTON:** Would you have emailed him? Is that what you are thinking of?

**Mr Hutchings:** I probably asked him verbally and he may—I think he emailed me back.

**Dr HORTON:** One email at least—you may be thinking of this—is at pages 10 and 11. The heading is 'Automatic suspension of councillors for disqualifying offences, reprisal and quorums for local government meetings'. Volume 2, if that helps; I am sorry if I have not made it clear, Mr Hutchings.

**Mr Hutchings:** Yes.

**Dr HORTON:** Just refresh your memory with that document. While you are reading, think of the answer to this question. Take your time with it. You asked him to find out ways, avenues, by which action of the CCC could cause a council to be disbanded and an administrator to be appointed?

**Mr Hutchings:** Yes. There seems to be a request for him to identify what section or what offences might disqualify councillors from their position, yes.

**Dr HORTON:** And what you asked him to do touched upon the issues which you had discussed with the chairperson the previous day from the day you had asked Mr Docwra to do that thing.

**Mr Hutchings:** I assume so, yes. I do not remember the meeting but that seems to be what came out of it.

**Dr HORTON:** I am making that assertion in reliance upon the first two lines of your email—

**Mr Hutchings:** Yes.

**Dr HORTON:**—to Alan.

**Mr Hutchings:** Yes.

**Dr HORTON:** What involvement do you have from this time? You will see, if we turn the page, the next document, 7 September. To use an old legal question, what happened next?

**Mr Hutchings:** I would imagine consideration went into assessment of the evidence and consideration of whether there were any grounds to charge criminally.

**Dr HORTON:** Did you have any further communication with Mr Dan Williams of MinterEllison about the matters the subject of the research you had asked Mr Docwra to undertake?

**Mr Hutchings:** I do not recall talking to him about that, no. In fact, I would have considered that to be inappropriate for me to talk about what charges may or may not have been considered by the CCC.

**Dr HORTON:** To what extent are you involved from this point—and by that I mean from the time of the documents at 10 and 11 of volume 2—in the decision of when, what and whether to charge the mayor and former councillors with?

**Mr Hutchings:** I do not recall having any involvement in that. I had not ever had any involvement in that.

**Dr HORTON:** Can the committee take it, then, that what it sees at 10 and 11 is the end of your involvement in the decisions about if, when and what to charge the mayor and former councillors with from that point on?

**Mr Hutchings:** Yes.

**Dr HORTON:** Just let me check my notes. So, to be absolutely sure, you were not involved in advising or participating in, appearing for, a meeting which occurred on 30 January 2019, which you will find, if you wish to be sure about things, records of at page 69 and following of volume 2?

**Mr Hutchings:** No, and it would not ordinarily—in fact, it was never part of my role to have any discussions about charges.

**Dr HORTON:** I understand. I am not suggesting you were, but I am just checking because I am going to—

**Mr Hutchings:** All of this is something I had never seen before. This was provided to me.

**Dr HORTON:** So that we are certain about these matters and so the committee can be certain in whatever findings it decides ultimately to make, I take it you would say the same thing with respect to the meeting on 24 April 2019, a record in relation to which, in case it jogs a memory, is at page 317 of volume 2?

**Mr Hutchings:** No, I do not recall ever seeing that.

**Dr HORTON:** And no-one asked you to advise in connection with the matters which you see revealed there in those documents?

**Mr Hutchings:** No. I am glad they did not because my background is not strong in crime.

**Dr HORTON:** Understood. I am asking you this out of caution: in light of the evidence you have given, it seems you were not involved in the 30 January decision or the 24 April decision about what to charge?

**Mr Hutchings:** No.

**Dr HORTON:** But then I take it, to make sure I have given you the opportunity, you do not have any knowledge of what were the motives or purposes of the CCC in laying the charges that were in the end laid on 26 April 2019 against the mayor and former councillors?

**Mr Hutchings:** No.

**Dr HORTON:** Thank you. I am trying to find, Mr Hutchings, the reference—just give me a moment. In the meantime I will ask this: you have mentioned public interest as one of the touchstones of what the CCC did in connection with its engagement with the QIRC matter?

**Mr Hutchings:** Yes.

**Dr HORTON:** And the public interest there being articulated, I think, that units of public administration comply with their legal obligations?

**Mr Hutchings:** It was not just that, but it was the public interest in ensuring that a public interest disclosure was properly supported.

**Dr HORTON:** Yes. I think you may have mentioned public interest as well in connection with the delivery of documents to Logan council.

**Mr Hutchings:** Yes.

**Dr HORTON:** Again, part of the function which you see as being in the public interest to make sure that public administration complies with public law or statute for the moment?

**Mr Hutchings:** Keeping them honest, to use shorthand.

**Dr HORTON:** Is that the sort of rough enough shorthand you would give for the test for when the CCC becomes involved in matters like this?

**Mr Hutchings:** The CCC has a standing, dictated by statute, to intervene at any time in one of these matters, and our view was that if we did not intervene then who would? Now, the form of our intervention ultimately did not take the form of entering the fray in the QIRC, but it took another entirely appropriate form.

**Dr HORTON:** You could have 'entered the fray' under your act if you sided in a limited way; correct?

**Mr Hutchings:** I did not give consideration to whether we had standing under our act, but we certainly had standing under the Public Interest Disclosure Act.

**Dr HORTON:** And do you refer in terms of that source to section 49(2) of the Public Interest Disclosure Act?

**Mr Hutchings:** Yes.

**Dr HORTON:** And is it only that provision that I need to concern myself with in understanding what you are saying about the source of that possible power?

**Mr Hutchings:** That is right.

**Dr HORTON:** I am sorry, it is probably section 49(1), Mr Hutchings, is it not, to the industrial commission, and (2) if you wanted to go to the Supreme Court?

**Mr Hutchings:** It is actually 48(2)(c).

**Dr HORTON:** Yes. You can go to the industrial commission under 48?

**Mr Hutchings:** Yes, or you can go to the Supreme Court under 49(2).

**Dr HORTON:** That is right. So you considered both?

**Mr Hutchings:** Yes.

**Dr HORTON:** And decided and advised what?

**Mr Hutchings:** Ultimately I was not asked for my formal advice on that because I gathered, from talking to the chairperson, that we had resolved—'we' as in the organisation—not to undertake such a costly and distracting exercise because we had a few other jobs on.

**Dr HORTON:** This exercise that we see in these two volumes, at least summarised, is, I want to submit to you, costly and distracting?

**Mr Hutchings:** No.

**Dr HORTON:** It seems to involve many senior people in matters which are not clearly—

**CHAIR:** Mr Hutchings, did you say 'costly and'—

**Mr Hutchings:** Distracting, from our core functions.

**Dr HORTON:** And not, clearly, the more serious of cases of corruption?

**Mr Hutchings:** Sorry, are you asking for my opinion on whether this was not one of the more serious cases of corruption?

**Dr HORTON:** I am giving you an opportunity to comment on that proposition that this involved the CCC doing this: giving a prioritisation of focus to a matter not squarely within that which the legislation directs, and that is to be involved in cases of corrupt conduct, particularly the more serious ones?

**Mr Hutchings:** This was exactly one of those cases.

**Dr HORTON:** I think you began, at the outset of your evidence, saying that you could not think of a clearer case of conflict than the one you have identified?

**Mr Hutchings:** I am glad you raised that, Mr Horton, because I am concerned that my answers to your questioning or the discussion we had generally yesterday may have confused the committee, so I was hoping to clarify what I said yesterday if there was any doubt about that.

**Dr HORTON:** I asked you yesterday when you made that statement whether you wished to qualify it and you were very clear to the committee, as I understood it, in saying you did not wish to take that opportunity and the answer was no. When I asked you the question whether this conflict, in effect, could not be overstated—you could not think of a worse case—I asked you that question and then I asked you whether you wished to qualify it and I paused. You did not wish to qualify that, you said. Have I misunderstood the evidence you gave yesterday?

**Mr Hutchings:** Just so we are clear—we may be at cross-purposes here—my comment about this being a direct conflict of duty and interest was in relation to the funding of councillors in a QIRC action where there was an issue about their truthfulness and the decision by them to continue the funding for themselves. That was the issue I was talking about. I am sorry, I am just trying to clarify that for you.

**Dr HORTON:** Thanks for reminding me. I wanted to come back to this question. We began with your assertion and opinion of this. Ms Kelsey could choose her own lawyers and your assertion was the councillors could too; correct?

**Mr Hutchings:** Correct.

**Dr HORTON:** That caused you concern because you thought, because we had formed the view that the councillors had given affidavits which were not entirely true, they ought not be able to choose their own legal representation?

**Mr Hutchings:** I am not talking about the question of choice of their own legal representation. What I am talking about in terms of this being problematic is the councillors being the decision-makers about their legal representation where they may have engaged in conduct which was destruction of evidence relevant to a matter in issue in the very action they were funding themselves.

**Dr HORTON:** I understood it to be part of your evidence that, as a result of the things you have just described, you found it of concern and to be wrong that the councillors ought to be able to choose their legal representatives.

**Mr Hutchings:** No. If I said that, I did not mean to convey that. What I am trying to convey is my general concern at parties to litigation being the decision-makers about whether they get funding for their legal representation, particularly when there were those circumstances where they may have been involved in dishonest conduct and they took every point in the litigation. In other words, they were funded to run every appeal if a decision did not go their way.

**Dr HORTON:** I think the evidence you gave is this—correct me if I am wrong—and is what you are referring to—

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.

**Mr Hutchings:** Correct.

**Dr HORTON:** That appears at page 65 of the proof *Hansard* of yesterday. I want to understand 'not be deciding upon their continued legal funding'. You think, for the reasons given, the mayor and councillors should not be deciding upon their continued legal funding. I said to you that that was nonsense. Even reading those words now—being fresher and hearing them twice—Mr Hutchings, that sounds like nonsense.

**Mr Hutchings:** I disagree.

**Dr HORTON:** Help me understand what you want to convey by the words 'should not be deciding upon their continued legal funding'?

**Mr Hutchings:** When one acts for a public entity and one is involved in civil litigation, one may well be the beneficiary of legal representation at the expense of the public entity. For example, Logan City Council, in this case, called upon their policy of insurance, as I understand it—I could be wrong. As I understand it, their policy of insurance covered their legal representation in this matter.

**Dr HORTON:** Have you—

**Mr Hutchings:** Can I just finish?

**Dr HORTON:** Yes, please.

**Mr Hutchings:** The insurer, in my view, would probably be very interested in whether the evidence being given by those indemnified councillors was true or not. My point is: if the people who decide that the legal representation should continue on forever are in fact the people who are potentially dishonest, that is a massive issue, a massive problem and a concern of mine at the time.

**Dr HORTON:** And these concerns are based upon you having read what documents?

**Mr Hutchings:** We endeavoured to find out how these arrangements were put in place. We used open-source searching to identify how local authorities funded their cases in which their councillors were involved.

**Dr HORTON:** Is open-source searching a fancy name for Google?

**Mr Hutchings:** Yes. Sorry, that is an integrity agency word that I should stop using.

**Dr HORTON:** I am glad I asked for clarification. You googled the question?

**Mr Hutchings:** We googled the question because it is not easy to find. It is not, for example, like the state government's indemnity policy, which is very easy to find on Google.

**Dr HORTON:** We will come back to why you are making the comparison with the state and whether your understanding of the state regime is correct. You want to say to me that what you are now saying about the understanding upon which the councillors were funded in the QIRC was based on a Google search and nothing more?

**Mr Hutchings:** No, it was not based on a Google search and nothing more.

**Dr HORTON:** What was the thing besides the Google search it was based on?

**Mr Hutchings:** The concern arose because we were concerned about the lack of a level playing field.

**Dr HORTON:** I think we all understand why the concern arose, and you have been in the box for a day. To save you time and the committee time, what besides the Google search did you rely upon?

**Mr Hutchings:** I recall we made some inquiries of, I think, the local government department.

**Dr HORTON:** What did that produce?

**Mr Hutchings:** They were able to tell us, from memory, that there was an insurance policy with Lloyd's that the LGAQ put in place regularly that was akin to the state government indemnity regime.

**Dr HORTON:** So we are now talking about a policy taken out by the LGAQ, not the council?

**Mr Hutchings:** Yes. I am not sure. I did not know.

**Dr HORTON:** You never got to the bottom of it, it sounds like?

**Mr Hutchings:** I never got to the bottom of it.

**Dr HORTON:** You never got to the bottom of it? You never saw the policy?

**Mr Hutchings:** No.

**Dr HORTON:** Yet you made conclusions which seem to have been very important in the CCC's conduct of this in relation to Ms Kelsey's concerns?

**Mr Hutchings:** What I made was an observation of certain circumstances. One, Ms Kelsey appeared—and I was advised—a fairly credible person. I did not know her from a bar of soap.



**Dr HORTON:** You never made any assessment of her credibility for yourself?

**Mr Hutchings:** I never met her. The second issue was that she was a former ICAC officer and CEO of a very large council in Queensland. She makes a PID. That is unusual. That is significant. We take it seriously. She has retained lawyers. She is putting her money where her mouth is. She is funding it out of her own pocket; the councillors are not. There is absolutely no reason we should not have involved ourselves in this—and in fact, if we had not, who would have?

**Dr HORTON:** We have been over this. I am just trying to keep you focused for a minute on the imbalance which you saw as needing correction, because I think it is fair to say the imbalance I think you have accepted is speaking and informing everything that is being done after.

**Mr Hutchings:** The apparent imbalance at the start followed by subsequent revelation that councillors had deleted their WhatsApp accounts—

**Dr HORTON:** For which no charges were ever laid.

**Mr Hutchings:** And there was a sacking of the CEO for which no reasons were given at the time which we could have justified as being a legitimate sacking.

**CHAIR:** They were not required to give reasons either, were they, Mr Hutchings?

**Mr Hutchings:** They were not required to give reasons—

**CHAIR:** No.

**Mr Hutchings:**—but in circumstances where they were put on notice by the chair of the CCC that if they took this action they may well expose themselves to criminal conduct—

**CHAIR:** I understand that, but under their Local Government Act—the act that they were bound by—they were not required to give reasons.

**Mr Hutchings:** They are aware that the state's integrity agency is watching them.

**CHAIR:** I am not asking about that.

**Mr Hutchings:** I understand what you are saying, Chair, that there was no legal obligation, but in those circumstances I am saying to you that we had a perception, rightly or wrongly, that there was something to this reprisal. If they had given fulsome decisions and reasons to us, notwithstanding the fact they did not have to give reasons at all—but, if they had explained why it had happened, our fears may have been allayed.

**CHAIR:** Thank you.

**Dr HORTON:** Do you think you ought to have read the policy, or had it, before you formed a concluded view about to what extent the councillors were as free in connection with the litigation as you are explaining to me?

**Mr Hutchings:** I was under the impression there was insurance in place. I do not think I needed to go and read an insurance policy.

**Dr HORTON:** I see, but you are informed it is the same as the state indemnification regime?

**Mr Hutchings:** I understand it may be similar, yes, but I never saw the detail of it.

**Dr HORTON:** No. In my questioning of you yesterday, you seemed to draw something from the fact that the local government regime in this relevant respect is not the same as the state indemnity regime?

**Mr Hutchings:** It is similar. It is certainly not the same, as I understand it. Having said that, I have not seen what the regime says in detail. My concern was that, having had some exposure to the state indemnity regime, Ms Kelsey was at a significant disadvantage if the councillors were funded and she was not.

**Dr HORTON:** Can you understand why the state regime is, in a constitutional sense, different from the regime which would operate at local government level?

**Mr Hutchings:** Of course I can. With local governments being creatures of statute, I can clearly understand that.

**Dr HORTON:** And funded by their ratepayers; correct?

**Mr Hutchings:** Yes.

**Dr HORTON:** They do not, to my knowledge, have a treasury—

**Mr Hutchings:** No.

**Dr HORTON:**—have the Treasury that is constitutionally recognised; understood?

**Mr Hutchings:** Correct.

**Dr HORTON:** It is in error, I want suggest to you, to have the thinking that one looks for the ideal of the state regime in the local government regime, because the two are two different constitutional animals; correct?

**Mr Hutchings:** It is no different in terms of public officers performing a public duty.

**Dr HORTON:** That is your answer?

**Mr Hutchings:** Correct.

**Dr HORTON:** Did you assume that the councillors had freedom over their choice of legal representation under the policy you did not see?

**Mr Hutchings:** I did not assume that, no. I did not know that. In terms of freedom of choice of their particular lawyers who represented them, no.

**Dr HORTON:** I see. So you do not wish to say any part of the imbalance today that you are suggesting needed to be corrected arose by reason of any impermissible freedom of choice that you saw the councillors as having in the choice of their lawyers?

**Mr Hutchings:** I never intended to convey that they could not choose who they had. My concern was about the circumstances in which they were being granted legal representation in light of the suspicion that there was improper conduct or unlawful or false evidence being given.

**Dr HORTON:** I think I am understanding now. They should not have had legal funding in light of the accusations against them that their evidence was less than fully true.

**Mr Hutchings:** Correct.

**Dr HORTON:** I think as you sit there today you would say no person, state or local government, should have access to funds in cases in which it is alleged against them that what they had said in that proceeding in evidence is not fully true.

**Mr Hutchings:** In my view, it just would not pass the pub test.

**Dr HORTON:** You are not a publican, Mr Hutchings; you are a lawyer.

**Mr Hutchings:** My comment, flippant though it may have been, was directed to the public interest in ensuring that public funds are spent in appropriate circumstances. I do not think the ratepayers of Logan would have been terribly impressed if they had been made aware that the WhatsApp material was directly contradictory of affidavit material put on by each of those councillors.

**Dr HORTON:** I take it, then, you have the belief, do you, that the councillors' and mayor's legal funding in the QIRC was from public money?

**Mr Hutchings:** Well, someone had to pay. Whether you characterise it as an insurance arrangement where it is a private form of insurance or a self-insurance arrangement, as in the case of the state, someone pays.

**Dr HORTON:** If you assume for the moment—just assume this—an insurer, wholly private, pays the councillors' and mayor's insurance. You regard that as public funds?

**Mr Hutchings:** Of course I do. The principle behind it is that they are acting appropriately. The public expects its elected representatives to behave lawfully. I do not think it would pass the pub test if councillors had revealed that the WhatsApp material existed in the first place or had revealed the distinction between WhatsApp material—or the contradiction between WhatsApp material and the affidavits they had sworn in the QIRC proceedings.

**Dr HORTON:** So that is your answer to the hypothetical situation where an insurer paid the councillors' and mayor's legal defence funds from an insurance policy? You would still see it in the way you have described—which I must say I do not understand at all—as public money?

**Mr Hutchings:** Whether it is a private insurance policy or the Logan council paying out of its consolidated fund does not make any difference, in my view.

**Dr HORTON:** It is still public money to you?

**Mr Hutchings:** Correct.

**Dr HORTON:** Because of a pub test and because of what you say the people of Logan think?

**Mr Hutchings:** Because presumably the insurance premiums come from somewhere.

**Dr HORTON:** Is that the extent of your answer?

**Mr Hutchings:** Yes.

**Dr HORTON:** Do you live in Logan?

**Mr Hutchings:** No.

**Dr HORTON:** You know a lot about what the people of Logan think.

**Mr Hutchings:** I do not presume to speak for them.

**Dr HORTON:** You speak as if you or the CCC know what is in the public interest of the people of Logan.

**Mr Hutchings:** I know what I would feel as a ratepayer personally.

**Dr HORTON:** In Logan.

**Mr Hutchings:** As any ratepayer anywhere.

**Dr HORTON:** These public interest assessments you are making: what procedures do you have in place internally—guidelines and so forth—in the CCC for making assessments about the public interest? Who do you consult? Who in the public has an input into informing you about public interest considerations?

**Mr Hutchings:** We have, over the years, had regard to the High Court authorities on what that term means, so we do have a framework that we work under which helps us identify what the public interest means when it is used in legislation.

**Dr HORTON:** Where do we see that framework?

**Mr Hutchings:** I have not got the cases in my mind right now.

**Dr HORTON:** I see. You are referring to cases of courts?

**Mr Hutchings:** Sorry?

**Dr HORTON:** The framework you refer to is legal decisions?

**Mr Hutchings:** What I am referring to is that the concept of what is the public interest has been defined by the High Court.

**Dr HORTON:** Yes, I am aware of those decisions.

**Mr Hutchings:** But I cannot tell you what those cases are. They do guide our thinking.

**Dr HORTON:** Yes. That is the law. What I am interested in is the framework you spoke about.

**Mr Hutchings:** I meant the law.

**Dr HORTON:** I see. Is the answer: you do not have policies, practices, procedures, guidelines—framework—internally about how you go about deploying what I think it is fair to say is a very important touchstone of so much of what the CCC does within the CCC organisation?

**Mr Hutchings:** It was very important to me in my consideration of this and in how we assisted Ms Kelsey.

**Dr HORTON:** Where do we find what was considered to be by the CCC within section 34(d) of its act as being the public interest here? Where is the consideration of that?

**Mr Hutchings:** I cannot point you to anything right now, but I would imagine those sorts of things are taken into account in dissemination documents.

**Dr HORTON:** I see. It seems a bit woolly, I want to suggest to you. You are acting on a concept of the public interest but it seems, with respect, to be a subjective, unarticulated one in the documents which you see at least in the bundles before you.

**Mr Hutchings:** Well, I think we all have our own personal views of what the public interest are—

**Dr HORTON:** Yes.

**Mr Hutchings:**—but I think we also understand generally what it means.

**Dr HORTON:** The act does not say in 34D 'each commission staff's view of the public interest'.

**Mr Hutchings:** No.

**Dr HORTON:** It assumes a conceptual public interest; correct?

**Mr Hutchings:** Correct.

**Dr HORTON:** How, beside the legal decisions, does the commission, in your experience—I recognise you no longer work there but in the time you worked there—go about structuring that decision or consulting with those to better understand what is in the public interest, or have you answered that question?

**Mr Hutchings:** We have regard to what the High Court has taken into account.

**Dr HORTON:** The High Court does not tell you what the public interest is in a particular case; it tells you what the legal meaning of 'public interest' is—

**Mr Hutchings:** Correct.

**Dr HORTON:** And we accept it is wide. You take into account evaluative and other criteria and possibly political considerations, in fact; correct?

**Mr Hutchings:** Yes.

**Dr HORTON:** But the criteria for it, in a specific case, is not found in the High Court ruling, presumably?

**Mr Hutchings:** No.

**Dr HORTON:** No. That is really what I am asking about.

**Mr Hutchings:** Okay.

**Dr HORTON:** I think you are saying it is a judgement just made along the way, not articulated necessarily. We can find it may be imbued in these documents and reasonable minds could differ?

**Mr Hutchings:** Absolutely, and there is a degree of subjectivity to it.

**Dr HORTON:** What do you point to, then, that gives the CCC the authority to be the final arbiter on matters which, in its subjective conception, is and is not within the public interest for the people of Logan?

**Mr Hutchings:** Sorry, that was a long question. What gives us the justification? Was that the question?

**Dr HORTON:** Yes.

**Mr Hutchings:** Doing the very best we can in sometimes circumstances where we do not have all the facts and accepting that we are an investigative agency as opposed to anything else, we sometimes make calls about what constitutes the public interest. We may get that wrong, but my personal view is we did not get this wrong.

**Dr HORTON:** Yes, you have made that very clear. Do you recall—I think I said earlier—giving Mr Alsbury advice in connection with section 329? Please go to page 439 of volume 1. Refresh your memory, if you need to here. Are you being a corporate lawyer here or an operational lawyer?

**Mr Hutchings:** Well, this was very unusual, for me to be asked to advise the head of Corruption on whether section 329 was engaged. I am not quite sure why, but there was a very heightened sense at the time of the need to refer 329 matters to the committee, and so this is a reflection of just how sensitive we were to that. So it may have been done by Mr Alsbury out of an abundance of caution, but I do not know.

**Dr HORTON:** Are you acting as an operational lawyer here or as a corporate one?

**Mr Hutchings:** As a corporate one.

**Dr HORTON:** I understand. Is that because you are now giving advice in connection with the question of 329 whether the CEO could suspect that conduct in effect engaged the need to report?

**Mr Hutchings:** Yes.

**Dr HORTON:** I see, and this is squarely within your position description at the time; correct?

**Mr Hutchings:** Yes.

**Dr HORTON:** You were not asked this question in connection with the conduct which had occurred on 3 October in delivering documents to the Logan City Council?

**Mr Hutchings:** No.

**Dr HORTON:** And Ms McIntyre did not ask you that question?

**Mr Hutchings:** Not that I remember, no.

**Dr HORTON:** The CEO did not ask you that question?

**Mr Hutchings:** No.

**Dr HORTON:** Mr Alsbury did not ask you that question?

**Mr Hutchings:** Not that I remember, no.

**Dr HORTON:** If there had been a need for legal advice on the question on whether the delivery on 3 October 2018 was such that the CEO could suspect that conduct in disclosing material could involve or might involve improper conduct, that request would have come to you?

**Mr Hutchings:** Not necessarily. It could have happened this way: it could have been, as was normally the case internally, people would self-disclose to the CEO and then the CEO might seek advice about whether it met the requirements of 329.

**Dr HORTON:** If the second of the circumstances you have just described occurred, that would come to you?

**Mr Hutchings:** Yes. Well, sometimes, yes.

**Dr HORTON:** Would come to you?

**Mr Hutchings:** Unless I had a conflict.

**Dr HORTON:** I see. So it would come to you unless there was a conflict, in which case it would go to—

**Mr Hutchings:** Another senior lawyer.

**Dr HORTON:** You review the question for decision here and you say, in effect, it is okay?

**Mr Hutchings:** Sorry, did you ask a question then?

**Dr HORTON:** Yes. I said: in effect, your advice is that it is okay?

**Mr Hutchings:** Yes.

**Dr HORTON:** What are you are being asked is, in effect, okay?

**Mr Hutchings:** Yes.

**Dr HORTON:** If you want to qualify that do, but you can read it for ourselves.

**Mr Hutchings:** Yes.

**Dr HORTON:** Possibility 4 you raise at the bottom of page 439. You say this possibility—

... could only be open if there was some evidence of an ulterior purpose. There is none.

**Mr Hutchings:** Yes.

**Dr HORTON:** The delivery here in the dissemination authority, which you would have seen for the purpose of this advice—did you read the dissemination authority?

**Mr Hutchings:** I may—well, if it was attached to this, yes, I would have, yes.

**Dr HORTON:** Good. What I am really asking you is: do you remember reading it?

**Mr Hutchings:** I do not remember reading it, no.

**Dr HORTON:** It is the same date as your advice, I think. You might look back at 425 to 429, signed by Makeeta McIntyre on 19 November. Does that jog any memories of whether you had a draft or a final version before you at the time? Just below halfway down the page—

The expressed reasons for using the information by providing it to the Council's CEO are set out in the attached covering letter and dissemination, both dated 19 December 2018.

It looks like you did.

**Mr Hutchings:** Sorry, what page were you on there?

**Dr HORTON:** I am on 439. I am sorry I was not clear about that. It is just below halfway down, Mr Hutchings—the sentence beginning 'The expressed reasons'.

**Mr Hutchings:** Yes.

**Dr HORTON:** That would suggest you had the dissemination authority?

**Mr Hutchings:** Yes, I would have then, yes.

**Dr HORTON:** And you were satisfied there was no evidence of an ulterior purpose?

**Mr Hutchings:** Yes.

**Dr HORTON:** That dissemination authority, I want to suggest to you, states as the purpose that it was a Public Records Act purpose?

**Mr Hutchings:** Yes.

**Dr HORTON:** It does not state that the purpose was to put the documents into the hands of the LCC for the purpose of its complying with what you perceive to be its disclosure obligations?

**Mr Hutchings:** No, not in circumstances where they should have had them anyway.

**Dr HORTON:** I see. That is still a purpose, isn't it, of what was being done?

**Mr Hutchings:** Yes.

**Dr HORTON:** So that is a purpose which should have stated in the dissemination authority; correct?

**Mr Hutchings:** Arguably, yes.

**Dr HORTON:** It is not stated in the dissemination authority; am I wrong about that?

**Mr Hutchings:** No.

**Dr HORTON:** It ought to have been, Mr Hutchings, in light of the evidence you have given, I want to suggest, of it being a purpose?

**Mr Hutchings:** Perhaps, yes.

**Dr HORTON:** I am suggesting 'should have been', not 'perhaps'.

**Mr Hutchings:** Well, I was not the author of it—sorry, was not the final decision-maker. So it might have been not a consideration in his mind at the time, but it certainly was in mine.

**Dr HORTON:** You are the final legal adviser on this question; yes?

**Mr Hutchings:** Yes, I am. My advice does not get taken all the time.

**Dr HORTON:** But that is not a reason not to give it; do you understand that?

**Mr Hutchings:** Of course I do.

**Dr HORTON:** In fact, if your lawyer does not give you the bad news, Mr Hutchings, my experience is that in life no-one else does.

**Mr Hutchings:** What bad news might you be suggesting?

**Dr HORTON:** 'Mr Alsbury, I know that we're delivering this back for a purpose. Completely legitimate in my'—Mr Hutchings'—'view that the council should have these and should always have had them, and that—subject to whatever the disclosure was—they will be disclosed in the QIRC. And I feel that in order for this dissemination authority to be frank it should say that, because we would not want it to be suggested there is some evidence of an ulterior purpose not articulated in the document because might it be suggested in fact we are trying to hide that.'

**Mr Hutchings:** Well, now that we are poring over all of this, I accept what you say. At the time we may well have not covered off on that; I accept that.

**Dr HORTON:** And that you—if it had not been done before it came to you—are the one that should have done that?

**Mr Hutchings:** No, I do not accept that.

**Dr HORTON:** Mr Hutchings, I am going to put a series of more general propositions now. Some of them I have put along the way. To the extent you say you have answered them, please just say that rather than—I do not wish to be repetitive or badgering. To the extent you need to explain in response to my suggestion, please feel free to do so. The first is that you had indicated you would give some statutory provisions before the break, and have I understood you have done that to your satisfaction in response to questions from the committee?

**Mr Hutchings:** Yes.

**Dr HORTON:** Thank you. Mr Hutchings, your dealings with Mr Williams in connection with the question of how the CCC might assist Ms Kelsey display partisanship and taking sides in civil litigation in which the CCC had no legitimate interest?

**Mr Hutchings:** I disagree, and the CCC had a very legitimate interest.

**Dr HORTON:** Mr Hutchings, you ought, given that background, have made it your business to read the QIRC ruling of 24 August 2018?

**Mr Hutchings:** I disagree.

**Dr HORTON:** That ruling meant that, so far as the documents delivered to council on 3 October 2018 and again in November—so far as they were the same as those the subject of the QIRC ruling, those deliveries were improper?

**Mr Hutchings:** I do not accept that.

**Dr HORTON:** And the request by the CCC in February 2019 to the council to make disclosure of documents which Ms Kelsey by then no longer sought is part of the CCC having taken sides and acted in an impartial manner with respect to Ms Kelsey's litigation?

**Mr Hutchings:** I do not accept that, and I say that it was entirely within the CCC's functions to do that.

**Dr HORTON:** That you conferred with Mr MacSporran immediately after 6 August 2018?

**Mr Hutchings:** Yes.

**Dr HORTON:** About the possibilities which might exist of what action the CCC could take to bring about a disbanding of the Logan City Council?

**Mr Hutchings:** Well, you put a tone on it that may not have existed. I do not accept that. But I do accept there was discussion about possible offences that may have resulted, given recent amendments to the act, in councillors losing their positions, yes.

**Dr HORTON:** No. Those amendments are the ones I think you are referring to made in about May of 2018.

**Mr Hutchings:** Yes.

**Dr HORTON:** Which was the royal assent in May 2018.

**Mr Hutchings:** Was there? I cannot remember.

**Dr HORTON:** I am asking you. That conversation with the chairman led you to ask a lawyer whom you directly supervised to research what action of that kind might be taken by the CCC?

**Mr Hutchings:** Yes.

**Dr HORTON:** And you gave that information to Mr MacSporran in direct response to the request made in the preceding day or days?

**Mr Hutchings:** Yes.

**Dr HORTON:** Thank you. Chair, I think they are my questions, at least in large part, for this witness. Is that a convenient time to pause?

**CHAIR:** We did start a little bit later in this session so I will ask members if they have any questions at this point.

**Mr SULLIVAN:** Just a clarification on that very last question Mr Horton asked. Counsel assisting, you put to Mr Hutchings that the witness forwarded that information to the chair. I think the email was an email from the lawyer at the request of Mr Hutchings. Can we just clarify that?

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

**Dr HORTON:** Yes, I am sorry. Page 10 of volume 2; I am sorry, that is entirely correct. I am so sorry, Deputy Chair. I am sorry, Mr Hutchings. That your Mr Docwra forwarded that research, which you had asked, to the chair which touched upon the issues that you and he had discussed in the day or days preceding that?

**Mr Hutchings:** Yes.

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

**Ms BUSH:** Good afternoon, Mr Hutchings. I am interested in some of the line of questioning from counsel around public interest and particularly want to understand your role more specifically and the CCC in relation to the internal governance that wraps around some of the decision-making that occurs. Obviously we have the CC Act, which gives you a range of powers and functions, but then there are obligations on us as public servants to think about how to use those powers and functions. I guess what I am not seeing here and what I am interested in is: what gateways need to be met? What is the threshold that needs to be met when considering whether to embark not just on an investigation but as an investigation advances through those gateways? I am not seeing any type of director's practice guidelines or framework or peer review panels that would have given you that critical feedback. That is a very long question, I apologise.

**Mr Hutchings:** I understand the question, and it is a fair question. The question is probably best answered by Mr Alsbury, but what I can say is that the Matters Assessment Committee at that time would have had the job of deciding whether to go ahead and that is not just me—well, it was not me at all. It was a group of people who would have promoted the investigation to the executive legal team—sorry, the executive—

**CHAIR:** Leadership.

**Mr Hutchings:** Sorry, the executive leadership team.

**CHAIR:** You can call it the ELT. We know what you mean.

**Mr Hutchings:** The ELT would have ultimately made the decision on whether to start it, whether to stop it or whether to continue it. I am confident that during that process those issues are considered, but I am sorry I cannot identify for you where a checklist is, where it actually is a box that is ticked. I am being flippant about it. It is not box that is ticked at all; it is a consideration that is made. Along the way, as you say, there are gateways. There is intake, Integrity Services, then there is the Matters Assessment Committee and then there is the ELT. When it gets to the ELT level, that is where the decisions are ultimately made.

**Ms BUSH:** Does the ELT have something built into your database that you use—I cannot recall the name of it? Is there some kind of system that gets built in where the ELT can be satisfied that they have met that threshold reasonably?

**Mr Hutchings:** Yes, and there are matters assessed reports that are generated by Integrity Services which detail all of the criteria for whether the matter falls within our jurisdiction, for a start, and what potential offences might be involved which might engage our jurisdiction and those sorts of things.

**Ms BUSH:** So in your role as director of Legal Services—I apologise, I have not seen your position description—is there not an element of your role that is required to provide director's guidelines to staff around the remit of and the functions of your particular office?

**Mr Hutchings:** Not in my area. My area was designed and exists solely to give independent legal advice to the commission, but because we have so many complaints of corruption we have a whole arm of the organisation called Integrity Services which manages intake and deals with issues of jurisdiction and those sorts of things. It is the organisational area that is responsible for the initial receipt and then the progressing of it in certain circumstances to MAC and then to the ELT. I do not know whether that answered your question.

**Ms BUSH:** That is helpful. I have a final question. The internal procedure to request internal legal advice from your office—

**Mr Hutchings:** Yes.

**Ms BUSH:** How is that initiated? And by who?

**Mr Hutchings:** We had a policy where it would be initiated by the head of the relevant area that was seeking the advice, and it would come to us in writing and we would respond like any other lawyer would respond to a client.

**Ms BUSH:** In writing?

**Mr Hutchings:** In writing—well, where it was asked for in writing. Sometimes the circumstances would have required an urgent oral advice.

**Ms BUSH:** In the circumstances pertaining I guess to what we are looking at at the moment, I would imagine that any legal advice would have been requested and provided then in writing.

**Mr Hutchings:** Well, the various advices I have done in this matter would have been a product of a request either by the chair—in which case I would imagine I would not be pestering him for a written request; I would just do it, and same for Mr Alsbury. If he asked me for advice, I would go ahead and do it promptly. Generally, there would not be a written request, I do not think, no.

**Ms BUSH:** But I imagine as part of providing legal advice you would be outlining a fairly compelling and legally sound rationale for that advice, if not just to cover off any risk for yourself.

**Mr Hutchings:** Yes, we try to, but sometimes things move so quickly in that organisation that you just do not have time to reduce every single thing to the form you would want it to be in.

**Ms BUSH:** Okay, thank you very much.

**CHAIR:** Mr Hutchings, just on that, this matter progressed over nearly 12 months.

**Mr Hutchings:** Yes.

**CHAIR:** More than 12 months, and considerations about public interest progressed over that time too. One of the things that comes out of the documents is that the documents demonstrate public interest considerations taken into account but by and large reflect a public interest which tends towards very much assisting the litigant, Ms Kelsey, not any other documentation of other public interest considerations. So are you saying that over that 12- or 18-month period there was not time to reduce those considerations to writing as well, or were they not just considered?



**Mr Hutchings:** No, I am not saying that. What I am saying is that if something had happened during the course of those 12 or 18 months that caused us to rethink our initial view about where the public interest lay in this then we would have altered it. But in our view nothing changed, and in fact the conduct of the councillors in deleting their WhatsApp accounts merely corroborated our initial suspicions about criminal conduct.

**CHAIR:** I wanted to ask you about the issue of insurance policies, whether it is self-insurance on the part of councils or private insurance paid for by ratepayer funds or government funds. Do you agree that how those things operate are matters of policy for government?

**Mr Hutchings:** Absolutely.

**CHAIR:** For local government?

**Mr Hutchings:** Absolutely, and the prerogative of the government of this state to back its employees when they find themselves embroiled in civil litigation—or now in criminal litigation it is also covered—is quite clearly appropriate. And it is quite clearly appropriate that the council should be no different in principle.

**CHAIR:** Okay, thank you. In respect of some of the statements you made about there being alternate views about the veracity of evidence of the councillors—

**Mr Hutchings:** Yes.

**CHAIR:** There were also alternate views about the veracity of evidence for the litigant in the IR matter.

**Mr Hutchings:** Yes.

**CHAIR:** Do you agree that in IR matters—whether they are unfair dismissal matters, PIDs, whatever they may be—the evidence of parties will often be contested and sometimes vigorously contested?

**Mr Hutchings:** Absolutely.

**CHAIR:** So to take what you said before I think to its logical conclusion, in all of those matters—including matters where employees are going against the council itself and there is contested evidence—doesn't that create an issue with your contention that there should not be private insurance funding paid for by ratepayer funds in that scenario, because no-one—what I am saying is that it is always going to be contested, Mr Hutchings.

**Mr Hutchings:** Absolutely.

**CHAIR:** Should the council not have access to publicly funded insurance in that scenario?

**Mr Hutchings:** Of course it should. My concern, and I expect the concern of other people at the CCC, was that we had been given evidence that the councillors—

**CHAIR:** I understand.

**Mr Hutchings:**—were not being truthful in the QIRC proceedings.

**CHAIR:** Ultimately, however—

**Mr Hutchings:** Sorry, can I just say as well: it was not just the fact that they were being untruthful; it was that they had been on oath untruthful.

**CHAIR:** Mr Hutchings, I will come to that, but it is a policy matter about who sets the insurance, and there are always going to be contested matters in these matters.

**Mr Hutchings:** Of course there is.

**CHAIR:** Quite frankly, what you are saying is implausible in the scenario of an IR situation for that to apply.

**Mr Hutchings:** Sorry, I am just trying to understand. When you say it is 'implausible for that to apply', what do you mean by that?

**CHAIR:** There is always going to be a contest of facts. So you would deny insurance to people who are having serious allegations made about them at a public body level?

**Mr Hutchings:** No, that is not what I am saying.

**CHAIR:** If there is an alternative version of facts put?

**Mr Hutchings:** No, that is not what I am saying at all. I accept what you say, that the reason they are in court is because there is a difference in what is the right set of facts between the parties. That is not my concern.

**CHAIR:** It is about the other parties not having support? Is that what it is?

**Mr Hutchings:** It is about the fact that we were in possession of evidence which the QIRC was not in possession of and it was relevant to that factual dispute.

**CHAIR:** To come to the QIRC and that evidence, the QIRC in this instance was the appropriate party to make the decision about where the evidence lies, was it not, in the industrial matter?

**Mr Hutchings:** It was. It was.

**CHAIR:** Not the CCC?

**Mr Hutchings:** No, no, no. We never decided anything about the evidence. We had a suspicion, reasonably held, that it was contrary to evidence they had sworn in that proceeding.

**CHAIR:** And in relation to that, you are obliged under your act to deal with that evidence—

**Mr Hutchings:** Mm-hmm.

**CHAIR:**—with impartiality, independence and in the public interest?

**Mr Hutchings:** Absolutely.

**CHAIR:** And I know it is your evidence that you think that the commission carried that out appropriately.

**Mr Hutchings:** We could have given it to the councillors. We could have given it to Ms Kelsey. We did not.

**CHAIR:** Okay.

**Mr CRANDON:** Thanks, Mr Hutchings. Just finishing off on something that you talked about earlier regarding sometimes when you are on the run—I think you may have mentioned that or words to that effect—oral advice is given.

**Mr Hutchings:** Yes.

**Mr CRANDON:** You are talking about legal advice?

**Mr Hutchings:** Yes.

**Mr CRANDON:** Do you then take notes?

**Mr Hutchings:** We try to, yes, yes. We are not perfect, but we try to reduce what we have said either into an email or a memo form that goes on the file.

**Mr CRANDON:** A memo form for your own benefit to go on the file?

**Mr Hutchings:** For our own legal file, yes.

**Mr CRANDON:** For your own legal file. But that does not always happen?

**Mr Hutchings:** There will be cases where it does not happen and that is—I am not proud of that.

**Mr CRANDON:** Do you think there are many cases in these circumstances where that happened?

**Mr Hutchings:** Look, I—there may have been conversations that I did not record where there has been components of it that were legal advice, yeah.

**Mr CRANDON:** Thank you. I want to take you back to page 335. My last question related—my second last question actually related to X7/IBAC.

**Mr Hutchings:** Yes.

**Mr CRANDON:** Can you share with us what the relevance of that particular matter is?

**Mr Hutchings:** It is probably not too relevant legally, because X7 was a case about the use by prosecutors of coercively obtained material. The reason for my reference to that was that it may have been something to think about here as to whether it was in fact relevant. But this is not a case where we have prosecutors with the benefit of coercively obtained material who then are able to bring a charge. This is a case where we had a different set of facts. I do not know why I have referenced it there, but it was probably not highly relevant to this case.

**Mr CRANDON:** Apart from the fact that—I mean X7, having googled it, comes up all around Australia, in every state and territory from what I could gather and through my quick look. It is a big issue. It relates to X7 v Australian Crime Commission.

**Mr Hutchings:** Yes.

**Mr CRANDON:** And it talks about certain self-incrimination or evidence—people cannot be forced to provide self-incriminating evidence. It regards the difference between the capacity to use evidence in criminal matters versus civil matters, and of course this is a civil matter—

**Mr Hutchings:** Correct.

**Mr CRANDON:**—among other things. It is interesting that you took that note there at the end of trying to come to a conclusion yourself in relation to certain things or coming to a conclusion yourself in relation to certain things. I just wanted to get that on the record. My third and final question, Chair, relates to the conversation that we have been having about the fairness of funding et cetera. If we were to go back in time and the minister Stirling Hinchliffe had agreed to fund Ms Kelsey in her QIRC matter, how would you deal with it in your mind given that the QIRC found against her and for the council to the tune of \$2½ million of expenditure of public money? Would you expect that money to be recovered?

**Mr Hutchings:** Look, it is a difficult situation because you never know what the outcome is going to be.

**Mr CRANDON:** Yes, specifically I am bringing you to that point.

**Mr Hutchings:** It depends what the criteria are for the grant of the indemnity or the grant of the legal assistance. If the bar is set at you trying to do your job as well as you can, which it is for the state public servants, then there should be no reason why indemnity and legal assistance should not be provided. The outcome of that eventually is unpredictable, as in any litigation. So that is just one of those things, the way litigation goes. I can say, though, that, as I think I might have said to you yesterday, this is a fairly peculiar situation in which the applicant is, in effect, the defendant.

**Mr CRANDON:** Well, you put that proposition to us.

**Mr Hutchings:** I might not have explained that very well.

**Mr CRANDON:** I am not suggesting for one moment that I accepted that proposition, but carry on.

**Mr Hutchings:** It would not ordinarily be the case that the state or a public body in my experience would fund someone who was bringing an action. For example, state public servants are not funded to bring a defamation action against another public servant. Okay?

**Mr CRANDON:** Or the state?

**Mr Hutchings:** Or the state.

**Mr CRANDON:** Which is exactly what the case is here, but a different—

**Mr Hutchings:** It is not exactly what the case is here, with respect.

**Mr CRANDON:** Well, a litigant.

**Mr Hutchings:** No, with respect, the case here is slightly different in that Ms Kelsey, having been obliged under the Crime and Corruption Act to refer suspected corrupt conduct to the CCC about her boss, then finds herself in the invidious position of what she says is a potential reprisal.

**Mr CRANDON:** That could happen, though, with a public servant?

**Mr Hutchings:** It could.

**Mr CRANDON:** A proper authority—

**Mr Hutchings:** It could, and the state would have the prerogative to fund that or not. It would depend upon the circumstances.

**Mr CRANDON:** Okay. Coming back to my core question, then: given the outcome of proceedings, would you now suggest that the \$2.5 million or thereabouts be pursued by the state?

**Mr Hutchings:** Well, I cannot comment on that because, for a start, the regime was not applied—the indemnity regime was not applied. Secondly, there was no support provided. If it had been provided, for example, by the state, the state may well have cut Ms Kelsey off at some point during the litigation.

**Mr CRANDON:** Public funds all the way through—

**Mr Hutchings:** Correct.

**Mr CRANDON:**—until they got to a point where they thought, 'Hang on, this isn't looking good. This is going down the road of Ms Kelsey being the less truthful person as opposed to the councillors.'

**Mr Hutchings:** Absolutely.

**Mr CRANDON:** Are you aware in your investigations in relation to what you came to believe in your own mind—and correct me if I am wrong—that they were fully funded in that there was no cost to them—the councillors, I am referring to—are you aware of what the outcome could be for them if they lost? Would they be responsible for a repatriation of the funds to—

**Mr Hutchings:** What I am aware of is what applies in the state regime, which is that if you are found to have been lying you are very likely to have to be required to repay the funds you were given.

**Mr CRANDON:** Yes. Okay. Thank you. Would it be fair to say, given what you know, that—take that a step further and it was most likely the case with the councillors? I do not know whether it is or it is not.

**Mr Hutchings:** I not sufficiently familiar with those proceedings to make a judgement on that. I am sorry; I would like to help you, but I cannot.

**CHAIR:** Mr Hutchings, following on from Mr Crandon's questions, do you consider the actions of the CCC—and you were a part of advising on some of that in relation to this matter—would have been materially different if the state had actually granted legal funding to Ms Kelsey?

**Mr Hutchings:** If the state had agreed to fund Ms Kelsey, I dare say we would have not had much more to do with the matter. The issue that seemed to me to be the issue—

**Mr SULLIVAN:** Sorry, with the QIRC matter?

**Mr Hutchings:** Yes. The issue from the chair's point of view, as conveyed to me, was that there was a distinctly unlevel playing field and that was really what we were trying to redress.

**CHAIR:** A financial one?

**Mr Hutchings:** A financial one, yes.

**CHAIR:** That is interesting, because a lot of the actions taken do not relate strictly to financial matters. It is not as though the CCC was paying legal bills or anything like that.

**Mr Hutchings:** Well, we could not have.

**CHAIR:** No, but you were undertaking other substantial action, in accordance with, you say, your legislation—the disclosure of documents and things like that.

**Mr Hutchings:** In accordance with our legislation and the PID Act, yes.

**CHAIR:** You do not think that would have happened if state funding had been given?

**Mr Hutchings:** She would still have been meeting the definition of a PID and we would have still had an interest in it from that point of view, but in terms of the actions we took in approaching Minister Hinchliffe—

**CHAIR:** Obviously if that had of been successful you would have had the funding, so after that point?

**Mr Hutchings:** It depends. It depends on the veracity of Ms Kelsey's evidence. It depends on whether there was a legitimate reason for the councillors doing what they did.

**CHAIR:** Shouldn't those considerations have been part of the mix anyway?

**Mr Hutchings:** As the matter went along, nothing changed our initial assessment. Our initial suspicions were never allayed.

**CHAIR:** So even if she had had funding, you really would have done the same thing?

**Mr Hutchings:** I think I understand what you are getting at now, yes.

**CHAIR:** It was not really about the funding, was it?

**Mr Hutchings:** That was a big part of it, and there was also the other aspect of it.

**CHAIR:** Okay. In relation to the insurance matter as well, I do not know this for certain but I am led to believe that people who are on a charge of fraud, if they are convicted, may not be eligible to be the beneficiary of an insurance policy for legal costs. Are you aware of that in a general sense?

**Mr Hutchings:** In a general sense, that sounds right.

**CHAIR:** Do you know if this was any part of the consideration of the CCC to charge with fraud rather than any other offence?

**Mr Hutchings:** No, I cannot say.

**CHAIR:** Finally, in relation to section 329, you gave some advice about that. One of the deliveries to Logan City Council of those documents included legal professional privilege material which, in subsequent deliveries, as I understand it, was removed. Would that change your advice about a 329 if the mistake had been made?

**Mr Hutchings:** Possibly, because the definition of 'improper conduct' is—

**CHAIR:** Delivering LPP.

**Mr Hutchings:**—so impossibly broad, even if you do it by mistake, it would still cover it.

**CHAIR:** We get lots of 329s about people who send emails to the wrong place, but we did not get one about the legal professional privilege material going to the wrong place. It seems a bit odd. Any other questions? Counsel?

**Dr HORTON:** Chair, we wish to explore just two matters which arise from the committee's questions. I will just indicate them so that, Chair, you might decide whether to adjourn now or not. The first is the contention about the inconsistency between the councillors' affidavit and the WhatsApp material, which seems important, which has been asserted three times. The second is just a point about state indemnity.

**CHAIR:** How long do you think it might take?

**Dr HORTON:** No more than five minutes.

**CHAIR:** Are you okay, Mr Hutchings?

**Mr Hutchings:** I am fine.

**CHAIR:** Okay.

**Dr HORTON:** Mr Hutchings, you have said on a number of occasions that you had formed the view—or those in the CCC had formed the view—that there was inconsistency between the affidavits given in the QIRC proceeding by the councillors and what you saw in the WhatsApp material.

**Mr Hutchings:** Yes.

**Dr HORTON:** What affidavits specifically and what parts of them specifically are you talking about when you allege this wrong evidence?

**Mr Hutchings:** All I can recall are affidavits of councillors in which they deposed to the fact that they brought an independent thought to the question of Ms Kelsey's probation assessment.

**Dr HORTON:** Yes. And?

**Mr Hutchings:** And then the inconsistency was with the WhatsApp material, which indicated that, as I recall—I only saw it once—they were resolved to not employ her.

**Dr HORTON:** Is that the extent of what you say is the inconsistency between the councillors' affidavits and what you say the WhatsApp material says?

**Mr Hutchings:** My recollection is that what the WhatsApp material said was that whatever the mayor wanted would go. There was unquestioning support for him in terms of Ms Kelsey. That is just my recollection.

**Dr HORTON:** Good. Which affidavits? Which paragraphs?

**Mr Hutchings:** I have not gone back to the paragraph numbers.

**Dr HORTON:** That is all right. Where is your note of which affidavits, which paragraphs, at the time?

**Mr Hutchings:** I do not have one.

**Dr HORTON:** Was any made?

**Mr Hutchings:** My assessment of this was based on my impression of having read the WhatsApp material, which was printed out in a folder like this, and reading I think online or reading an electronic copy of some affidavits.

**Dr HORTON:** I see. So you read the affidavits and you read the WhatsApp material and this is a view you formed?

**Mr Hutchings:** Yes.

**Dr HORTON:** You are not referring to anyone else's view when you are talking about this? It is Rob Hutchings's view as a lawyer?

**Mr Hutchings:** Yes.

**Dr HORTON:** Corporate or operational?

**Mr Hutchings:** Yes.

**Dr HORTON:** Which one?

**Mr Hutchings:** Corporate.

**Dr HORTON:** You have revealed the full extent of what you thought the inconsistency to be?

**Mr Hutchings:** Yes.

**Dr HORTON:** And the inconsistency in your mind was one of perjury?

**Mr Hutchings:** It was either that or—well, it was actually that, yes.

**Dr HORTON:** So you had formed the view that the councillors had committed perjury in their affidavits by saying the things that you just identified?

**Mr Hutchings:** Yes.

**Dr HORTON:** And you made no record of that?

**Mr Hutchings:** I do not recall making a record of that, no.

**Dr HORTON:** Of your thinking, of your conclusions, of your legal reasoning to come to the conclusion in your mind that people had committed perjury?

**Mr Hutchings:** I had been shown these documents by investigators.

**Dr HORTON:** Sorry, I need precision here—precision, precision. Which documents? Which investigators? When?

**Mr Hutchings:** I had been shown the WhatsApp material by investigators involved in this job.

**Dr HORTON:** Understood.

**Mr Hutchings:** I had been given copies, I think by MinterEllison, of the affidavit material.

**Dr HORTON:** Of the councillors?

**Mr Hutchings:** Of the councillors. And those two things seemed to be at odds.

**Dr HORTON:** Perjury in the respect you have identified?

**Mr Hutchings:** Yes.

**Dr HORTON:** We are well past the weasel words here. It is perjury, in your view, you have said?

**Mr Hutchings:** Yes.

**Dr HORTON:** And you do not keep a note of your reasoning or of your thinking or of the paragraphs which you considered gave rise to a perjury?

**Mr Hutchings:** There was no need for me to actually keep a note, because I was not operational and I was never going to be involved in the charging process.

**Dr HORTON:** I see, because you are a corporate lawyer?

**Mr Hutchings:** I had a level of interest in the matter which I would have satisfied by reading all those documents.

**Dr HORTON:** But a level of interest, Mr Hutchings—and I think this is the level we are getting to here—which informed your meta-approach to this matter which was this: you had to correct an imbalance and the imbalance was in part about this unfairness in the legal representation or its funding because of the alleged perjury, in your mind?

**Mr Hutchings:** Yes.

**Dr HORTON:** Yes. So we are in the level of meta-approach. This is your underlying motive for everything you do which you believe is consistent with what the chair has told you: help Ms Kelsey?

**Mr Hutchings:** Yes.

**Dr HORTON:** Great. That is really important. But you do not keep a note?

**Mr Hutchings:** No.

**Dr HORTON:** And you do not even make one?

**Mr Hutchings:** No, because the investigative team was dealing with that.

**Dr HORTON:** I see, and where? Where do we find what they have done that meant that you did not need to do it?

**Mr Hutchings:** I do not know, Mr—

**Dr HORTON:** We do not, Mr Hutchings, I want to suggest to you. Now, there is a bigger problem, I want to suggest to you. Did you read the decision of Vice President O'Connor on the ultimate determination of Ms Kelsey's matter?

**Mr Hutchings:** Yes, I think I might have read it briefly, yes.

**Dr HORTON:** And what did you notice about the concerns you had had about perjury when you read that decision?

**Mr Hutchings:** I cannot remember.

**Dr HORTON:** I see. You did not think, 'My decision about perjury might not have been right'?

**Mr Hutchings:** No, that is not something I remember thinking, no.

**Dr HORTON:** I see. You did not look at—of course, you recall in the end the WhatsApp messages actually got into the proceeding; remember?

**Mr Hutchings:** I think they must have because of the email, I recall, from Dan Williams in which he referred to it as a game changer.

**Dr HORTON:** Great. So they got into the proceeding anyway, or some of them; right?

**Mr Hutchings:** Well, it may have been shown to some legal representatives.

**Dr HORTON:** So you would want to know, would you not, if the WhatsApp were there? You would think, 'I just want to check that my views about perjury'—really serious; you agree?

**Mr Hutchings:** Yes.

**Dr HORTON:** Perjury is really serious. You think, 'I just want to check my judgement about the perjury where the members made that ruling that I was sure was perjury'; yes?

**Mr Hutchings:** No. I was not particularly concerned about what the result was at the end.

**Dr HORTON:** I see. You had thought that people who once were elected public officials had committed perjury, but it did not really matter in the end whether or not that was found in the proceeding at which that might be an issue?

**Mr Hutchings:** My view about operational matters is, in practical terms, irrelevant at the CCC.

**Dr HORTON:** Mr Hutchings, this, I have to say, shocks me. I am putting that so you know the level of seriousness which I am suggesting to you this represents.

**Mr Hutchings:** There are battalions of people engaged at the CCC to undertake the investigative activity.

**Dr HORTON:** Yes, yet—

**Mr Hutchings:** I am not in that.

**Dr HORTON:**—we do not—I will not go there. I want to suggest to you that Vice President O'Connor made two relevant, for present purposes, observations—findings—in his decision. For your reference, at 769 I read—

The Applicant's submission is that the WhatsApp messages, whilst not the sole matter that is relied upon, demonstrate the alignment between the Second to Ninth Respondents—

take it for a minute they are the councillors—

and allow the Commission to draw an inference against them in terms of the reliability of their reasons for termination.

'Reliability of their reasons for termination'. No-one is alleging perjury, it seems. Are you aware whether anyone alleged perjury in the QIRC proceeding?

**Mr Hutchings:** No.

**Dr HORTON:** 778—

Whilst I accept that the WhatsApp transcripts reveal a level of hostility towards Ms Kelsey and demonstrate a distrust of her, they cannot be explained by reference to the lodging of a PID.

Now, help me—and I think you cannot because you said you cannot remember the decision—but your view of perjury, Mr Hutchings, was wrong?

**Mr Hutchings:** I do not accept that.

**Dr HORTON:** I understand.

**Mr Hutchings:** Sorry?

**Dr HORTON:** I understand.

**CHAIR:** Mr Horton, I am sorry to cut you off, but I was just going to say that that might be an appropriate place, unless you had another point to go. I am sorry; I might have jumped—

**Dr HORTON:** Barristers' estimates of time are notoriously unreliable. Please, stop me and break.

**CHAIR:** Did you have anything you wanted to finish off on or not?

**Dr HORTON:** I do have one more question.

**CHAIR:** Okay; sorry. Go ahead.

**Dr HORTON:** And I will remember what it was in a minute. This shows, Mr Hutchings, one big difficulty with what you did: you made an assessment which was just your assessment. It drove your involvement in this case in a partisan way to correct a perceived imbalance, but the basis for your doing so did not exist or was at least highly, materially, seriously flawed.

**Mr Hutchings:** I do not accept that.

**Dr HORTON:** That is the question, Chair.

**CHAIR:** Okay. It being nearly 1.15, we will take a break. Do you have further questions for Mr Hutchings?

**Dr HORTON:** No, not at present, Chair, and after lunch it is intended that we call Ms Makeeta McIntyre. Mr McMillan will take Ms McIntyre's evidence, with the committee's permission, and we will hear from her this afternoon.

**CHAIR:** Mr Hutchings, thank you very much for attending the committee. We will stand you down at this point and have a break. It has been a particularly long session, so in the interests of giving counsel assisting the CCC and counsel assisting the inquiry some time to refresh, we might resume today at 2.30 pm.

**Proceedings suspended from 1.14 pm to 2.34 pm.**



**CHAIR:** We will recommence the proceedings. Our apologies for being a little bit late. We were dealing with some other matters. Counsel assisting, Mr McMillan, welcome to the podium.

**Mr McMILLAN:** Thank you.

**CHAIR:** Would you like to indicate where we will be going from here?

**Mr McMILLAN:** The next witness that we propose to hear from is Ms Makeeta McIntyre from the CCC.

**Ms Makeeta McINTYRE** (accompanied by Mr Peter Dunning QC and Mr Matthew Wilkinson)

*Witness was sworn—*

**Mr McMILLAN:** Good afternoon, Ms McIntyre. Could you start, please, by telling us what job you occupied in 2018?

**Ms McIntyre:** In 2018 my substantive position was principal lawyer within the corruption legal unit of the Legal Services division. During that year I performed the role of acting as the assistant director of corruption legal. That was between the period of March 2018 to October, November 2018.

**Mr McMILLAN:** And you are still employed by the Crime and Corruption Commission?

**Ms McIntyre:** That is correct.

**Mr McMILLAN:** What is your current role?

**Ms McIntyre:** Principal lawyer.

**Mr McMILLAN:** Are you still a principal lawyer based within the corruption legal unit?

**Ms McIntyre:** Yes, I am.

**Mr McMILLAN:** We have heard evidence from Mr Hutchings today who I think during 2018 was the director of Legal Services.

**Ms McIntyre:** That is correct.

**Mr McMILLAN:** He has described there being a distinction between operational lawyers in the commission and corporate lawyers. Are you familiar with that distinction?

**Ms McIntyre:** I am classified as an operational lawyer.

**Mr McMILLAN:** So your job as a principal lawyer in the Corruption division you would describe as an operational lawyer?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** What in your mind is the distinction between an operational lawyer and a corporate lawyer as the commission was organised in 2018?

**Ms McIntyre:** An operational lawyer is essentially allocated to an investigation to provide legal services and advice to a multidisciplinary team within the Corruption division. In 2018, though, I will need to draw the distinction that I was within the Legal Services division providing those services to the Corruption division.

**Mr McMILLAN:** Does that mean that you ultimately reported up to the director of Legal Services?

**Ms McIntyre:** That is correct.

**Mr McMILLAN:** As a legal supervisor?

**Ms McIntyre:** That is right.

**Mr McMILLAN:** But that your functions, your day-to-day job, was to assist and advise an operational investigative team?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** Was there an assistant director, other than when you were acting as the assistant director of course, that sat operationally between you and the director of Legal Services?

**Ms McIntyre:** No.

**Mr McMILLAN:** When you acted as the assistant director, what was that function?

**Ms McIntyre:** It was managing a team—I think at that time about four lawyers. It varied as such. I would obviously manage that team in terms of the allocation of those lawyers to investigations within Corruption, obviously guidance, mentoring, training, liaising with the senior management of Corruption as well and the Legal Services division.

**Mr McMILLAN:** During 2018 were you predominantly the principal lawyer that was attached to Operation Front?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** In that capacity, did you have responsibilities to assist and advise the police officers who were seconded to the CCC as part of that operation in relation to questions of legality, warrants, admissibility of evidence and so on?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** Was it also part of your function to assist those officers to understand the elements of offences that they might consider arose from evidence they had gathered?

**Ms McIntyre:** Essentially, yes.

**Mr McMILLAN:** Do I take from it that that it was also part of your function to consider what evidence might support particular charges arising from investigations undertaken as part of Operation Front?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** And that task was an ongoing one that continued throughout your time as the principal lawyer attached to that operation?

**Ms McIntyre:** To Operation Front, yes.

**Mr McMILLAN:** Do you also have any responsibilities as a principal lawyer in the Legal Services division for dealing with dissemination authorities?

**Ms McIntyre:** With regards to dissemination authorities, anybody can be an applicant for a dissemination. It does not have to be a lawyer. I think in terms of Operation Front I took on that role with regards to being the applicant for most disseminations, but it is not a specific requirement for a lawyer to be the applicant. A lawyer would be required to at times draft disseminations or review and settle disseminations that had been drafted by investigators or other personnel of Corruption.

**Mr McMILLAN:** What are the circumstances, in your mind at least, in which a dissemination authority would be required to release from the commission to a person outside the commission material that was, for example, obtained by the use of the commission's coercive powers?

**Ms McIntyre:** Information can be referred or disseminated to a person outside the organisation if it is to be used for that entity, if it is going to a particular entity. At that time a formal dissemination would be required. If it is the case that we are providing information to an entity or a person for the sole purpose of them assisting us with our investigation, there would be no requirement of a formal dissemination.

**Mr McMILLAN:** So if it was for a purpose other than assisting the commission, as a general rule you would expect a dissemination authority to be required?

**Ms McIntyre:** Other than assisting, yes.

**Mr McMILLAN:** All right. Are you familiar with section 329 of the Crime and Corruption Act?

**Ms McIntyre:** Yes, I am.

**Mr McMILLAN:** You would be familiar, then, that that section provides that one of the number of definitions of 'improper conduct' under that act is 'disclosure of confidential information without the required authorisation, whether or not the disclosure contravenes an Act'. The disclosure of confidential information without a dissemination authority would meet that definition, would it not?

**Ms McIntyre:** Possibly. If it was a disclosure that was to be provided not for the specific purpose of the CCC, in assisting the CCC in its investigations and the like, I would not say that it would be a specific breach of section 329. Obviously there would be circumstances that you would need to take into consideration as to the reasoning behind the disclosure of the information at that time.

**Mr McMILLAN:** Section 329 also provides that something might be improper conduct if it was in 'noncompliance with a policy or procedural guideline set by the commission'. Are there any written policies in the commission—sorry. Were there any written policies in the commission in 2018 that assisted officers to understand when they would require a dissemination authority in order for sensitive material to leave the building?

**Ms McIntyre:** Yes, there were.

**Mr McMILLAN:** And noncompliance with those policies, in your mind, might meet the definition in section 329(4)(g) for noncompliance with—

**Ms McIntyre:** As is stated in section 329, yes.

**Mr McMILLAN:** And further, a potential form of improper conduct under section 329 is in subsection (4)(h), disclosure that is 'an abuse of power'. Are you familiar with that section?

**Ms McIntyre:** Section 329?

**Mr McMILLAN:** Yes, (4)(h).

**Ms McIntyre:** That is what it says.

**Mr McMILLAN:** So would disclosure for an improper purpose constitute an abuse of power in your view?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** I want to ask you about, I suppose, two separate topics, if I may. Necessarily, the course of my questions will involve jumping back and forward in time a little, and for that I apologise. If I lose you at any point, please stop me and ask for clarification. I want to be sure that you are following the chronology as I am. I want to deal first of all, if I can, with the CCC's involvement—if I can use that word—in the Queensland Industrial Relations Commission's proceedings commenced by Ms Kelsey. Can I take a step back: without disclosing any operationally sensitive information, when did your involvement with Operation Front as a principal lawyer commence? Are you able to pinpoint a time?

**Ms McIntyre:** I understand Operation Front commenced on—we received the public interest disclosure on 12 October 2017. I suppose Operation Front was approved to commence on 8 November 2017. I, as principal lawyer, did not commence with Operation Front until about February or March 2018.

**Mr McMILLAN:** And by that stage were you aware that Ms Kelsey had commenced her proceedings in the Queensland Industrial Relations Commission, I think in December 2017? Did you know that when you joined the operation?

**Ms McIntyre:** In February or March 2017?

**Mr McMILLAN:** No, I am sorry. Ms Kelsey commenced her proceedings in December 2017. When you started your role in Operation Front, were you aware at that time that there were proceedings on foot in the Industrial Relations Commission as between Ms Kelsey and the council?

**Ms McIntyre:** Possibly through reading information. I could not say yes or no to be definite, but possibly.

**Mr McMILLAN:** Are you able to, sitting here now, recognising that it is some years later, identify when it was that you became aware of the Industrial Relations Commission proceedings?

**Ms McIntyre:** I do not know when I became involved but I am aware of those proceedings.

**Mr McMILLAN:** You would have become aware, I suggest, at some point that there were legal proceedings on foot in which issues directly relevant to Operation Front were being litigated?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** And that would have been a topic of conversation amongst the operational team that included you?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** And those conversations occurred at various times throughout 2018; is that right?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** You should have a number of bundles in front of you. The larger volume is called Volume 1. I ask you to turn page 81 of that volume, please. Here you will see an email that I think might have been printed by you because your name is in bold at the top, but regardless it is an email from Mr Hutchings to you and Mr Alsbury on 25 May 2018. Do you see that?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** In it Mr Hutchings describes a conversation that he had with Dan Williams, who was Ms Kelsey's solicitor at MinterEllison. He notes in the third paragraph that Mr Williams told him—

... that an essential plank in their case—  
Brisbane

that is, Ms Kelsey's case—

involves establishing with evidence the present inference that there is a cohort of aligned councillors who act in concert, and who did so ... in an act of reprisal against Ms Kelsey.

Was that the first time that that suggestion had been made to you, that that was a central plank in Ms Kelsey's civil litigation?

**Ms McIntyre:** 25 May—I am aware that Ms Kelsey's legal representatives had contacted the CCC to assist. That this may be the first—I cannot say yes or no whether this is the first time that I became aware of that. The CCC was also investigating that type of behaviour from those councillors as well, so—

**Mr McMILLAN:** In fact, Operation Front, one of the things that it was focused upon was the prospect of collusion between the councillors to effect a reprisal on Ms Kelsey.

**Ms McIntyre:** Yes.

**Mr McMILLAN:** So this email, being informed that that was a central plank in her civil litigation, I suggest, would have been an important fact for you to know.

**Ms McIntyre:** The QIRC were investigating—sorry, I should not say 'investigating'—were dealing with the same allegation.

**Mr McMILLAN:** And is this the first time you became aware of that?

**Ms McIntyre:** My apologies. There was a reprisal action taken against Ms Kelsey by the councillors.

**Mr McMILLAN:** That was the allegation that was made?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** And it would have been important for you to know, would it not, that that was a central plank of her civil litigation—the same allegation that you were investigating as part of Operation Front?

**Ms McIntyre:** In terms of my role for Operation Front, it is the investigation of the allegations that are relevant to the CCC—what we were investigating at that time. Whether it was a central plank for the QIRC proceedings in my mind is not relevant to me. I was looking at the allegations that had been referred to the CCC, and that is one of the allegations that had been referred to the CCC.

**Mr McMILLAN:** It was not relevant to you to know that a central plank in Ms Kelsey's civil case was the very same thing upon which she had made what was described as a public interest disclosure that resulted in a criminal investigation, deploying the resources of the CCC? You did not think that was important?

**Ms McIntyre:** There is the CCC investigation and then there are QIRC proceedings. My role is to deal with what is happening with regards to the CCC proceedings. What was happening in the QIRC proceedings was not particularly of relevance to me.

**Mr McMILLAN:** Might it have been of relevance if, for example, it was in fact the motivation for Ms Kelsey to make what was described as the public interest disclosure? That would be relevant to you, would it not?

**Ms McIntyre:** Well, that was the premise of her public interest disclosure that was made to us.

**Mr McMILLAN:** If her complaint to you which resulted in the investigations being undertaken by Operation Front were, in fact, an attempt to assist her in her civil litigation, that would have been important for you to know as the lawyer attached to that investigative team, would it not?

**Ms McIntyre:** I was aware that there was a request by Ms Kelsey for the CCC to assist, prior to this date.

**Mr McMILLAN:** Could you turn, please, to page 89 of that bundle? This appears to be a file note dated 31 May 2018, in the top right-hand corner. Do you know who the author is of this file note?

**Ms McIntyre:** I am.

**Mr McMILLAN:** This is a meeting involving the people that are listed at the top of the file note and you?

**Ms McIntyre:** That is correct, yes.

**Mr McMILLAN:** Can I ask you to turn to page 90? You will see about five lines from the top, 'CCC motivated assist SK'. That is Ms Kelsey?

**Ms McIntyre:** I do not know who made that comment during the telephone conference that we had at that time. I am sure you have been provided with a copy of the transcript of that meeting.

**Mr McMILLAN:** This is your note, is it not, Ms McIntyre?

**Ms McIntyre:** Yes, but if you are asking me who made that comment, I do not know who made that comment. I am just writing down what was stated in that meeting.

**Mr McMILLAN:** It is a simple question: is the abbreviation 'SK' a reference to Ms Kelsey?

**Ms McIntyre:** Yes, it is.

**Mr McMILLAN:** You are saying you do not recall who said that in the course of that meeting. Was that the first time that you had heard someone say that the CCC was motivated to assist Ms Kelsey?

**Ms McIntyre:** I do not know. That was 31 May. I do not know. I am aware that there was a request. I am aware that Ms Kelsey had requested the assistance of the CCC. When that date was, I do not know.

**Mr McMILLAN:** You had joined Operation Front in early 2018?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** And this is 31 May 2018. My question to you is: is this the first time that anyone had said to you or that you heard anyone say that the CCC was motivated to assist Ms Kelsey in her civil action?

**Ms McIntyre:** I am aware that the CCC were monitoring the QIRC proceedings. There was, to my knowledge, a discussion in relation to whether the CCC would join those proceedings—I was not involved in that discussion—just simply that it was being monitored, and if there was any assistance that we could provide Ms Kelsey that we would consider that along the way.

**Mr McMILLAN:** So at some stage prior to 31 May you recall having conversations around the CCC being able to assist Ms Kelsey?

**Ms McIntyre:** I do not know whether it is before that. I am aware that there were discussions that we would try and assist Ms Kelsey. When they occurred I cannot tell you.

**Mr McMILLAN:** Do you recall whether you were surprised during this meeting on 31 May that there would be some suggestion that the Crime and Corruption Commission would be motivated to assist a private litigant in civil litigation?

**Ms McIntyre:** No, not surprised.

**Mr McMILLAN:** You were not surprised?

**Ms McIntyre:** No.

**Mr McMILLAN:** Is that because that had been the topic of conversation amongst you and others at the CCC prior to that date?

**Ms McIntyre:** As I have stated, we are aware that she requested our assistance and if we had information to assist her then we would consider.

**Mr McMILLAN:** Can I ask you to turn to page 95 now, please? Moving on in time. The bottom half of the page is an email from Mr Hutchings to the chairman, copied to you, on 6 June 2018 and it starts—

Al, just spoke with Makeeta.

I am interested in the second paragraph where Mr Hutchings advises the chairperson that—

We propose disseminating the Whats App material previously downloaded from the Mayor's phone.

Do you recall this conversation with Mr Hutchings on 6 June 2018?

**Ms McIntyre:** I am aware that there were considerations of disseminating the WhatsApp material. Whether it was before or on that date—I am aware that we were considering disseminating information. The information at that time was the WhatsApp material which was relevant not only to the CCC investigation but the QIRC proceedings.

**Mr McMILLAN:** First of all, who is 'we'? When you say you are aware that 'we were considering disseminating' material, who are you referring to?

**Ms McIntyre:** That is not me; that is Rob. 'Accordingly, we propose.'

**Mr McMILLAN:** Your evidence only a moment ago was, 'I am aware that we were considering disseminating' material.

**Ms McIntyre:** The CCC.

**Mr McMILLAN:** You are referring to the CCC organisationally?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** Did you have a conversation with Mr Hutchings about that dissemination?

**Ms McIntyre:** Well, as it says that we spoke—Rob and I spoke on that day. The phones that we are looking at in relation to the analysis of the phones were the phones seized from the seven councillors, not mayor Smith, at that time. We had already analysed mayor Smith's phone earlier on in the year.

**Mr McMILLAN:** This email is describing a dissemination of the material downloaded from the mayor's phone, though, is it not?

**Ms McIntyre:** It is, but in terms of the first paragraph as to the analysis of the phones, I am just clarifying that that is in relation to the seven councillors.

**Mr McMILLAN:** Thank you.

**Ms McIntyre:** And that is what I was talking to Rob about.

**Mr McMILLAN:** When Mr Hutchings says in the second paragraph—

Accordingly, we propose disseminating the Whats App material previously downloaded from the Mayor's phone.

who were you proposing to disseminate that material to?

**Ms McIntyre:** There were discussions about disseminating the material to Ms Kelsey's lawyers.

**Mr McMILLAN:** For what purpose?

**Ms McIntyre:** To assist in the QIRC proceedings.

**Mr McMILLAN:** To assist her?

**Ms McIntyre:** Yes, because—

**Mr McMILLAN:** So that would not be a purpose to assist the Crime and Corruption Commission that we discussed earlier in relation to section 329, would it?

**Ms McIntyre:** In terms of the 329—sorry, I withdraw that. In terms of our—in terms of disseminating information, we can disseminate information at that time pursuant to section 62 of the act. It can be provided to a person for their purposes.

**Mr McMILLAN:** For any purpose whatsoever?

**Ms McIntyre:** Any purpose whatsoever.

**Mr McMILLAN:** What criteria would the CCC apply to disseminating coercively obtained material to any person whatsoever?

**Ms McIntyre:** It is information that—or material that is in our possession. It does not necessarily have to be coercive material.

**Mr McMILLAN:** No, but this was, was it not?

**Ms McIntyre:** It was material obtained, yes, it was, under a search warrant.

**Mr McMILLAN:** What sort of criteria would you expect the CCC to apply to a dissemination under section 62 to a private litigant in civil litigation?

**Ms McIntyre:** Public interest, whether it is fair in the proceedings, so section 57, whether it is necessary to provide that information, whether they do have an interest in that. There is no specific criteria that is listed down.

**Mr McMILLAN:** Was it proposed on or about 6 June, when this conversation occurs with Mr Hutchings, to disseminate that particular material to anyone other than Ms Kelsey?

**Ms McIntyre:** There were discussions, and I do not know when it was around this time, whether we disseminated it to all parties to the QIRC proceedings or whether it was just disseminated to the QIRC themselves.

**Mr McMILLAN:** Can I ask you to turn to page 97. This is an email again from Mr Hutchings to you and Mr Alsbury the next day, on 7 June 2018. I draw your attention to the second paragraph where Mr Hutchings refers to an overriding concern of urgency for Ms Kelsey's sake. Do you recall what the urgency was in disseminating the material at that particular point in time?

**Ms McIntyre:** No, I do not.

**Mr McMILLAN:** Do you remember having any discussions with Mr Hutchings or anyone elsewhere at the CCC about where the QIRC proceedings were in terms of hearings and evidence?

**Ms McIntyre:** There were discussions. I do understand that there were discussions in terms of where the proceedings were up to. I do not believe I was involved in all of those discussions. We monitored the QIRC proceedings—that being the CCC monitored.

**Mr McMILLAN:** And you understood from Mr Hutchings's email of 7 June that there was some urgency in getting this material into Ms Kelsey's hands?

**Ms McIntyre:** I cannot comment in relation to the urgency. I do not know.

**Mr McMILLAN:** You received the email from Mr Hutchings in which he says there is some urgency in doing so?

**Ms McIntyre:** I received the email. What the urgency was I do not know.

**Mr McMILLAN:** Can you turn to page 99. This is an email from Mr Andrews. Mr Andrews was a detective senior sergeant working in Operation Front; is that right? Do you need me to repeat the question, Ms McIntyre?

**Ms McIntyre:** Yes, please. I was reading the email.

**Mr McMILLAN:** Mr Andrews was a detective senior sergeant working in Operation Front; is that right?

**Ms McIntyre:** Yes, he was.

**Mr McMILLAN:** He was one of the seconded police officers for whom you were the principal lawyer responsible to give legal advice and assistance as part of that operation?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** This email does not appear to be sent to you, but one of the addressees is Operation Front. Is that a distribution list?

**Ms McIntyre:** Yes, it is an email list of those persons attached to Operation Front. I received that email. I was on the email distribution list.

**Mr McMILLAN:** Were others on the distribution list as well as you?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** Would others have included Mr David Beattie?

**Ms McIntyre:** Yes, I believe so.

**Mr McMILLAN:** And also Detective Sergeant Francis?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** This email—and I think you took a moment to have a look at it; feel free to take more time if you need—is an email from Mr Andrews in which he reports the outcome of an appeal by Ms Kelsey to the Supreme Court. He starts with the words—

Folks—Kelsey lost her appeal in the Supreme Court today ...

Do you see those words?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** Were you aware of those proceedings before you received the email from Mr Andrews?

**Ms McIntyre:** Possibly.

**Mr McMILLAN:** Might that have been the urgency referred to by Mr Hutchings in his email of a week earlier?

**Ms McIntyre:** I cannot say that. I do not know.

**Mr McMILLAN:** Mr Andrews refers in the second paragraph to being very concerned that ultimately the court might decide Ms Kelsey's matter without having all available evidence. Was that a concern that he had previously expressed to you or was this the first time you had heard that concern?

**Ms McIntyre:** I cannot say whether that would be the first time. I know that there were some concerns amongst the investigators about the relevance of the information or the evidence that we had and the relevance of that information to the QIRC proceedings.

**Mr McMILLAN:** You understood by this stage, in June 2018, that Ms Kelsey was the applicant in the proceedings in the Queensland Industrial Relations Commission?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** That she was seeking a range of remedies as against the council, the mayor and, I think, the seven councillors by this point?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** Those remedies included reinstatement of her position as the chief executive officer?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** Pecuniary penalties?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** And other relief?

**Ms McIntyre:** Yes. What that relief is I do not know.

**Mr McMILLAN:** Did you ever see the initiating process—the application—filed by Ms Kelsey in that proceeding? The initiation process, I am sorry.

**Ms McIntyre:** I do not believe I saw the initiating process. I think I saw the further amended application once the seven councillors were adjointed to the proceedings.

**Mr McMILLAN:** You understood that this was civil litigation in its pure form—that is, adversarial litigation between one party and others?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** And that it was ultimately for the Queensland Industrial Relations Commission at first instance to adjudicate that dispute as between the parties?

**Ms McIntyre:** Sorry, can you repeat that?

**Mr McMILLAN:** And that it would ultimately be for the Queensland Industrial Relations Commission at least at first instance to adjudicate that dispute as between the parties?

**Ms McIntyre:** In terms of what they were adjudicating against, yes, but in terms of what we were dealing with is the same allegation that reprisal action was taken against Ms Kelsey.

**Mr McMILLAN:** I will come to Operation Front in due course. You as a principal lawyer attached to this investigative unit of the CCC understood, did you not, that these were adversarial proceedings, not inquisitorial ones—that is, the Queensland Industrial Relations Commission proceedings?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** And that in adversarial proceedings the tribunal of fact adjudicates the dispute as litigated by the parties?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** And that it is not for the tribunal of fact—in this case the commission—to seek out evidence of its own accord?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** You do not quibble with that proposition?

**Ms McIntyre:** Sure, yes.

**Mr McMILLAN:** You as a lawyer would have had concerns, would you not, that an entity that was not a party to that adversarial proceeding might seek to place material before the tribunal of fact—that is, the Industrial Relations Commission—that was not sought to be adduced by any of the parties?

**Ms McIntyre:** Can you repeat that?

**Mr McMILLAN:** You as a lawyer would have been concerned, would you not, that the CCC being not a party to those proceedings might seek to place material before the Queensland Industrial Relations Commission that was not material that was placed before it by the parties?

**Ms McIntyre:** The information that was to be placed before the QIRC was relevant to those proceedings and it was up to the QIRC to determine whether they would accept that information.

**Mr McMILLAN:** In adversarial litigation it is for the parties to adduce evidence, is it not?

**Ms McIntyre:** It is.

**Mr McMILLAN:** The CCC was not a party to the Queensland Industrial Relations Commission proceedings?



**Ms McIntyre:** No, we were not.

**Mr McMILLAN:** Were you aware that the CCC had considered whether it should take its own action under the Public Interest Disclosure Act?

**Ms McIntyre:** I understand that there were discussions. As I said earlier, I was not part of those.

**Mr McMILLAN:** But you were aware as at June 2018, were you not, that the CCC was not an applicant in the Queensland Industrial Relations Commission?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** And therefore it was not a party to the proceedings commenced by Ms Kelsey?

**Ms McIntyre:** Not a party.

**Mr McMILLAN:** Should you not have had concerns when you received this email from Mr Andrews that his concern about placing material before the Queensland Industrial Relations Commission was improper?

**Ms McIntyre:** No, I do not believe it is improper. It was information that was relevant to the QIRC proceedings.

**Mr McMILLAN:** And you thought it was appropriate for the CCC, who was not a party to that proceeding, to seek to place that information before it, did you?

**Ms McIntyre:** As I said, a decision was being made that we would place the material before the QIRC proceedings. Whether that was around 14 June I cannot say, but there was consideration of giving that information to the QIRC for them to make that determination whether it was going to be acceptable for the parties to review and take into account whether it was admissible.

**Mr McMILLAN:** You say that a decision was made. Do you mean a decision was made by the CCC to ultimately—

**Ms McIntyre:** Yes, later. It was after this, I believe.

**Mr McMILLAN:** At this point in June, when one of the police officers with whom you work closely on Operation Front sends an email to you and others expressing a concern that a court might make a decision based on the absence of material that neither of the parties have sought to place before it, you did not think, 'Hang on, that is not how adversarial litigation works. Maybe I might give him the benefit of my legal opinion on that'?

**Ms McIntyre:** I was not concerned.

**Mr McMILLAN:** Wasn't that your job—to advise the police officers about the bounds of the law?

**Ms McIntyre:** Yes, but we have that authority under our act that we can actually disseminate information if it was relevant for a particular proceedings, and that was in relation to the QIRC. Section 62 at that time allowed us to provide that information. I did not have any concern at that time. If it was relevant for those proceedings, which I say it was, when it was to be delivered or not—that was not a matter for me. I believe it was relevant; so does the rest of the investigation team, if I can speak on behalf of them, which I should not. I believe at that time it was relevant to those proceedings.

**Mr McMILLAN:** What facts was that opinion, that statement of belief, based upon as at June 2018?

**Ms McIntyre:** Based on the evidence that we had up to that point, particularly the WhatsApp information that was downloaded off mayor Smith's phone at that time which showed collusion between him and the seven—I will say six councillors at that time because former councillor Russell Lutton was not a party to that. It showed collusion. It showed manipulation. That is exactly what was happening. There were allegations of reprisal being taken against Ms Kelsey, and this is leading up to that. We believed it was relevant to the matter before the QIRC proceedings.

**Mr McMILLAN:** Had you at that stage read the pleadings in the QIRC proceedings?

**Ms McIntyre:** I do not know—possibly. I cannot say when.

**Mr McMILLAN:** How could you assess relevance to legal issues in a legal dispute without knowing what the bounds of that legal dispute were?

**Ms McIntyre:** I may have read those—I do not know when I—

**Mr McMILLAN:** The answer is you could not, isn't it?

**Ms McIntyre:** No. I believe that that material, the evidence that we had, was relevant to those proceedings.

**Mr McMILLAN:** As a lawyer, Ms McIntyre, would you be willing to give an opinion about relevance without seeing the pleadings in a case?

**Ms McIntyre:** No.

**Mr McMILLAN:** Why are you giving evidence today that you thought it was relevant if you cannot remember whether or not you had read the pleadings?

**Ms McIntyre:** I may have read those.

**Mr McMILLAN:** Had you seen any of the other evidence filed in the proceedings at this point in time?

**Ms McIntyre:** I know that there were—I do not have the information in front of me. I cannot remember when we did coercive—I should not say 'coercive' but investigative hearings. That was in June-July. In terms of preparing for those proceedings, I had requested information related to the QIRC proceedings. It may have been prior to this date that I did read those pleadings as well as certain affidavits from the councillors that had filed.

**Mr McMILLAN:** Just to be clear, you think by the time you gave an opinion on relevance you would have received and read the affidavits of the councillors that you say had been filed in the proceedings; is that right?

**Ms McIntyre:** Let me correct: I did not give an opinion on relevance to the investigation team at this time. I cannot say that I did.

**Mr McMILLAN:** But you considered the material in the WhatsApp messages to be relevant?

**Ms McIntyre:** I consider the material absolutely relevant.

**Mr McMILLAN:** You had formed that belief having regard to the sworn affidavits in the proceedings, had you?

**Ms McIntyre:** Possibly. It was relevant.

**Mr McMILLAN:** Could I ask you now to turn please to page 107. You will see there a letter from MinterEllison to Mr Hutchings dated 20 June 2018. Can I draw your attention to the third paragraph, where the author of that letter says—

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

Above that there is a reference to there being a hearing scheduled on 30 July. Can I ask you then to turn please to page 110. This appears to be—at the bottom of 110—the email by which MinterEllison deliver that letter to the CCC. You will see above that an email chain where Mr Hutchings asks for a meeting with Paul and Al to discuss. You are copied to a response from Mr Alsbury and, ultimately—I think on page 109—you say that you are available for that meeting.

**Ms McIntyre:** Yes.

**Mr McMILLAN:** At this stage you were the acting assistant director in the Corruption division?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** Is that the reason that you would have been included in that meeting?

**Ms McIntyre:** Possibly, but possibly because I was the legal officer attached to the investigation as well.

**Mr McMILLAN:** Could you turn to page 113, please. This appears to be a file note dated 20 June 2018. It is not your note, is it?

**Ms McIntyre:** No.

**Mr McMILLAN:** To the extent that it records something—put that aside for a moment—do you remember the meeting that you had on that day?

**Ms McIntyre:** No, I do not.

**Mr McMILLAN:** Does the note assist you at all by reference to the fact that it suggests that the participants of that meeting were the chair, Rob and Makeeta?

**Ms McIntyre:** That is right, yes.

**Mr McMILLAN:** Does that assist you at all in remembering that meeting?

**Ms McIntyre:** No. I do not remember the meeting itself but, based on this meeting note, it appears to be a decision that has been made to disseminate information to all parties of the QIRC proceedings. That information was TI—telephone intercepts—the WhatsApp material and hearing material.

**Mr McMILLAN:** Is that, do you think, the decision that you referred to earlier in your evidence when you said there was a decision made to disseminate to the QIRC directly?

**Ms McIntyre:** It could be that. I do not know the date.

**Mr McMILLAN:** Do you know Zora Valeska?

**Ms McIntyre:** I do.

**Mr McMILLAN:** In 2018 she was working at the commission as a principal lawyer; is that right?

**Ms McIntyre:** That is right.

**Mr McMILLAN:** What role was she in at that time? Do you know?

**Ms McIntyre:** I do not know.

**Mr McMILLAN:** Did you work with her or consult with her at all in relation to the proposed disclosure to the Industrial Relations Commission of material that was held by the CCC?

**Ms McIntyre:** I do not believe so.

**Mr McMILLAN:** Could you turn, please, to page 125. You will see there the start of a note to file from Ms Valeska that continues to page 127. Take your time to look at it, if you wish. I am not going to ask you about the detail of it. I am interested in whether you have seen that document before today.

**Ms McIntyre:** No. The only time that I saw this was when the material was provided to the CCC.

**Mr McMILLAN:** I see. You do not recall seeing it or being told about it in 2018?

**Ms McIntyre:** No.

**Mr McMILLAN:** Were you aware by any other means that Ms Valeska had expressed a view that some of the material that was sought to be disseminated to the QIRC was ultimately not admissible in that jurisdiction?

**Ms McIntyre:** No.

**Mr McMILLAN:** Was that a topic of the discussion had between you, Mr Hutchings and, I think, Mr Alsbury on 20 June?

**Ms McIntyre:** We have had discussions in relation to the TI material. We were of the view that it could be disclosed.

**Mr McMILLAN:** And you do not recall either of those gentlemen telling you that Ms Valeska was of a different opinion?

**Ms McIntyre:** No.

**Mr McMILLAN:** She was, at that stage, the person that was principally responsible for giving advice about telephone intercept product, wasn't she?

**Ms McIntyre:** I do not believe so, no. She is listed down as the principal lawyer. The lawyer within the TI unit is a senior lawyer.

**Mr McMILLAN:** I see. Ms Valeska has worked in the TI unit for some years—

**Ms McIntyre:** She has, yes.

**Mr McMILLAN:**—at the CCC, hasn't she? And she had at that stage, to your knowledge—that is in June 2018—

**Ms McIntyre:** Oh, yes.

**Mr McMILLAN:**—significant experience in advising about telephone intercept product?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** Could you turn to page 129, please? You will see an email, to which you are not a party, from Mr Williams to Mr Hutchings—I am sorry, first of all an email from Mr Hutchings to Mr Williams and then a reply. Then Mr Williams informs Mr Hutchings on 28 June that they have asked the QIRC to issue a notice—a subpoena he describes it—'returnable to the Registry'. Did you understand about this time that the process that had been determined was that Ms Kelsey's lawyers would ask the Queensland Industrial Relations Commission to issue a form of compulsory process that would compel the production of material by the CCC?

**Ms McIntyre:** I am aware that the preferred approach would be a notice issued to the CCC.

**Mr McMILLAN:** Did you give any advice about the preferred approach, as you describe it?

**Ms McIntyre:** No.

**Mr McMILLAN:** But you became aware of the preferred approach by being told that from someone else, did you?

**Ms McIntyre:** Look, I am aware that the approach was to obtain—to be issued with a notice instead of giving the material to each of the parties. I think at that stage the reason why we were not giving the material to each of the parties to the QIRC proceedings were the issues with regards to the TI material being disclosed to them.

**Mr McMILLAN:** Could you turn to page 139, please. This is a different copy. You will see in the middle of the page I think the same email that I have just taken you to but this time with Mr Hutchings's response—Thanks for that Dan

We are preparing our material now.

That material you understood to be material that had been obtained in the course of investigations undertaken by Operation Front?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** So that was material that your investigative team, if I can describe it that way, was responsible for gathering and maintaining?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** Did you give any advice to Mr Hutchings about the disclosure of that material to the QIRC?

**Ms McIntyre:** In terms of—what do you mean by 'advice'?

**Mr McMILLAN:** Any kind of advice. Did you have a conversation with him wherein you expressed your views? Did you send him an email?

**Ms McIntyre:** About the dissemination?

**Mr McMILLAN:** Did you write a formal advice?

**Ms McIntyre:** I would have expressed views in relation to, I suppose, the type of material that was being provided, which was already agreed upon or determined to be relevant as being the WhatsApp material, the TI material that was played in the investigation hearings and the hearing transcripts.

**Mr McMILLAN:** Did you think it odd that the CCC would start preparing a response to a notice of attendance to produce before it had even been served with that notice?

**Ms McIntyre:** I do not have an opinion, no. We were aware that there was a request, since April, for information. I suppose the approach that Sharon Kelsey's legal team decided to take was the issuing of the subpoena. We were aware that that was coming. We were preparing that information. We already knew what was going to be provided.

**Mr McMILLAN:** As the lawyer who was advising an investigative team that was conducting essentially a criminal investigation, did it make you uncomfortable that there was this level of closeness between the CCC and Ms Kelsey and her lawyers such that you would direct the resources of the commission to preparing material in advance of being served with a notice to do so?

**Ms McIntyre:** Ms Kelsey was a complainant and a witness for the CCC investigation. There is no—she was not treated any differently to other complainants or witnesses that are relevant to our investigations.

**Mr McMILLAN:** So other complainants who ask you to start producing material without any form of compulsion or notice—do they get the same level of resources, where the CCC jumps within moments of emails being sent requesting something?

**Ms McIntyre:** I cannot comment in relation to whether that has happened or not. In this case, she was treated no differently.

**Mr McMILLAN:** In your experience as a lawyer at the CCC—over how many years—

**Ms McIntyre:** Since 2011.

**Mr McMILLAN:**—have you observed the CCC to have this type of involvement in assisting a private litigant in civil litigation?

**Ms McIntyre:** I personally have not been involved, no.

**Mr McMILLAN:** In your 11 years at the CCC, you have not observed the CCC to perform that type of function before—other than on this occasion?

**Ms McIntyre:** To assist a person in litigation?

**Mr McMILLAN:** A private litigant in civil litigation.

**Ms McIntyre:** I have not been involved with that.

**Mr McMILLAN:** Can I ask you to turn to page 141, please.

**CHAIR:** Ms McIntyre, that was not the question, about whether you had been involved in that. Have you observed it since you have been employed at the CCC?

**Ms McIntyre:** No.

**CHAIR:** Okay.

**Mr McMILLAN:** Thank you, Chair. Can I ask you to turn to page 141, please. This is a letter dated 29 June 2018, addressed to you as assistant director, from McInnes Wilson, who were the solicitors acting for seven of the councillors who were named respondents in the Queensland Industrial Relations Commission. The letter effectively informs you of those parties' objections to the notice of attendance to produce.

**Ms McIntyre:** Yes.

**Mr McMILLAN:** Do you recall receiving this letter?

**Ms McIntyre:** I believe I did receive it. Whether I recall receiving it—I know that I sent an email—sorry, I referred the letter to, I think, Paul Alsbury—

**Mr McMILLAN:** Yes.

**Ms McIntyre:**—for discussion, and Rob Hutchings.

**Mr McMILLAN:** And noting that the request for a notice of attendance to produce had been issued or made by Ms Kelsey's lawyers. Then you, the very next day, receive notification from another party in that litigation that they proposed to object to that request. Did you think that the CCC should pause in its efforts to comply with that request or at least take advice on it?

**Ms McIntyre:** No.

**Mr McMILLAN:** You thought that you would just continue to assist, notwithstanding the notice of objection?

**Ms McIntyre:** My opinion is that, no, it was—there was a notice of objection. The parties had their own recourse to take during the QIRC proceedings.

**Mr McMILLAN:** Was that view informed at all by an institutional view at the CCC that you were aware of that you should take reasonable, and all reasonable, steps to assist Ms Kelsey in her litigation?

**Ms McIntyre:** No. We take all reasonable steps to be fair and impartial, which is subject to section 57 of our act.

**Mr McMILLAN:** Could you turn to page 155, please. This is an email from Mr Hutchings, again on 29 June, some little time after you have received the objection from McInnes Wilson, with Mr Hutchings providing you a draft dissemination for your consideration and that of Mr Alsbury.

**Ms McIntyre:** That is correct.

**Mr McMILLAN:** The CCC is moving remarkably quickly at this point in time; would you not agree?

**Ms McIntyre:** No.

**Mr McMILLAN:** You would not agree, in 11 years of experience, that for the CCC to have a draft dissemination authority prepared and delivered to the senior executive officer of Corruption within 24 hours of that request being made is remarkably fast?

**Ms McIntyre:** No, I believe Rob was going on leave, so that is the reason why the draft dissemination was drafted in such haste.

**Mr McMILLAN:** Could you turn to page 169, please. You will see again McInnes Wilson writing on 4 July informing you—and this letter is addressed to you—rather, to Mr Alsbury and copied to you—informing you that they would propose to seek a stay of the notice. I will draw your attention to page 170, where the lawyers for the former councillors alert you to at least their contention that the provision of this material might procure a miscarriage of justice.

**Ms McIntyre:** Sorry, where is that?

**Mr McMILLAN:** Page 170 under the heading 'Potential for miscarriage of justice'.

**Ms McIntyre:** What paragraph are we looking at? Sorry, yes. Sorry, 'Potential for miscarriage of justice', yes.

**Mr McMILLAN:** You as a lawyer—recognising that this was a piece of advocacy on behalf of a client or clients, you as a lawyer would have been concerned that anything you might do might have the potential to procure a miscarriage of justice; would you not?

**Ms McIntyre:** You would not want a miscarriage of justice in any proceeding, but by providing the information to the QIRC we were obviously trying to prevent that from happening as well.

**Mr McMILLAN:** You as a lawyer would be particularly concerned, would you not, that anything you did did not have the potential to cause a miscarriage of justice?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** Do you agree?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** So I suggest to you that this letter was cause for you, at the very least, as an admitted solicitor, to pause and reflect upon its contents?

**Ms McIntyre:** As the contact person receiving this letter, it was referred to the executive management for them to make a decision with regard to this process.

**Mr McMILLAN:** So did you think nothing else of it?

**Ms McIntyre:** As I said, if there were concerns that there was going to be a miscarriage of justice—the councillors had legal representation, and any concerns that they had would be litigated during the QIRC proceedings, which occurred.

**Mr McMILLAN:** It is not a matter of 'if', Ms McIntyre. You have received a letter from solicitors alerting you specifically to something that you might propose to do giving rise to a miscarriage of justice. Surely—surely—that caused you to pause and reflect upon your own role in what the CCC was about to do. If it did not, please tell us.

**Ms McIntyre:** We were providing the information pursuant to section 62 of our act, which gave us that provision to do that.

**Mr McMILLAN:** Is the answer to my question yes or no, Ms McIntyre?

**Ms McIntyre:** Whether I had pause? No, I did not. Whether I was concerned about this process, it was not a matter for me to make that decision.

**CHAIR:** Who was it?

**Ms McIntyre:** It is the executive management.

**Mr McMILLAN:** Did you consider that your role during the period that you were acting as the assistant director for Corruption was any different to the role that you had when you were the principal lawyer attached to Operation Front?

**Ms McIntyre:** I had a lot more duties to do as the assistant director.

**Mr McMILLAN:** Did you also have more responsibilities?

**Ms McIntyre:** I did.

**Mr McMILLAN:** You understand there is a difference between duties and responsibilities?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** Do those responsibilities include informing the senior management of the CCC of any ethical or legal concerns that you might have had—might have had—about the CCC's conduct?

**Ms McIntyre:** If I had concerns, yes.

**Mr McMILLAN:** So can we take it, therefore, that you did not have concerns arising from McInnes Wilson's letter?

**Ms McIntyre:** No, I do not believe I did.

**Mr McMILLAN:** And therefore, logically, you did not raise concerns with anyone because you did not have them?

**Ms McIntyre:** No, the letter was referred. I believe Paul responded.

**Mr McMILLAN:** Can we turn then, please, to page 199. On this page you email the dissemination authority to Mr Alsbury on 5 July—that is the very next day after you have received the letter from McInnes Wilson—and ask for his comment?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** That is right?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** Again, the CCC is moving remarkably quickly at this stage, I suggest.

**Ms McIntyre:** The due date for the provision of the material was 6 July.

**Mr McMILLAN:** And you were aware, were you not, that the CCC had a lawful right to refuse or, rather, not comply—

**Ms McIntyre:** Yes.

**Mr McMILLAN:**—with the notice to produce? Similarly, had the CCC required more time to give this matter proper, careful, thorough legal consideration you could have exercised that right and sought more time?

**Ms McIntyre:** I believe they did take that consideration at that time.

**Mr McMILLAN:** So in response to my question—or my suggestion that the CCC was again moving remarkably swiftly, it is not correct to say the due date was the next day, is it? The CCC was throwing its resources behind this effort?

**Ms McIntyre:** No, I disagree.

**Mr McMILLAN:** Your statement concerning the release for information commences on the very next page, Ms McIntyre—I am sorry, over the page at page 201. What is the purpose of this document?

**Ms McIntyre:** This is recording—this is the request to release information.

**Mr McMILLAN:** Yes.

**Ms McIntyre:** Under section 62 of the CC Act.

**Mr McMILLAN:** So this is the document which then triggers someone else in the organisation to consider signing a dissemination authority; is that right?

**Ms McIntyre:** That is correct.

**Mr McMILLAN:** So this document should contain all of the necessary information for the person who will ultimately be asked to give the dissemination authority to decide whether or not they should?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** At the end of the form is a certification, first of all on page 211, by the author—in this case you—that the contents of the application are true and correct and then a certification by another senior officer that it is appropriate to release the information. Is that a standard form that is used to prepare and inform a dissemination authority in the CCC?

**Ms McIntyre:** At that time, yes.

**Mr McMILLAN:** So you signed this statement at page 211 on 5 July? That is your signature?

**Ms McIntyre:** I did.

**Mr McMILLAN:** Did you prepare the document in its entirety?

**Ms McIntyre:** No.

**Mr McMILLAN:** Someone else prepared it for you?

**Ms McIntyre:** I believe it was started by Rob Hutchings.

**Mr McMILLAN:** Yes.

**Ms McIntyre:** Then I believe I had some input to it. I believe David Caughlin, who was the certifying officer, also had some input, and Paul Alsbury, who authorised it, also had some input.

**Mr McMILLAN:** Given that you were not the sole author of the document, how is it that you satisfied yourself as you needed to in order to make the declaration that you do on page 211?

**Ms McIntyre:** Sorry, how did I—

**Mr McMILLAN:** How is it that you satisfied yourself that the contents of the document were true, as you attest on page 211? What did you do to make sure that the things you were saying were true were in fact true?

**Ms McIntyre:** So in terms of—I suppose based on our previous discussions, looking at legislation, the information that was going to be provided over, and what relevance that would have to the QIRC proceedings. It is basically determining that the information would be relevant to those proceedings.

**Mr McMILLAN:** Did you consider any other documents or materials that you might have access to in attesting to the fact that every statement in this document is true, or did you read it and attest to that fact from your own memory?

**Ms McIntyre:** From my knowledge of the investigation.

**Mr McMILLAN:** Could you turn to page 205, please. The third last dot point on that page asserts—

The WhatsApp chat sessions between Mayor Smith and the councillors reveal there is alignment between the Mayor and councillors as pleaded to by Ms Kelsey and denied by the councillors.

**Ms McIntyre:** Can you repeat that again? What page?

**Mr McMILLAN:** The third last dot point on page 205. Feel free to read that to yourself again. Did you have reference to the pleadings in the Queensland Industrial Relations Commission at the time that you signed this document?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** Could you turn to page 206, please, the last dot point above paragraph 9. Could you read that quietly to yourself, please? It refers to—

... the likelihood of false evidence having been sworn in the QIRC ...

Did you have access to the sworn affidavits—

**Ms McIntyre:** I did.

**Mr McMILLAN:** At that stage?

**Ms McIntyre:** I did.

**Mr McMILLAN:** And you referred to them for the purposes of attesting to the truth of this document?

**Ms McIntyre:** I did because I referred to them in the investigative hearings that I was counsel assist for.

**Mr McMILLAN:** Could you turn to page 217, please. This is the dissemination authority that was ultimately signed by Mr Alsbury, and the schedule to that authority commences at page 223. You will see that the material ultimately produced in response to this notice and under this dissemination authority included lawfully intercepted information under the TIA Act on page 224. Did you give or receive any legal advice about the admissibility of that material in the Queensland Industrial Relations Commission?

**Ms McIntyre:** Yes, I did. It was verbal advice.

**Mr McMILLAN:** You gave that advice or you received it?

**Ms McIntyre:** I gave advice that it could.

**Mr McMILLAN:** To whom?

**Ms McIntyre:** To I believe the chairperson, Paul Alsbury and Rob Hutchings during a meeting—I do not know when; I do not know what date that was—that, in terms of my interpretation of the TIA Act, if telephone intercepts are played in an exempt proceeding, which is what a CCC investigative hearing is deemed under the act, it can then be provided and given in evidence in any proceeding, and the QIRC proceedings in my interpretation would fall within 'any proceeding'.

**Mr McMILLAN:** Did anyone tell you in the course of requesting or receiving your verbal advice in that regard that Ms Valeska had prepared a written advice about the admissibility of the TI product?

**Ms McIntyre:** No, but just the fact that she has provided advice does not mean it is necessarily correct either.

**Mr McMILLAN:** As a lawyer, a principal lawyer in the CCC, would you not be assisted by at least considering the written opinion of another lawyer at the same level?



**Ms McIntyre:** I would consider it if I knew it was there. I do not necessarily agree it is correct, though.

**Mr McMILLAN:** Was that a flaw in the CCC's process, in your view—that written advice about that exact issue was not drawn to your attention?

**Ms McIntyre:** It would have been nice to have known about the advice, of course.

**Mr McMILLAN:** Is it your experience as a lawyer that the act of writing an opinion helps to clarify and crystallise your thinking about the legal reasoning for the opinion?

**Ms McIntyre:** Yes, obviously written advice is always helpful.

**Mr McMILLAN:** So the process of Ms Valeska having undertaken to reduce her opinion to writing might have given it more weight in your mind, if you had known about it? You would agree?

**Ms McIntyre:** Possibly, but I still believe that it was capable of being provided, and lawfully provided, pursuant to those provisions of the T(IA) Act.

**Mr McMILLAN:** I think you told me earlier that you had not seen or considered Ms Valeska's opinion before being provided with this bundle.

**Ms McIntyre:** No.

**Mr McMILLAN:** You are aware, aren't you, that ultimately the Queensland Industrial Relations Commission set aside the notice of attendance to produce?

**Ms McIntyre:** I am aware of that.

**Mr McMILLAN:** Have you read Commissioner Black's decision on that point?

**Ms McIntyre:** Not recently.

**Mr McMILLAN:** Did you read it at the time?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** Are you sure?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** And you would have then observed at paragraph 155 of that decision—although I do not expect you to remember the paragraph, but it would have been notable to you, I suggest—that Commissioner Black expressed concern that the CCC had entered the fray in the industrial relations proceedings. Do you recall reading that?

**Ms McIntyre:** No.

**Mr McMILLAN:** And you do not recall, or do you recall—I will put it in the affirmative. Do you recall having read Commissioner Black's decision thinking that it bound the CCC in terms of dealings with the material about which the decision was concerned?

**Ms McIntyre:** I think the decision has—I have not expressed a view in relation to that decision. I am aware that there are views—

**Mr McMILLAN:** I am not asking you to express a view about the decision, Ms McIntyre. I am asking you whether at the time of reading the decision you thought that it bound the commission in dealing with that material in future.

**Ms McIntyre:** For those proceedings, possibly. Back then, I cannot recall.

**Mr McMILLAN:** You did not make a note, at least to yourself mentally, that 'The Industrial Relations Commission has told us it does not wish to receive this particular material because it is inadmissible in this proceeding and therefore we should desist in any effort to put it before the commission'?

**Ms McIntyre:** I recall the decision was that they determined that the material subject to the notice was inadmissible in those proceedings.

**Mr McMILLAN:** Leading up to that, in the weeks and months leading up to that decision, or rather at least to the delivery of the material to the commission, there had been considerable resources at the CCC—including the director of Legal Services, the senior executive of Corruption and so on—ensuring that that material got to the QIRC. There were considerable resources of the CCC devoted to that task, weren't there, including you?

**Ms McIntyre:** In terms of the preparing of the dissemination and the collation of the material?

**Mr McMILLAN:** Yes.

**Ms McIntyre:** It depends on what you would deem as being considerable. There was—

**Mr McMILLAN:** The application of a principal lawyer, the director of Legal Services and the senior executive officer of Corruption. Those are officers at the highest level of the commission, other than the chairperson, aren't they?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** So they are considerable resources of the commission, are they not?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** And having deployed those resources to facilitate the material being placed before the commission and the commission having told you it would not receive that material, did you then think, 'That's the end of that effort for us'?

**Ms McIntyre:** I do not recall.

**Mr McMILLAN:** Chair, is that a convenient time for an afternoon break?

**CHAIR:** Yes, we will keep it brief, though. I propose that we break until four o'clock.

**Proceedings suspended from 3.48 pm to 4.02 pm.**

**CHAIR:** We will resume our hearing now. Mr McMillan?

**Mr McMILLAN:** Thank you, Chair. Ms McIntyre, just before the break I was asking you about having read Commissioner Black's decision in relation to the notice of attendance to produce and whether it caused you to think that should stop the CCC's efforts in its tracks in relation to putting that material before the Queensland Industrial Relations Commission. You are aware, aren't you, that material—at least some of that material—was delivered to the Logan City Council by Detective Sergeant Francis on 3 October 2018?

**Ms McIntyre:** I am aware of that.

**Mr McMILLAN:** Now, were you in the role of principal lawyer attached to Operation Front at that time?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** Were you at work relevantly when materials were being prepared for that delivery prior to 3 October?

**Ms McIntyre:** I was on leave in early October. I cannot remember the date for that, though. Possibly.

**Mr McMILLAN:** To be fair to you, those materials were delivered without your knowledge?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** You found out about it after the fact?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** You did not have the opportunity to give any advice about whether or not they should be delivered or the circumstances in which they should be delivered before that happened, did you?

**Ms McIntyre:** That is right.

**Mr McMILLAN:** When you returned to work, do you recall when it was that you discovered that the WhatsApp messages had been delivered to the council on 3 October?

**Ms McIntyre:** It was in a team meeting in, I think, about mid-October—

**Mr McMILLAN:** Yes.

**Ms McIntyre:**—that they had been provided to the Logan City Council.

**Mr McMILLAN:** And what did you understand or what were you told was the purpose of that delivery?

**Ms McIntyre:** The purpose was to obtain—I was not told at that team meeting what the purpose was. I had only found out about that. I then sent an email out wanting to know where the decision was recorded and whether a formal dissemination had been undertaken at that time, whether there was a cover letter and I think there was something else that I asked as well. That was, I think, around 15 or 16 October. I was told that they were provided for the purpose of having the acting CEO at that time to make a determination as to whether the WhatsApp material contained public records.

**Mr McMILLAN:** In fairness, I will take you to some of those documents in a moment. But when you first discovered it, or you were first informed that the WhatsApp documents had been delivered to Logan City Council was in a team meeting, you said?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** That is your recollection?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** Did you, in that team meeting, ask why they had been delivered to the Logan City Council?

**Ms McIntyre:** I cannot recall. I know that I would have asked certain questions. What they were, I cannot recall.

**Mr McMILLAN:** Did it strike you that there might be some conflict between that action and the ruling delivered by Commissioner Black in August—

**Ms McIntyre:** No.

**Mr McMILLAN:**—about the admissibility of that material in the Industrial Relations Commission proceedings?

**Ms McIntyre:** No because we were looking at breaches of the Public Records Act.

**Mr McMILLAN:** You, by that stage, were aware, weren't you, that Ms Kelsey's lawyers, MinterEllison, were in communications with Mr Hutchings requesting access to material that might assist in proving collusion between the councillors?

**Ms McIntyre:** Yes, but that was prior to 3 October and, as you said, 3 October occurred after Commissioner Black's decision. The request for information was prior to and in accordance with the notice that we provided—sorry, the documents we provided in accordance with the notice that had been provided.

**Mr McMILLAN:** And you were aware, weren't you, that very shortly after Commissioner Black's decision MinterEllison re-agitated their request for any other way that the CCC might cause that material to be delivered into their possession?

**Ms McIntyre:** I am not sure—what date was Commissioner Black's decision?

**Mr McMILLAN:** I think it was 24 August.

**Ms McIntyre:** So August?

**Mr McMILLAN:** 2018.

**Ms McIntyre:** I do not know. I have not—

**Mr McMILLAN:** Could you turn, please, to page 333 of the bundle. You will see at the bottom of page 333 an email from a solicitor at MinterEllison to Mr Hutchings informing Mr Hutchings of Commissioner Black's decision and attaching the decision. You can see over the page, 334, the decision is attached.

**Ms McIntyre:** Yes.

**Mr McMILLAN:** And that same day—in fact, less than 10 minutes later, Mr Hutchings forwards that email to Mr Alsbury, the chairman and you offering a solution or a way in which that material might be delivered and replies only moments later with another thought—

PS the advantage of that course would be the material would then be public.

This is you, only four days after that decision, being alerted to continuing efforts by MinterEllison to cause that material to be put into their hands or into the public arena, isn't it?

**Ms McIntyre:** I cannot comment in relation to the email.

**Mr McMILLAN:** You do not have any reason to doubt that you received that email as sent by Mr Hutchings to you, Mr Alsbury and the chairman?

**Ms McIntyre:** Yes, my name is on there; I would have received it.

**Mr McMILLAN:** And you expect that you would have received an email from Mr Hutchings in relation to Ms Kelsey's case?

**Ms McIntyre:** I would expect that I did.

**Mr McMILLAN:** Could you turn, please, to page 341. This is an email on 11 September 2018, again from Mr Andrews to you, copying I think a number of other members of the Operation Front investigation team. Is that so: those CCs are various members of the Operation Front investigation team?

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

**Ms McIntyre:** Yes.

**Mr McMILLAN:** And Mr Andrews says—

Hey, Makeeta,

Section 9.2 says WhatsApp is prohibited.

And then says—

We'll deliver them to A/CEO Silvio Trinca, tomorrow, as soon as you give us the go ahead & nice letter from the SEO.

The attachment to that email appears commencing at page 343 and it is the Queensland government Public Service Commission's private email use policy?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** This is, would you agree, a further attempt by Mr Andrews to find a way in which the CCC might deliver the WhatsApp messages to the Logan City Council?

**Ms McIntyre:** They were being delivered for the purposes of the consideration or the investigation into the breach of the Public Records Act.

**Mr McMILLAN:** Where in this email does it say that?

**Ms McIntyre:** It does not say that. We were looking at that.

**Mr McMILLAN:** In fact, it is raising an entirely separate possibility, isn't it, that section 9.2 says WhatsApp is prohibited and that might be some basis upon which to deliver the documents to the Logan City Council?

**Ms McIntyre:** No.

**Mr McMILLAN:** It does not say that?

**Ms McIntyre:** No. We were looking at the breach of the Public Records Act.

**Mr McMILLAN:** Could you take up the smaller volume, volume 2, and turn to page 29. Here you will see that same email from Mr Andrews to you, but on page 28 we also have your response.

**Ms McIntyre:** You do.

**Mr McMILLAN:** Your response is on 12 September 2018 at 5.08 in the morning and you say—

This policy is State Government, and may not apply to Local Government. Sorry, not that simple in applying to this situation. We might need to dig a little deeper. To enliven our jurisdiction, we have to say the use of communication apps is corrupt conduct. I'm not sure whether it does without sitting down and considering further (something I haven't had a chance to do). If it doesn't, I need to consider whether/how we can disseminate to council.

You are involving yourself in a discussion with Mr Andrews about the ways that the CCC might cause these documents to be disseminated to the Logan City Council, are you not?

**Ms McIntyre:** Yes, for the purposes of investigating the breach of the Public Records Act.

**Mr McMILLAN:** And nowhere in your email in response to Mr Andrews's email do you mention the Public Records Act, do you?

**Ms McIntyre:** No I do not, but I do not believe I needed to because that was one of the matters that we were looking at.

**Mr McMILLAN:** You say to him 'to enliven our jurisdiction'. You are looking for something that might give you a legitimate basis to deliver these documents to the Logan City Council, are you not? You do not have one yet. You have not considered that the Public Records Act enlivens your jurisdiction at this point, have you?

**Ms McIntyre:** No, we were looking at that as a particular matter during the investigation. We were looking at a number of things during Operation Front, and one of them was breaching the Public Records Act.

**Mr McMILLAN:** Why would you not say in this email: 'In order to enliven our jurisdiction, we might need to consider the Public Records Act'?

**Ms McIntyre:** I do not need to.

**Mr McMILLAN:** You do not need to?

**Ms McIntyre:** No. It was a matter that the whole team was looking at. I do not need to be specific in saying, 'This relates to the Public Records Act.' I do not need to. It was one of the matters that we were looking at.

**Mr McMILLAN:** Have you had the opportunity to look at these bundles before your appearance today?

**Ms McIntyre:** Yes, I have.

**Mr McMILLAN:** Have you been able to identify any communication between you and the members of the Operation Front investigation team that is recorded, either in emails, correspondence or file notes, where the Public Records Act issue was discussed before you send this email on 12 September 2018?

**Ms McIntyre:** I cannot answer that question.

**Mr McMILLAN:** Why not?

**Ms McIntyre:** Well, I have not been able to identify them. We were looking at that as part of our investigation. We were looking at a number of things.

**Mr McMILLAN:** That is why I asked you, Ms McIntyre, whether you have had access to these bundles. Have you had the opportunity to go through and look for correspondence that bears your name?

**Ms McIntyre:** Yes, I have.

**Mr McMILLAN:** It would be important, would it not, for you as a lawyer, before appearing before a standing committee of the parliament of Queensland, to familiarise yourself with your own documents? You would agree?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** And have you done so?

**Ms McIntyre:** I believe I have.

**Mr McMILLAN:** So can you point me to any document that reveals a discussion between you and the members of Operation Front that discusses the Public Records Act before 12 September 2018?

**Ms McIntyre:** I would need a break to be able to identify those. Am I granted a break to identify the documents that you are requesting me to analyse?

**Mr McMILLAN:** Ms McIntyre, the chair is in control of the committee. If you wish to ask him for a break, you can do so?

**CHAIR:** Mr McMillan—

**Mr McMILLAN:** I am happy to move on, Chair, and Ms McIntyre can consider that issue overnight.

**CHAIR:** I was just going to suggest that. I think it would be an appropriate course of action if you could have a look at that, because I understand you will be back here tomorrow morning. Mr McMillan might be able to explore something else in the meantime.

**Mr McMILLAN:** Certainly. Thank you, Chair. Could I take you, please, Ms McIntyre, back to volume 1—

**Ms McIntyre:** Could I seek some advice for a second, please?

**Mr McMILLAN:** Could I take you, please, back to volume 1 and page 347. This is an email from Detective Inspector Preston to Mr Andrews and you dated 25 September 2018, and he says—

I today met with two members from the State Archives Office ...

Do you recall receiving this email at the time?

**Ms McIntyre:** I recall reading this email—not at the time, but I have read it since.

**Mr McMILLAN:** In this email, in the third paragraph he says—

I believe it would be appropriate for our investigators to take the WhatsApp messages they have downloaded from the councillors phone and produce them to the LCC CEO to see whether Councillors have provided such records for keeping in accordance with the legislation.

I want to suggest to you, Ms McIntyre, that this is the first time that anyone, at least in correspondence that has been produced by the CCC to this committee, mentions the Public Records Act.

**Ms McIntyre:** I do not know.

**Mr McMILLAN:** Could you take that suggestion when you consider the emails that you were party to overnight and my question earlier in relation to your email from 12 September? Do you recall whether you replied in writing to Mr Preston's email about the state archivists—or the suggestion that the material might be delivered to Logan City Council for the purpose described in this email?

**Ms McIntyre:** If I replied, it would have been provided to the PCCC.

**Mr McMILLAN:** So if there is no such reply then you did not reply?

**Ms McIntyre:** That is right.

**Mr McMILLAN:** Do you recall whether you had a conversation with him—

**Ms McIntyre:** I do not recall.

**Mr McMILLAN:**—verbally?

**Ms McIntyre:** No.

**Mr McMILLAN:** You say 'no' quite certainly.

**Ms McIntyre:** I do not recall.

**Mr McMILLAN:** You do not recall; I am sorry. Would you have replied in writing? Is this something that would have warranted a written response or might you have discussed it with—

**Ms McIntyre:** No.

**Mr McMILLAN:** Might you have discussed it with him?

**Ms McIntyre:** I do not recall discussing this with him. I do not recall writing anything. If I did, it would be provided by email.

**Mr McMILLAN:** All right. You are aware, as we have discussed, that ultimately the documents were delivered on 3 October. Have you read the transcript of that interaction or listened to the recording of it?

**Ms McIntyre:** I did, yes. The delivery of the WhatsApp material?

**Mr McMILLAN:** Was that in preparation for giving evidence here or did you do that at the time—on or about the time in 2018?

**Ms McIntyre:** No, that was in preparation of giving evidence—I suppose in terms of giving evidence here and the collation of the material for the production under the summons.

**Mr McMILLAN:** Did you consider at any time in 2018 that the delivery of the WhatsApp material on 3 October 2018 by Detective Francis to the Logan City Council might be improper conduct that was reportable to the committee pursuant to section 329 of the act?

**Ms McIntyre:** No.

**Mr McMILLAN:** You were aware that it was delivered without a dissemination authority?

**Ms McIntyre:** Yes, I am.

**Mr McMILLAN:** You were aware that it was delivered outside the CCC to the Logan City Council, which is a unit of public administration?

**Ms McIntyre:** I am aware.

**Mr McMILLAN:** Yes, and ought that not have been accompanied by a dissemination authority?

**Ms McIntyre:** No, because my understanding was that the material was being provided for the acting CEO at that time to provide a statement to say whether the material that was provided—the WhatsApp material—contained public records and that was to progress our investigation, and our view is that if information is being provided to a party or an entity to assist with our investigation no formal dissemination is required.

**Mr McMILLAN:** I think you have just repeated the evidence that you gave earlier this afternoon that, in your view, if the dissemination is for the purpose of the receiving party assisting the CCC with one of its legislated functions then a dissemination authority is not required?

**Ms McIntyre:** That is correct; if it is not, yes. If it is—

**Mr McMILLAN:** And the Public Records Act purpose, if I can describe it that way, is a purpose for which the recipient might then assist the CCC—that is, the Public Records Act purpose is to find out whether they are public records and whether or not that informs the CCC's investigations about destruction of public records?

**Ms McIntyre:** That is right.

**Mr McMILLAN:** That is right. If in fact the true purpose of that delivery was to assist Ms Kelsey in her litigation in the Queensland Industrial Relations Commission, that would be an improper purpose, would it not?

**Ms McIntyre:** It was not provided for that purpose.

**Mr McMILLAN:** That was not my question, Ms McIntyre. Do you want me to repeat the question?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** If in fact the delivery on 3 October was not for the public records purpose but to assist Ms Kelsey in her litigation in the CCC, that would be an improper purpose, would it not?

**Ms McIntyre:** I do not believe it would be.

**Mr McMILLAN:** It would at the very least require a dissemination authority because it would not be for a purpose to assist the CCC—you agree?—if that was the true purpose?

**Ms McIntyre:** If that was the true purpose.

**CHAIR:** That is 'yes, if that was the true purpose'? You are saying, 'yes, if that was the true purpose'?

**Ms McIntyre:** If it was a true purpose, I believe a formal dissemination would need to be provided.

**CHAIR:** Thank you.

**Mr McMILLAN:** And because it was not provided, if that was the true purpose, that would be improper conduct that was reportable under section 329?

**Ms McIntyre:** If it was for an improper purpose, yes.

**Mr McMILLAN:** When you found out about the dissemination on 3 October—I think you said sometime in mid-October—did you give consideration to whether or not that dissemination was improper conduct under section 329?

**Ms McIntyre:** No, because I became aware that it was provided for our purpose, which was to investigate—

**Mr McMILLAN:** I am not asking you whether you concluded that it was improper conduct; I asked you whether you gave consideration to that issue?

**Ms McIntyre:** Whether the officer had breached?

**Mr McMILLAN:** Yes.

**Ms McIntyre:** No.

**Mr McMILLAN:** You did not?

**Ms McIntyre:** No.

**Mr McMILLAN:** Was that not one of your functions—

**Ms McIntyre:** No, it is not—

**Mr McMILLAN:**—as a lawyer advising the investigation—

**Ms McIntyre:**—because—

**Mr McMILLAN:** Just let me finish, please. Was that not one of your functions as a lawyer advising an investigation team to inform them if they might have done something that was improper conduct under section 329?

**Ms McIntyre:** If they had, if it was improper conduct, I would have reported it, but it was not.

**Mr McMILLAN:** I thought you said you did not give consideration to that issue?

**Ms McIntyre:** I did not need to because I—I became aware that it was provided for a specific purpose, which was to provide assistance to our investigation.

**Mr McMILLAN:** So is your evidence that you did consider 329 and decided that it was not a breach or you did not consider it at all? Do you understand the distinction I am making?

**Ms McIntyre:** At that time, I do not know whether I did or not. I do not believe I needed to.

**Mr McMILLAN:** You would agree, would you not, that as the lawyer advising the operational team any dissemination of confidential material without an authority is something that you should have given consideration to?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** And you should have considered whether that dissemination was improper conduct?

**Ms McIntyre:** Yes. If I was—

**Mr McMILLAN:** And if it was, that would have required you to report it to the CEO, would it not?

**Ms McIntyre:** That is correct.

**Mr McMILLAN:** And none of those things happened, did they?

**Ms McIntyre:** I asked the question as to whether the material was provided by a formal dissemination. I asked for the reasons as to why it was provided, which would make up my assessment as to whether a 329 was committed, but it was not.

**Mr McMILLAN:** So your evidence to this committee is that no dissemination authority was required; is that right?

**Ms McIntyre:** That is right.

**Mr McMILLAN:** Is that the same thing as saying that it did not need to be formally disseminated? Is there any distinction between those two concepts?

**Ms McIntyre:** That is correct, yes.

**Mr McMILLAN:** Could you turn to page 375, please. This is an email from you to Mr Francis, Mr Andrews and others on 16 October 2018, and in it you refer to the delivery of material on 3 October. In the second last paragraph above the dot points you say—

... this material should have been formally disseminated.

This was your thinking at the time, was it not?

**Ms McIntyre:** That is right. That is before I asked of the particular reasons. That is why you can see down there I asked to be advised as to—

- Whether advice was provided to the team that this information was a breach of the Public Records Act?
- Where the decision to provide this material to Logan CC is recorded?
- Whether any formal dissemination was prepared for this material to be provided to Logan CC?
- Whether a covering letter was provided to Mr Trinca.

**Mr McMILLAN:** And I will read the full paragraph, in fairness to you, into the record. The paragraph I referred to reads as follows—

My understanding is that whilst there may be a breach of the Public Records Act, this is not corrupt conduct. I am of the view that if it was considered there was a breach of the Public Records Act, this material should have been formally disseminated.

I suggest to you, Ms McIntyre, that that statement of your opinion in October 2018 is entirely contrary to the evidence that you have just given to this committee.

**Ms McIntyre:** No.

**Mr McMILLAN:** You disagree?

**Ms McIntyre:** No. That is—this is when I came back from leave, so, as you can see from the email, I became aware on 15 October that material had been provided over. I sought the instructions from the investigation team at that time as to the basis of the information being provided and the reasons for that, where the decision was recorded and they responded. So once I—

**Mr McMILLAN:** Ms McIntyre, you have—

**Ms McIntyre:** Please let me finish. Once I became aware that it was provided for the purposes of obtaining information from the acting CEO, Mr Trinca, as to whether the material was to be provided as—sorry, whether he had an opinion as to the material containing public records, was for the purposes of assisting our investigation, there was no need for a formal dissemination to be made. Whilst I said that at that time without any background or knowledge as to why the material had been provided over, now I have been told. My view in this email had changed once I was told that the information went over for the specific purpose of Mr Trinca assisting our investigation.

**Mr McMILLAN:** Can you turn to page 379, please. This is an email from Mr Andrews to Mr Reid the following day—sorry, two days later, on 18 October. In the second paragraph he says—I have spoken to Makeeta since I sent below response and she says we should have had a formal dissemination to do what we did & she gave me the impression that she was going to get that sorted.

By this stage you are aware, are you not, that the stated purpose for the delivery on 3 October was to find out if the WhatsApp communications were public records? You need to answer verbally.

**Ms McIntyre:** Yes.



**Mr McMILLAN:** And that the Public Records Act purpose was to find out whether or not councillors had destroyed public records or breached the Public Records Act in some other way by deleting the WhatsApp communications? That was the stated reason for the delivery on 3 October?

**Ms McIntyre:** Was to obtain, yes, a statement from Mr Trinca.

**Mr McMILLAN:** And I say the stated reason, Ms McIntyre, not to try to trick you but because it was not your reason, it was the reason that was stated to you for that delivery; you understand?

**Ms McIntyre:** That is what I was told.

**Mr McMILLAN:** You were told that that was the reason that the material was delivered?

**Ms McIntyre:** And I believe there are emails that state that, too.

**Mr McMILLAN:** By this stage—that is, on 18 October 2018—you knew that was the reason that the material was delivered on 3 October and yet—I am sorry, I should have been fair to you. Do you recall the conversation that Mr Andrews is referring to in this email?

**Ms McIntyre:** No.

**Mr McMILLAN:** Do you recall telling him, as he records in this email, that 'we should have had a formal dissemination to do what we did'?

**Ms McIntyre:** No.

**Mr McMILLAN:** Do you have any reason to think that he would have misled Mr Reid about a conversation with you?

**Ms McIntyre:** I do not believe so. I do not know whether—I cannot recall the conversation. I do not know what was said in the conversation or whether he told me the reasons as to—I do not know who told me that. It was somebody in the investigation team as to the reasons why.

**Mr McMILLAN:** Given that on a plain reading of Mr Andrews's email it would seem to be a fairly contemporaneous account of the conversation that he had with you, you would accept it as an accurate record of that conversation that you cannot remember?

**Ms McIntyre:** I did not write the email so I cannot say whether it is accurate or not.

**Mr McMILLAN:** Again, do you have any reason to doubt Mr Andrews's accuracy in recording conversations with you?

**Ms McIntyre:** No.

**Mr McMILLAN:** You seem reluctant to accept that you might have said this to Mr Andrews; is that fair? Tell me if it is not.

**Ms McIntyre:** No.

**Mr McMILLAN:** It is not fair?

**Ms McIntyre:** I do not—if that is what Mark has written, I have got nothing to dispute what he says.

**Mr McMILLAN:** So you accept that you probably did tell him that he should have had a formal dissemination authority, given that is what he records in his email?

**Ms McIntyre:** Possibly.

**Mr McMILLAN:** And you told him that at a point at which you already knew the stated purpose was to investigate a Public Records Act breach?

**Ms McIntyre:** That was the reason.

**Mr McMILLAN:** And that entirely aligns, does it not, with the advice that you give in your email of 16 October—that is, formal dissemination was required.

**Ms McIntyre:** As I said, I do not believe I was correct at that time. I believe that a formal dissemination did not need to be provided.

**Mr McMILLAN:** You now believe that?

**Ms McIntyre:** Even back then. In terms of the timing of when I became aware and the change in my mind or my view, I cannot pinpoint when that happened.

**Mr McMILLAN:** You were aware, were you not, that no section 329 report was made about the delivery on 3 October?

**Ms McIntyre:** If you are asking me whether I reported it, no. Whether I am aware whether one was reported, I do not know.

**Mr McMILLAN:** You do not know. You did not think it necessary to make inquiries about that fact?

**Ms McIntyre:** No. It is a confidential matter.

**Mr McMILLAN:** If you were aware of improper conduct in the commission, is it incumbent upon you to report that conduct to the CEO?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** So that it could be reported to the committee?

**Ms McIntyre:** Yes.

**Mr McMILLAN:** If you were aware of improper conduct that you had not reported yourself, is it not incumbent on you to make an inquiry as to whether or not it had been reported by someone else?

**Ms McIntyre:** Sorry, can you repeat that again?

**Mr McMILLAN:** If you are aware of improper conduct, or what you think might be improper conduct, inadvertent or otherwise—because the definition is incredibly wide, as we have heard—and you did not report that conduct yourself, is it not incumbent on you to inquire as to whether it has been reported at all?

**Ms McIntyre:** I do not believe there was a breach of section 329.

**Mr McMILLAN:** Did you at any stage form a view that the material delivered to Logan City Council on 3 October was confidential information?

**Ms McIntyre:** I do not believe it was confidential. It contained aspects of legal professional privilege in those documents.

**Mr McMILLAN:** To the extent that those messages contained information that might be subject to legal professional privilege, you understood, did you not, that it should not be disseminated to the Logan City Council?

**Ms McIntyre:** No, it could be disseminated. What would be deemed as legal professional privilege should have been redacted.

**Mr McMILLAN:** I see. So, I think we are agreeing that the material that was subject to legal professional privilege should not be disseminated.

**Ms McIntyre:** That is right.

**Mr McMILLAN:** But it was on 3 October.

**Ms McIntyre:** It was not.

**Mr McMILLAN:** It was not?

**Ms McIntyre:** Redacted, no.

**Mr McMILLAN:** Sorry, I will try and be more precise in my questioning. The material that was delivered on 3 October did, in fact, contain unredacted material that might be subject to LPP?

**Ms McIntyre:** That is right.

**Mr McMILLAN:** This was something that concerned you when it came to delivering the material back to council again in November?

**Ms McIntyre:** It did.

**Mr McMILLAN:** You were concerned to ensure that that did not happen again?

**Ms McIntyre:** That is right.

**Mr McMILLAN:** And that when it returned to council it was accompanied by a proper dissemination authority?

**Ms McIntyre:** That is right.

**Mr McMILLAN:** If you were so confident at the time that the first delivery was not improper, why is it that the second delivery needed to be accompanied by a dissemination authority?

**Ms McIntyre:** Because we were asking for the acting CEO to deal with that material for the purposes of Logan City Council in terms of their record keeping.

**Mr McMILLAN:** Is that a different purpose to the stated purpose from 3 October, being the Public Records Act purpose?

**Ms McIntyre:** Yes. We were asking Mr Trinca to provide his opinion as the acting CEO as to whether that material contained public records which would have assisted our investigation in relation to that breach that we were looking at. In terms of the November dissemination, we were referring

that material back for him to deal with that material as they did not have any policies in place with regards to the use of WhatsApp material by councillors and employees of Logan City Council. It was for him to then, I suppose, deal with that material and create policies. It was more of a prevention side of the house.

**Mr McMILLAN:** I see. So the 3 October delivery: the stated purpose was to assist the CCC in investigating whether records had been destroyed or not kept properly? And the November dissemination was different because it was to facilitate the Logan City Council meeting its own obligations?

**Ms McIntyre:** That is correct.

**Mr McMILLAN:** I understand. You were aware by the time of the November dissemination that the material was fairly described as containing contentious and sensitive information? That was an email that was sent to you by Mr Kennedy, the assistant director. Do you remember receiving that?

**Ms McIntyre:** Have you got a reference?

**Mr McMILLAN:** Certainly, page 403. I should be fair to you, Ms McIntyre: it was not sent directly to you; it was addressed to Mr Francis but copied to you.

**Ms McIntyre:** Page 403?

**Mr McMILLAN:** Yes. The third paragraph—

Reason:

The second sentence—

I understand those communications include contentious and sensitive information.

You also understood them to contain legally professionally privileged information or information that might be subject to legal professional privilege; that is right?

**Ms McIntyre:** These are not my words.

**Mr McMILLAN:** No. They are Mr Kennedy's words—

**Ms McIntyre:** That is right.

**Mr McMILLAN:**—as is plain from the email.

**Ms McIntyre:** Whether I agree whether communications include contentious and sensitive information, I did not describe that material as containing that.

**Mr McMILLAN:** Did you agree?

**Ms McIntyre:** At the time?

**Mr McMILLAN:** Yes.

**Ms McIntyre:** No—I do not know.

**Mr McMILLAN:** You had read the WhatsApp—

**Ms McIntyre:** I did not form any view in relation to this.

**Mr McMILLAN:** You had read those communications by this point, hadn't you—that is, the WhatsApp communications?

**Ms McIntyre:** At that time?

**Mr McMILLAN:** Yes.

**Ms McIntyre:** Possibly.

**Mr McMILLAN:** You were aware of what they were about?

**Ms McIntyre:** I would hope to say that I did.

**Mr McMILLAN:** They contained, it is fair to say, language and communication that might be embarrassing to the councillors if they were made public?

**Ms McIntyre:** I do not have—

**Mr McMILLAN:** You do not remember?

**Ms McIntyre:** My opinion on whether the communications are contentious and sensitive is—I do not have one.

**Mr McMILLAN:** Perhaps you could just focus on answering my question. Had you read those communications at this point?

**Ms McIntyre:** Of course, yes.

**Mr McMILLAN:** And you were aware, were you not, that they contained language and exchanges that would likely be embarrassing to public officials if they were made public?

**Ms McIntyre:** And I suppose embarrassing to Ms Kelsey because they were communications about her.

**Mr McMILLAN:** Certainly.

**Ms McIntyre:** Derogatory information, yes.

**Mr McMILLAN:** And do you have difficulty accepting that that makes them contentious and sensitive?

**Ms McIntyre:** I do not have any difficulty but, again, I did not say this.

**Mr McMILLAN:** It is quite plain that they are not your words, Ms McIntyre. I am asking you whether you agreed with that description. Do you have difficulty with that proposition?

**Ms McIntyre:** They were contentious and I suppose they are sensitive to all parties, not just the councillors.

**Mr McMILLAN:** Yes. Could you turn to page 419, please. This is an email from you to Mr Kennedy on 15 November about the dissemination and providing WhatsApp communications to the State Archivist. This is a different dissemination to the dissemination to the Logan City Council. You were concerned—you make a note, in the second paragraph—that the communications contain material that might be considered subject to legal professional privilege and you have asked that the dissemination wait until Friday so that you could discuss it with Mr Hutchings—in the third paragraph.

**Ms McIntyre:** Yes.

**Mr McMILLAN:** Was there some pressure to disseminate before that, was there?

**Ms McIntyre:** No.

**Mr McMILLAN:** There was not?

**Ms McIntyre:** No.

**Mr McMILLAN:** Then why in the next sentence do you say—

For whatever reason, the team is persisting on sending the dissemination to you to progress. It may have something to do with my discussion with them Tuesday afternoon that I did not consider the Councillors deleting the WhatsApp app (and subsequent communications) amounted to the offence of Misconduct in relation to public office when you considered all the elements of the offence.

You still say there was no urgency? Was there an attempt in your mind for the officers to get around you by going directly to Mr Kennedy?

**Ms McIntyre:** No.

**Mr McMILLAN:** You will see his response to you in the top half of the page—

I don't get the sense they are trying to by pass you if that is your concern.

**Ms McIntyre:** No, I do not believe that they were bypassing me.

**Mr McMILLAN:** That was not your concern?

**Ms McIntyre:** I wanted to make sure that the communications that were going to be provided to the State Archivist were redacted.

**Mr McMILLAN:** You see, you raise with him, I suggest, Ms McIntyre, in this email on 15 November, a query as to whether or not the police officers have gone directly to Mr Kennedy because they are concerned about your advice that deleting the WhatsApp is not an offence.

**Ms McIntyre:** No and—

**Mr McMILLAN:** I am sorry; I need to withdraw that—is not misconduct.

**Ms McIntyre:** Sorry, what was the question? I interrupted you—

**Mr McMILLAN:** I will repeat it because I interrupted your answer, so I am sorry about that. I want to be careful about my language. You are saying to Mr Kennedy in this email it occurs to you that the officers might be trying to go around you because you had given them advice that deleting the WhatsApp communications was not capable of amounting to the offence of misconduct in public office?

**Ms McIntyre:** Look, we had conversations in relation to the WhatsApp material and breaches and the like. Often we have robust discussions with regards to particular offences. In this case I simply saw it as a breach of the Public Records Act. The investigators considered it to be a misconduct in relation to a public office offence. I disagreed with that.

**Mr McMILLAN:** All right. Could I ask you to turn to page 435, please. This is an email from you to Mr Williams at MinterEllison on 29 November 2018. In it you request that he provides you, for the purposes of your investigation, various affidavits that were sworn in the industrial relations proceedings. Are these the same affidavits that you told us earlier you had in June?

**Ms McIntyre:** No. These are later affidavit material that was filed. I had access to affidavit material that was filed dated in April 2018. This is additional material that they had filed.

**Mr McMILLAN:** Had you previously had direct contact with Mr Williams about obtaining material that had been filed in the QIRC?

**Ms McIntyre:** It would appear by my language in terms of the first sentence, 'I am a lawyer working with the investigation team', I do not believe I had direct contact with Mr Williams prior to that date.

**Mr McMILLAN:** Chair, I note the time. I am going to move to another topic now. It is 10 to five. I appreciate it has been a long day, including for Ms McIntyre, who has been waiting since early this morning. We are, of course, in the committee's hands.

**CHAIR:** Mr McMillan, your kindness in pulling up at 10 to five when we have been here at 9.30 is very much appreciated, and I think it would be an appropriate time to pause and adjourn for the day. Thank you, Ms McIntyre. You will be stood down for now but have you back in the morning, please.

Thank you, Mr Dunning and Mr Matthew Wilkinson. Thank you, too, Mr McMillan and Mr Horton. Mr McMillan or Mr Horton, are there any matters that we need to address before we adjourn for the day?

**Mr McMILLAN:** No, thank you, Chair.

**CHAIR:** There being nothing else from the members, we will close today's proceedings and see you back here at 9.30 in the morning.

**The committee adjourned at 4.50 pm.**