PARLIAMENTARY CRIME AND CORRUPTION COMMITTEE

Members present:
Mr JM Krause MP—Chair
Mr MJ Crandon MP
Mrs MF McMahon MP
Mr BL O'Rourke MP
Ms JC Pugh MP
Dr MA Robinson MP
Mr JA Sullivan MP

Counsel assisting:
Dr J Horton QC

Staff of the Office of the Parliamentary Crime and Corruption Commissioner:
Mr M Woodford—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

FRIDAY, 3 SEPTEMBER 2021

Brisbane

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The committee met at 9.37 am.

CHAIR: Good morning, everybody. I declare open today's hearing of the Parliamentary Crime and Corruption Committee inquiry into matters relating to Logan City Council. I am Jon Krause, the member for Scenic Rim and chair of the committee. I acknowledge the traditional owners of the land on which we meet, and elders past, present and emerging, whose lands, winds and waters we all now share.

Joining me on the committee today are: Mr Jimmy Sullivan, member for Stafford and deputy chair; Mr Michael Crandon, member for Coomera; Mrs Melissa McMahon, member for Macalister; Dr Mark Robinson, member for Oodgeroo; Mr Barry O'Rourke, member for Rockhampton, who is substituting for Ms Jonty Bush, member for Cooper; and Ms Jess Pugh, member for Mount Ommaney. Since our last meeting we have had a couple of changes of committee membership. I would like to welcome the member for Mount Ommaney to the committee and also the member for Cooper on a permanent basis. We welcome back Mr O'Rourke as a substitute today. I thank him for his previous service. I also thank the member for Hervey Bay, Mr Adrian Tantari, for his previous service.

Thank you all for joining us here today. The committee's proceedings today are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. As parliamentary proceedings, under the standing orders any person may be excluded from the hearing at my discretion or by order to the committee. In line with general rules relating to parliamentary proceedings, I remind witnesses to please refrain from unparliamentary language, even if directly quoting from material. These proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to the chair's directions at all times.

Before we begin, are there any declarations of interest relevant to today's public hearing that have not previously been advised in a public hearing?

Mr SULLIVAN: Thank you, Chair. I have previously declared it but, noting Mr Heaton's appearance today, I draw attention to the declaration of my previous role. It in no way impedes my ability to participate in this committee.

CHAIR: Member for Mount Ommaney, I might ask if in the public hearing you could confirm that you do not have any conflicts of interest in relation to this matter.

Ms PUGH: No.

CHAIR: Thank you. Sorry to put you on the spot. Same with you, Mr O'Rourke?

Mr O'ROURKE: None from me.

CHAIR: Thank you. Mr Horton, welcome back.

Dr HORTON: Thank you, Chair.

CHAIR: I would ask that you please advise the committee about the next steps and possible calling of the next witness.

Dr HORTON: Thank you. Committee, as I understand it, you have set aside three days for further public hearings: today, Monday and Tuesday. Today, first up I would seek to call Mr Carl Heaton, who is the Director of Public Prosecutions and who, you have heard from the evidence, had some role in connection with the matters the subject of the resolution. After Mr Heaton, I propose to recall Mr MacSporran QC, chair of the CCC, and to hear from him, as foreshadowed that he would be recalled.

CHAIR: Okay.

Mr Carl HEATON, QC

Witness was affirmed—

CHAIR: Mr Horton?

Dr HORTON: Thank you. You are Mr Carl Heaton; is that correct?

Mr Heaton: Yes.

Dr HORTON: You are the DPP of Queensland?

Mr Heaton: That is right.

Dr HORTON: When did you assume that role?

Mr Heaton: 19 June last year, 2020.

Dr HORTON: Before you were the DPP, did you work in the office of the DPP?

Mr Heaton: Yes, I did.

Dr HORTON: In what capacity?

Mr Heaton: I was the deputy director from 25 July 2016 until my appointment as the director.

Dr HORTON: Thank you. Your predecessor as the DPP himself was Mr Michael Byrne QC; is that right?

Mr Heaton: That is right.

Dr HORTON: The committee has already heard some evidence about some contact you had with Mr MacSporran in April of 2021 and before that.

Mr Heaton: Yes.

Dr HORTON: Just going back a little bit in time, could I just understand, please, when, to your knowledge, the brief in connection with the fraud charges against the former mayor and councillors of the Logan City Council came to your office? I want to propose some dates that might assist.

Mr Heaton: Well, I think it was about May 2019.

Dr HORTON: I think the partial brief may have been 28 June 2019; does that sound correct?

Mr Heaton: Maybe I think we might have just got something like QP9s and something like that beforehand.

Dr HORTON: The precise dates do not matter for my purposes at the minute. Perhaps the full brief on 5 August 2019.

Mr Heaton: I do not know that.

Dr HORTON: Ultimately you yourself formed the view that those charges should be discontinued.

Mr Heaton: That is right.

Dr HORTON: And that led, I think, to their dismissal by a magistrate on 14 April 2021.

Mr Heaton: That is right.

Dr HORTON: What I would like to do is trace through a bit chronologically what happened and ask you questions along the way. Starting with the referral of the brief to the DPP, were you a party to the receipt of the brief back in the period we have described in mid 2019?

Mr Heaton: No, I was not.

Dr HORTON: Usually when a brief is received by the DPP such as this, is that an occasion on which the DPP necessarily assesses the legitimacy or, if you like, whether or not the charges ought proceed?

Mr Heaton: Do you mean the DPP as in the office or the person who holds that position?

Dr HORTON: Office for the moment.

Mr Heaton: Well, when a brief is received the practical reality is there may be some superficial assessment to gain an understanding as to what the scope of the brief is so that perhaps even some subconscious allotting of that brief might take place as to when in the list of priorities the subject officer might turn their mind to it. The reality is, as well, that when there is a critical court date pending that is when minds will focus on the particular circumstances of a brief, bearing in mind that this is one of many briefs that are received and considered by staff at the DPP in the course of their daily working lives.

Dr HORTON: Yes, I see. The committee is not to understand the mere receipt of a brief by the office of the DPP in the ordinary case as having come with an implicit acceptance and detailed analysis that the charges are ones that are legitimate to maintain?

Mr Heaton: No.

Dr HORTON: Then the full brief comes to the DPP, assume it is August 2019, and the committal hearing begins, as I understand on the chronology, in about November of the next year, 2020.

Mr Heaton: That is right.

Dr HORTON: I see. I just want to give you a chance to comment on this, if you would, and only if you are able to, and please do not if you are not able to. It was said to the committee by Mr MacSporran, to use his words, reading from *Hansard*, 17 August, page 63—

I am comforted in that view again by the fact that it did not cause Mr Byrne, who was the DPP at the time the brief arrived, to have any reservations about running the case.

Do you have a view as to the accuracy or not of that statement?

Mr Heaton: I cannot speak to what was in Mr Byrne's mind. I am not even certain that he personally turned his mind to this particular matter. It would not be usual that he would turn his mind or that I would turn my mind to every matter, even matters of this nature. They are allocated to senior staff within the office. We have a dedicated team that is doing this work—there has been a little bit of it lately—and so the brief was assessed by those senior lawyers within the office. Unless there was something particular about it that brought it to Mr Byrne's attention, he ordinarily would not have—and there may have been about this one, I do not know.

Dr HORTON: I think you might be saying as a general proposition whatever comfort one obtains from the DPP accepting, in effect, the brief at the time it arrives, it is comfort which has to be understood against the background that that is not ordinarily the time at which some detailed assessment is automatically to be undertaken?

Mr Heaton: Absolutely. And, in fact, it seems that a detailed analysis of this matter was not done until months later.

Dr HORTON: Yes.

Mr Heaton: And in anticipation of the committal coming up and the directions hearings that took place beforehand and the like—the very ordinary course of the life of a matter through the system.

Dr HORTON: Thank you. Then the committal starts, I think, on 30 November 2020 or thereabouts?

Mr Heaton: Yes.

Dr HORTON: It runs, I think, for about nine days; is that your recollection?

Mr Heaton: That is right. There were nine days of hearing, as I understand it.

Dr HORTON: Do you know the answer to this question—I know you, of course, were not appearing in the committal.

Mr Heaton: No.

Dr HORTON: But was there an adjournment mid committal to invite submissions from defendants of which you are aware?

Mr Heaton: The adjournment was sought at the end of the evidence and before submissions were made in relation to the sufficiency of the evidence to the magistrate, inviting the magistrate to rule.

Dr HORTON: Yes, I see. It ran for nine days. I think it is adjourned on the final day, which is about 10 December, until 25 January 2021.

Mr Heaton: Something like that.

Dr HORTON: But the point you are making is that the evidence was, for all intents and purposes, complete.

Mr Heaton: That is right.

Dr HORTON: The committal never finished in a technical sense, because decisions were then being made by your office?

Mr Heaton: That is right.

Dr HORTON: Early the next year.

Mr Heaton: That is right. As I understand it, the evidence which was to be called at the committal had been heard, and it was at that point that then my staff came to me. That was then the first of my direct involvement in this matter.

Dr HORTON: Yes. Was that on or about 10 December that your staff came to you?

Mr Heaton: I would have to—that would be a matter of record, but, yes, it was around that date because it was almost immediately after the conclusion of the evidence that they came to see me and we had a conversation. They told me what they had submitted in terms of asking for an adjournment and the reasons for it and then I awaited—they invited submissions from the defence and, indeed, began the process of putting together an advice to me and so I then waited for that to happen. I think that early in the New Year I got that material.

Dr HORTON: I think on 10 December 2020, CCC officers met with people from your office?

Mr Heaton: That is right.

Dr HORTON: Which might have included Mr Green?

Mr Heaton: That is right, and Mr Bain.

Dr HORTON: I can show you that. I will take you to some of these documents. Mr Heaton, in front of you is volume 2. If you turn to page 383, the bottom right-hand corner, this is a letter from the CCC to you, dated 2 February 2021.

Mr Heaton: Yes.

Dr HORTON: You will see the second paragraph mentions the meeting that occurred on 10 December 2020. You were not privy to that meeting, as I understand?

Mr Heaton: No. I might be wrong, but I understood that that happened over at court.

Dr HORTON: That accords with what the documents seem to say. Then you receive this letter, because the preliminary view has been shared with the CCC about what might happen with the charges.

Mr Heaton: That is right.

Dr HORTON: Do you remember receiving and reading this letter from the CCC?

Mr Heaton: Yes.

Dr HORTON: From Mr MacSporran himself.

Mr Heaton: That is right.

Dr HORTON: You will see, on page 402, Mr MacSporran requests a meeting with you.

Mr Heaton: Yes.

Dr HORTON: And that, as I understand it, does occur?

Mr Heaton: Yes.

Dr HORTON: Do you recall when that meeting occurred?

Mr Heaton: No, I would have to look.

Dr HORTON: That is all right. I do not need a specific date. We might be able to map it in a moment because some further things happen. To your recollection, are there any notes of that meeting that you had?

Mr Heaton: I did not take any notes. I do not know if anybody else did.

Dr HORTON: It is not important for present purposes. Who else was present?

Mr Heaton: I am just thinking. I cannot even really remember. I cannot really remember. Ordinarily, if I saw Mr MacSporran, Mr Alsbury would be with him on a matter like this, but I cannot really remember, I am sorry.

Dr HORTON: I will take you a bit further down the chronology. At 403 there is a memo to Mark Green from you, dated 6 April 2021, unsigned.

Mr Heaton: Yes.

Dr HORTON: Does this memorandum look the same as the final one that you would have signed off on?

Mr Heaton: Yes.

Dr HORTON: I draw your attention to paragraph 31 in particular, which I think might have been changed in the drafting, although not materially for present purposes.

Mr Heaton: Yes.

Dr HORTON: That seems to be your final memo.

Mr Heaton: Yes.

Dr HORTON: Did you have assistance in preparing that memorandum?

Mr Heaton: I received an advice in the form of a memorandum which was much more detailed than this one. I used that as a basis for compiling this memorandum, with reference to the material that I received as well.

Dr HORTON: Thank you. We can see from the material, and the committee has seen evidence, there was disagreement in effect between you and Mr MacSporran about what ought to happen to the charges.

Mr Heaton: Yes.

Dr HORTON: Then there was an appearance on 14 April 2021 before the magistrate, which was—did you want to say something, Mr Heaton?

Mr Heaton: I am just going back to the meeting with Mr MacSporran. I know I met with him, I think, on 7 April because I provided this memorandum to him. He sought a meeting with me and made a booking through my executive assistant. In anticipation of that, I had then finished this memorandum and I sent it to him by email so that then when we met—I think it was a phone call, actually, on that occasion and then we met.

Dr HORTON: I think you may have sent the memo on 7 April 2021 and I think—the precise dates do not matter for present purposes—you might have met on 9 April 2021.

Mr Heaton: That sounds about right, yes.

Dr HORTON: We will come to that. As I said, the precise dates, for the minute, do not matter too much. 417 is a record of what someone in the CCC is saying happened in court on the day of the dismissal. I understand you might have a transcript of what happened on that day?

Mr Heaton: I have since listened to the recording and obtained a transcript of what was actually said.

Dr HORTON: What is at 417 only purports to be a paraphrase, really, but does that accord with your understanding of what occurred in summary—

Mr Heaton: Yes

Dr HORTON:—and in paraphrase on the day? Thank you. I want to go back, if I may, to the meeting, because that has been the subject, as you know, of reporting to this committee about differences between you and Mr MacSporran about what was to be done and what was done. Do you have in that same volume, I think, Mr Heaton, but you might have your own version of it, a smaller volume that you were given of 96 pages? Would you turn to page 75? If you already have a bundle that you have used for this purpose and that you have notes or markings on, please feel free to use that.

Mr Heaton: I am referring to your copy of the documents, for clarity.

Dr HORTON: Page 75 is the transcript of a meeting. I think in some of the members' volumes it may be at the front of the volume rather that at the back. We changed it so that we would not confuse witnesses. I want to ask you about the first three-quarters of the page. I am going to ask you questions as we go through it. Mr MacSporran says at the beginning, the second line

… the DPP did not challenge us; they ran with it.

You would wish that to be understood, in light of your comments, about when and in what circumstances there is a review by your office of what is being sent to it? You just have to answer audibly.

Mr Heaton: Yes. Of course. The number of times I have told witnesses to do that!

Dr HORTON: I do the same. Then about a third of the way down the page, Mr MacSporran said—They told us that they had proposed to adjourn the committal proceedings mid-committal to allow the defence lawyers to make submissions …

That accords with your understanding, albeit towards the end of the committal?

Mr Heaton: Yes.

Dr HORTON: A bit further on—Then I and Mr Alsbury were granted an audience with Mr Heaton and the prosecutor, Mark Green, about why … they should not withdraw the charge.

Mr Heaton: Yes.

Dr HORTON: Which accords with your understanding?

Mr Heaton: Yes.

Dr HORTON: Then these words are said at the beginning of the next paragraph—It came down to, clearly, their view that there were no longer—

I want to emphasise those words—

sufficient prospects.

Mr Heaton: Yes.

Dr HORTON: And then four lines in, after the comma—… there are no longer sufficient prospects to continue the prosecution.

Mr Heaton: Yes.

Dr HORTON: We will come a bit to what he says about this, but is that a fair paraphrase of what your decision was at the time?

Mr Heaton: I guess it is important to put my decision in its proper context in that, as I said earlier, this was the first time that I was asked to consider the sufficiency of the evidence. The conclusion that I came to was that, at that point in time, there was insufficient evidence to continue the prosecution. Mr Green and Mr Bain, who had had some long-time involvement in this case and had prosecuted it through the committal, of course had assessed the evidence prior to the committal. My recollection is that the comment about what would or would not be said in court when the charges were discontinued was said by Mr Green. I recall that Mr Green expressed himself in terms of 'no longer sufficient', reflecting an assessment by him that the state of the evidence prior to the committal was such that it was at that point—at least on what was evident from the material, the written word—sufficient for the matter to continue to that point in the process.

Dr HORTON: Yes.

Mr Heaton: As a result of the evidence that had been heard and the way things had transpired in the committal, Mr Green's assessment of the sufficiency of the evidence had certainly changed, and that was when they came to me. So in expressing myself in the way that I did in my memorandum, I am reflecting the decision that I made, not reflecting what decisions and what prosecutorial discretion may have been exercised by others before that point in time.

Dr HORTON: I understand. So the assessment you are making on 6 April 2021, as you say in the box on the front page, at page 403, 'insufficient prospects of success to justify continuing further'—it is simply a point-in-time analysis?

Mr Heaton: That is right.

Dr HORTON: You think, do you, that you might have heard Mr Green say at the meeting you had had with Mr MacSporran before the court appearance on 14 April, that he may have used the words 'no longer'?

Mr Heaton: That is right.

Dr HORTON: But I think you accept, from the transcript you have seen of court and from the paraphrasing, the words 'no longer' were not used in court?

Mr Heaton: Were not said, that is right.

Dr HORTON: I understand. Do you see any significance between the two things we have just discussed?

Mr Heaton: No, I do not. What Mr Green said to the court was a very unremarkable conveying of the decision to the court that up to that point had carriage of the matter, so I do not see that there was any shortcoming. From a legal point of view, I accept that Mr MacSporran might have been more sensitive to the use of those words in terms of the public perception of the decision, but that is another matter, I suppose.

Dr HORTON: I understand. That might be relevant to my next series of questions. I will give you an opportunity to respond to things, but, please, you do not need to answer if you do not think that you do. I am only giving you an opportunity to say something if you wish, because it is about you. Mr MacSporran goes on in reporting to this committee on 14 May 2021, saying he was shocked and disappointed, and you have read those words. Is there anything you wish to say in response to that?

Mr Heaton: When I met with him on a subsequent occasion, which was about other matters, he did comment to me at the start, by reference to what Mr Green had said in court. I will confess that I did not give it the significance that clearly he did, and perhaps as history has unfolded the reason why he made that comment. The moment passed and we got to business talking about the other matters. So I guess all I can say about that is obviously that was more significant to him than it was to me in the context of what was going on.

Dr HORTON: Yes. The moment had passed for you but, on your reading, the moment had not necessarily passed for him?

Mr Heaton: For him.

CHAIR: Mr Horton, is it ok if I ask a quick question?

Dr HORTON: Please do.

CHAIR: What was the comment made on that occasion?

Mr Heaton: The comment by Mr MacSporran?

CHAIR: Yes.

Mr Heaton: I remember him saying that he was disappointed with what Mr Green had said. I do not remember him saying that he was shocked. He certainly did not—it just kind of was not a moment that was of great significance to me, I am sorry to say.

CHAIR: No worries. Thank you.

Dr HORTON: Can I move, if there is nothing else you want to say on that topic, Mr Heaton, to a different topic which is more future-looking? One of the functions, as you know, of this committee, in reviewing and monitoring the performance of the CCC, is to think of ways in which, in a future-looking sense, that might be maintained—the good performance. I am going to ask you a series of questions. In none of them am I seeking to intrude in terms of your view of higher policy, because we know that the standing orders and so forth leave those matters generally to people even more senior than you, even though you are very senior. Can I test practical propositions on a range of what might be considered policy alternatives but without asking for your value judgement of the policy alternative itself? We can part that, so far as you are content to continue on that basis. Historically speaking, matters could be referred to the DPP under section 49 of the Crime and Corruption Act. Were you familiar with that scheme?

Mr Heaton: Yes.

Dr HORTON: Did you have a view about whether that worked, in a practical sense, well or otherwise?

Mr Heaton: Well, I guess my acute awareness of the scheme is a more recent thing, and under the regime as it now exists. In 2018 there was legislative change, and I appreciate the reasons the former director made the submission on the back of the last review in 2016 of the CCC. So I am aware of that history. I had not, therefore, been directly involved in any of the matters that had been referred by the CCC, and indeed the former director was very particular about quarantining those matters within the team that was dedicated to dealing with those matters and with him overseeing them directly. So the two deputies were not involved, for the most part, in those things.

Dr HORTON: And since you have become the director himself, you have had occasion, as I understand it, from time to time, to have received briefs from the CCC?

Mr Heaton: That is right.

Dr HORTON: And do those matters generally involve features which require special expertise or expertise different from the run-of-the-mill prosecutor in your office doing other criminal work?

Mr Heaton: In essence, no. They may involve people who are likely to attract more media attention and so have an additional layer of complexity because of that factor, but the offending and the exercise of the prosecutorial discretion is exactly the same as it might be for any offence that comes.

Dr HORTON: I understand. I really meant more in a practical sense. For instance, some of the CCC referred matters are more documentary in nature, for example?

Mr Heaton: Usually, yes.

Dr HORTON: I see.

Mr Heaton: Much bigger files.

Dr HORTON: I see. That is a feature which might differ from the ordinary criminal case which involves, for example, physical contact or something of that kind rather than—

Mr Heaton: Absolutely.

Dr HORTON:—business affairs or so forth?

Mr Heaton: Absolutely.

Dr HORTON: Those things would presumably then require of your office some special skill and application that might be well adapted to that case and not the general run-of-the-mill criminal case?

Mr Heaton: I am not quite sure what you are getting at about that 'special skill'. I mean, these matters, because of the nature of them, because of the complexity and because of the nature of the evidence, go to more senior lawyers within the office. We deal with thousands of matters in a year, so we have a lot of lawyers of varying degrees of experience that deal with the full range of matters in the criminal calendar. These matters are quarantined to a specialist unit. We try to filter the more senior lawyers into them and they develop an expertise because they are dealing with these sorts of issues—similar charges.

Official corruption, for example, secret commissions—they are not charges that we would see very often coming from the QPS. We have set up a team to deal with those matters and to develop an expertise, and they carry, generally speaking, a lesser file load than others might within the structure of the office because the physical size of them is more likely to be physically larger, more defendants, and when you have more defendants you have greater complexity in terms of the party provisions and individual responsibility for an act. Does that answer your question?

Dr HORTON: It does. Returning to this specific matter again—the Logan City Council matter—do you know whether your office was involved prior to the brief coming to it, partially or fully, in liaising with the CCC about it?

Mr Heaton: I understand that we were not. When we received this file, charges had already been laid.

Dr HORTON: Without mentioning any specific matter, is it routine for your office to be involved by the CCC or vice versa in charges which might ultimately come to your office?

Mr Heaton: Before charging—I would not say it is routine, but it does happen.

Dr HORTON: That is some sort of consultation?

Mr Heaton: Yes.

Dr HORTON: In your view, have you found that in the past to be a constructive thing?

Mr Heaton: In the ones that I have directly been involved in, I have thought it was very constructive.

Dr HORTON: Are there any practical matters that you would wish to mention to the committee on this assumption, for the moment—and I really want to put this as an assumption; I am not being impertinent to the committee—that if there were a policy change where the CCC could only refer matters, for example, for prosecution through you, what are the practical considerations in that hypothetical possibility that you would want to raise for consideration?

Mr Heaton: I guess it is difficult to say with certainty. I anticipate that that would lead to an increase in the work coming to us. It might simply involve the work being put into the critical analysis of a case at an earlier point in time. It is done at the very perhaps latest just before the committal. It might be done at an earlier point before charging in that scenario. But it is difficult to know how much extra might come to us. I do not know what is going on at the CCC in terms of what decisions are being made.

Dr HORTON: You would raise a resourcing consideration for—

Mr Heaton: It would definitely raise a resourcing consideration. I think it also tends to obscure the independence of the DPP as a prosecuting authority. That is not to say that we as the office and the lawyers within it are not sometimes approached by police for advice on legal matters that might guide investigations, but that happens on a very ad hoc and informal basis and is otherwise the subject of one of the guidelines in the director's guidelines. We have fairly strict constraints around offering advice and then, according to the guidelines, only after charges are laid.

Dr HORTON: Can I just understand that a bit better? Your office would sign and present an indictment, for example?

Mr Heaton: Yes.

Dr HORTON: With a charge like the ones in the Logan City Council matter you are saying that decision whether to charge in that sense is one that might bring into focus the question of impartiality in your office?

Mr Heaton: Yes, in that the office is fiercely independent and needs to be, and particularly from the investigating agency—most commonly the QPS, of course, but the CCC or indeed other agencies that filter matters that are indictable through to us. The decision to prosecute and the appropriateness of the charge are all matters about which the prosecution discretion needs to be very particularly focused.

Dr HORTON: In terms of the rationale for that distinction you describe between investigation and prosecution—I think which we saw with the enactment of the various DPP acts in the late 1980s; as early as 1984 through to 1988—are you able to explain that rationale a little bit more, so far as you understood it for that distinction?

Mr Heaton: For why the DPP is independent from the investigating agency?

Dr HORTON: And why you seem to be saying that that was a thing which was required and expected and good?

Mr Heaton: Other jurisdictions elsewhere in the world have a different model where prosecutors are more directly involved in the investigation process. That is not our model. For the sake of argument, police investigate matters. They exercise different discretions. They have different states of mind. They have different conclusions in order to exercise the powers that they have under the Police Powers and Responsibilities Act. Our obligation is ultimately to the court, to the questions of justice, and so there are times when those two objectives come into conflict. Having an independent prosecuting agency ensures that the ethical obligations on prosecutors, who are essentially barristers and officers of the court, are strictly adhered to and that there is a reduced risk of any interference of some perhaps agenda or perspective of the investigating agency or the people involved in it.

Dr HORTON: Your guidelines, the director's guidelines: are they guidelines which you understand would be applied by a charging officer?

Mr Heaton: Yes.

Dr HORTON: You may not be able to answer this. Ought they be applied by that officer, on your understanding, with direct focus upon the key matters they raise?

Mr Heaton: Yes, and the guidelines are an outward-facing document available to anybody. They are a public document.

Dr HORTON: Yes, and assume for the moment they are ones that are also directed by the Commissioner of Police to be complied with by officers, albeit they seconded into the CCC?

Mr Heaton: Precisely.

Dr HORTON: They are my questions, Chair, for Mr Heaton.

CHAIR: I think there are some committee members with questions.

Mr CRANDON: I have a couple around what we have heard from you today. I want to clarify some of your earlier comments. You mentioned sufficiency of evidence and that prior to the court hearings—I think it was nine days in total—it appeared on what you had that there was potential but then by the end of it no longer. That is where Mr Green came up with what his thoughts were. The magistrate used words—I could not find them again—to the effect that he will 'choose his words carefully, but I think that is a proper decision'. They are the types of words he used.

Mr Heaton: Do you want me to look up the transcript? I have it here.

CHAIR: If you could, that would be helpful.

Mr CRANDON: Yes, that would be good.

CHAIR: If you are willing to table it, that would be helpful.

Mr Heaton: I do not mind.

Dr HORTON: As I am aware, Chair, we do not have that. I would seek for it to be tabled so far as the committee would receive it.

Mr Heaton: I have scribbled on it. Do you want to have this or do you want me to read it?

Mr CRANDON: No, please read it.

Mr Heaton: It reads—

MR GREEN: Yes. Thank you, your Honour. And thank your Honour for allowing the time for the Crown to consider the material. And after a thorough review of the matter the Crown has determined that there is insufficient evidence to continue with the fraud charge where all eight are charged and so therefore will be offering no evidence on that charge and ask for it—

…

them to be discharged.

HIS HONOUR: I will be careful with my language—

…

HIS HONOUR:—but from what I saw and heard in those two weeks in November I think that's a—that a proper decision.

I am reading from page 1-4 of the Auscript transcript of the court proceedings on Wednesday, 14 April 2021 commencing at 9.16 am.

CHAIR: I move that that document be tabled but not published at this point.

Mr CRANDON: It appears that the decision, as said by Mr Green and that statement by the magistrate, came from the evidence, I think, over the nine days and the implications of that over the nine days. It seems like to me, as a layperson, that, based on what had been presented to you by the charging officer, by the CCC, it looked okay until it was tested and then it simply did not stand up under the scrutiny of that testing over nine days. In lay terms, is that an accurate reflection?

Mr Heaton: I think that is a fair summary, yes, of the situation. That is precisely the purpose of the committal process.

Mr CRANDON: Yes.

Mr Heaton: What might appear to have persuasive strength in written form and in a statement taken by police officers does not always reflect how the evidence comes across when given orally. That is the very great benefit of a committal, testing that evidence and giving the defence the opportunity to cross-examine the key witnesses prior to trial not only from their point of view of being able to identify what matters they might like to exploit but also from our point of view in terms of making that critical assessment of the persuasive strength of the evidence and whether or not in exercise of the prosecutorial discretion the matter has sufficient prospects as to warrant that important step of making the decision to go to trial.

Mr CRANDON: In that regard, the magistrate was fully behind the decision not to proceed.

Mr Heaton: Yes, so it seems.

Mr CRANDON: In a matter as serious as this and the implications of it, would your preference have been to have been involved earlier in matters? This was a very significant case. The implications were not simply the charging of seven individuals—I know we are talking about eight individuals but, in particular, seven individuals for the purpose of our hearings—but the effect of the charging of those seven individuals then saw a full council dismissed, an administrator appointed and the knock-on effect of all of that. In something as significant as that, would the Office of the DPP prefer to have been involved earlier?

Mr Heaton: In framing it as a preference, it assumes that the checks and balances that exist within the structure of the CCC, with the office of the chair of the commission having the ultimate responsibility and opportunity to oversee and exercise a similar discretion to that which, I guess, I would exercise in that same situation. History might reflect that if it had come to the DPP—although, again, I cannot speak for Mr Byrne, but if it had come to me at that point in time then the matters that I saw as being significant might have been highlighted at an earlier point in time. Perhaps others might have preferred that it came to me beforehand, but in many ways this was just another matter. This was just another case. Of course there were serious implications. Sometimes matters that involve serious implications have come to me to consider before charging. Clearly in this case they did not. I cannot speak to whoever made the decision as to why that would be done.

Mr CRANDON: To your knowledge, did anybody at the DPP have any idea what was going down before it actually went down—

Mr Heaton: Do you mean—

Mr CRANDON: On 26 April the charges were laid. Did anybody have any idea? Did they come on an ad hoc basis, as you mentioned earlier?

Mr Heaton: I do not know. I do not know the answer to that, if they did.

CHAIR: Mr Heaton, you just said before that some matters have come to you prior to charges being laid in the past. What types of matters?

Mr Heaton: Matters involving fraud and official corruption and secret commissions and the like.

CHAIR: Recently or—

Mr Heaton: Since I have been the director.

CHAIR: From the CCC?

Mr Heaton: Yes.

CHAIR: In that case, do you give formal advice or informal advice?

Mr Heaton: If it comes to me formally, I will do a formal response in a memorandum that would look very much like the one that is in this.

CHAIR: This is post 2018, with the legislative change?

Mr Heaton: Yes.

CHAIR: So there has been some type of informal dialogue or structure in that regard?

Mr Heaton: Yes.

CHAIR: In your response to Mr Crandon you referred to the committal being a useful tool for scrutinising the evidence taken by police officers which might reveal that it is not as cogent as it seemed to be. Is that the purpose of the prosecutorial guidelines as well, for police officers to perhaps turn their mind in a critical way to all relevant factors for the laying of charges?

Mr Heaton: Absolutely. The guidelines simply articulate what should be done in every case in critically analysing not just the evidence in favour but the evidence that might also tend to suggest not proceeding. This is certainly a message that I get out to staff. The question is not how but whether you should when considering a charge or considering conduct. There needs to be that critical assessment at every stage.

Mr SULLIVAN: To that point, Mr Heaton, in your memo starting at page 403, at page 409—it is page 7 of your memo—at paragraph 33 you make the point—

… the Crown bears the onus of proof to the criminal standard to exclude any other rational reason.

In this particular case that was crucial, because the elements of the offence went to the state of mind of eight individuals; is that correct?

Mr Heaton: That is right.

Mr SULLIVAN: Would you expect that a police officer or, once it is in your office, a lawyer would turn their mind to what offences to charge or proceed with, what are the elements of those offences and that necessarily includes what defences are likely to be raised? Is that fair?

Mr Heaton: Absolutely, yes.

Mr SULLIVAN: In this case, the evidence that went to—I think in your memo—credibility was particularly important because, again, the elements that needed to be proven and defence negatived went to state of mind of those individuals at the time?

Mr Heaton: That is right.

Mr SULLIVAN: In your evidence to Mr Horton in relation to the team that you quarantine these sorts of matters to, is that more to do with the types of charges that are laid rather than the mere fact that it is an interaction with the CCC?

Mr Heaton: Yes.

Mr SULLIVAN: I would imagine that there would be matters that go to their criminal arm as to drug charges or trafficking or things like that that would be pretty common practice for interaction between the CCC and the DPP?

Mr Heaton: Yes. There are other matters that are not as sensitive as these. It is a matter of public record that there have been investigations involving members of the legal profession and members of councils. It is those matters that we have quarantined to essentially limit the scope of the information about those sensitive matters.

Mr SULLIVAN: Is there early analysis or, again, is it more sort of when you are lining up a court date or when you are considering what charges, if any, to proceed with where you consider, when it comes to CCC matters, issues of admissibility, particularly when it comes to the coercive powers of the CCC?

Mr Heaton: Absolutely.

Mr SULLIVAN: Is that done early on, or is that usually done prior to charges being laid?

Mr Heaton: Well, if we are dealing with the usual scenario, it is after charges have been laid, and then an assessment is made of the available evidence in order to decide whether there is sufficient to present an indictment. Indeed, I see the exercise of the prosecutorial discretion being a continuing one, so throughout the entire process of analysis and the acquisition of knowledge from a brief and gaining an understanding of what the brief is about, the lawyers are critically analysing the sufficiency of the evidence as to the charge, or indeed any alternative charge that might be open, in order to develop the strategy for how and if the matter will proceed.

Mr SULLIVAN: In this matter, Mr Heaton, in terms of when it came to you and how it was managed by your team, you are comfortable that Mr Green is an experienced and capable prosecutor?

Mr Heaton: Absolutely.

Mr SULLIVAN: And it was managed within your office—I am not trying to second-guess the decision or memo or where the case ended up, but you would say to us it was handled in a professional, proper manner?

Mr Heaton: Absolutely. Can I say that Mr Green is not part of that team. Mr Green is one of our consultant Crown prosecutors, so our most senior cohort of prosecutors. The matter went to him because, as often happens—perhaps not often; sometimes happens—in these matters, there is evidence which is not admissible in one that we have to quarantine from a lawyer having knowledge of. Again, it is a matter of public record that there are other charges than this fraud to do with these matters that are proceeding. Other lawyers are handling those matters in order to quarantine the evidence that is being—

Mr SULLIVAN: As is proper, it was handed to another—

Mr Heaton: Exactly.

CHAIR: Mr Heaton, just in relation to the issue I think Mr Horton asked you about, which was whether these matters—or some matters from the CCC should come to you before charges are laid, you raised an issue of independence but also potentially resourcing implications. This is sort of a general question. Would it not be, from a resourcing point of view, more a case of work being done that would be done in any case?

Mr Heaton: To some extent. That is why I say I do not know what is going on in terms of what analysis has been done before matters come to us. I know that particularly matters that have been referred to me were done because there was some uncertainty about the sufficiency of the evidence—so essentially asking for my opinion, for want of a better phrase. Or there might be matters where the public interest discretion might be exercised, and that can only be exercised by me to discontinue a matter. So if it appears to a decision-maker at the CCC that that might arise in a particular case, then before charging referring it to the DPP will get, I guess, some insight into how that issue might be dealt with from a public interest point of view. What was your question?

CHAIR: Was it a matter of work that would be done before charging is work that would be done after charging anyway?

Mr Heaton: I think in some ways, and I am absolutely all for front-ending. As I was explaining earlier, if we were given the responsibility of considering matters before charge, then at that point we could develop a clear understanding of what evidence was admissible, what the appropriate charge was, what our case theory was, how the matter would proceed. But bearing in mind at that point there is no contradictor so we do not have the benefit of defence making submissions to us—sometimes informally, sometimes formally—that might give some insight into where the vulnerabilities are in our case. So all we can do is look at the material on the face of the documents and, perhaps based on our experience, anticipate where the vulnerabilities might be in the evidence. It is necessarily going to be a flawed process, but that is a process that is undertaken now by others already.

So having done that work at that point, if a charge is then laid and then proceeds, then we might have to do the work a second time in anticipation of the committal. And if that is months, as is usually the case—months, maybe even a year or more later—then I am guessing that at least 60 per cent of that work will have to be done again to get the person's mind back up to be on top of all of the material. Then if the matter gets through committal, then again when the matter comes to trial further down the 12 or 18 months or two years of the process, the work will have to be done a third time. If the same officer is involved in the beginning as at the end, then the amount of work that is done is minimised. But invariably with the passage of time people move on or move into different roles, so it is unlikely that the person that is involved in those initial decisions will be the person who ultimately takes it to trial. Sometimes that happily happens but not always. So there will necessarily be some duplication along the way. It is a matter for others to determine whether that duplication is a necessary benefit.

CHAIR: It is a public interest consideration in a lot of respects?

Mr Heaton: Absolutely. But we do not—I guess as a process we do not scrutinise QPS investigations before charges. The CCC is in a different position to the QPS in that they have experienced lawyers amongst their staff, so the process—essentially, what we are contemplating is transferring the process of critical analysis from one agency to a different agency but with the same—

CHAIR: Sort of relying on them exercising judgement and discretion and independence in the way that you and your office would?

Mr Heaton: That is right.

CHAIR: Okay.

Mr Heaton: There is no reason those at the CCC cannot do that exercise.

CHAIR: Understood. The matters you said before that you had discussions with the CCC about in terms of before charges being laid—I think it was about the sufficiency of evidence, merit, things like that. Were they of—I know you probably do not want to tell us what they were about, but—

Mr Heaton: I think it is—I need to be careful, but go on.

CHAIR: Understood. But you were having that discussion, would you say, in a general sense because there were public interest considerations to be taken into account whether charges were to be laid or not?

Mr Heaton: Public interest considerations or sufficiency of evidence or maybe not even as carefully articulated as that. Maybe a 'have a look at this one'. Not so informally but—yes, maybe not even necessarily what the thinking is as to why it is being referred to me, but just that it is being referred to me for an advice or for an opinion before charges are laid as to whether or not there is sufficient evidence, whether it is in the public interest, whether or not the prosecutorial discretion would be exercised by me to proceed.

CHAIR: I am going to ask you a question—feel free not to answer if you think it is appropriate—but high-profile individuals involved which may have particularly significant political ramifications?

Mr Heaton: Let's just say that there would have been—maybe I will use the word 'scandal'.

CHAIR: That is fair enough. So in the context of your answer before, you have been engaged on some occasions by the CCC about those sorts of matters but not with the Logan City matter—you or your predecessor—prior to the laying of charges?

Mr Heaton: That is as I understand it.

CHAIR: That is the end of that line of questioning. Thank you for that. In relation to the section 49 changes back in 2018, you mentioned, I believe, there was a submission from the former director in relation to that change?

Mr Heaton: That is right.

CHAIR: Are you aware or across what that submission was about?

Mr Heaton: It is essentially set out in the material I received, which I think was from the CCC submission, which referred to the 2016 report—

CHAIR: The five-year review.

Mr Heaton: Yes. As I understand the process, then Mr Byrne made a submission as part of the process of that five-yearly review in relation to section 49. That then became one of the recommendations of the report and then he was invited to comment, essentially, by the Attorney-General in terms of proposed amendments giving effect to the recommendations. That led to the legislative change in 2018.

CHAIR: I will have to have a look at that.

Mr Heaton: And I am just going from the top of my head, too.

CHAIR: Going back to the earlier parts of your statement, you said that issues were raised with you around 9 or 10 December in 2020, I believe, by your officers about the prospects or the evidence. Can you recall offhand what issues were raised with you in those discussions?

Mr Heaton: The discussion was about the evidence that had come out during the committal. I had, I guess, some interest and was following the progress of it generally, but at that point in time I did not have a detailed understanding of what the nuances of the case were. At that meeting with Mr Green and Mr Bain, they explained to me the significance of the evidence that had unfolded during the committal and briefed me in more detail about the nature of the allegations, the charges, the particulars that we were setting out to prove—

CHAIR: The credit of the witnesses?

Mr Heaton: That certainly plays into it. I think this is evident in my memorandum. Credit is certainly an issue, but it was not necessarily the only issue. In exercising certainly my discretion, I am always mindful of not only whether there is technically an offence there but what the persuasive strength of the evidence is in terms of it being accepted by a jury. In that sense, credibility does come into play. If it becomes apparent that actions were done for a particular purpose to achieve a particular agenda, even if there might technically be an offence there, a jury might view all of that with some scepticism or indeed not give it perhaps the weight. I am always mindful of how the evidence might come across to a jury and, on that point, similarly with the particular charge and how you might be able to intellectually articulate that the circumstances, the evidence, fits a particular charge. But if a jury is going to struggle to understand it, we are unlikely to succeed.

CHAIR: Interesting segue, Mr Heaton, because I have been around for 9½ years now in this place. I remember quite vividly when these charges were laid there was some discussion around these corridors, and I think in the legal community as well, that the charge of fraud arising out of the events that occurred at Logan City Council was a bit of an odd one. Would you like to comment on that?

Mr Heaton: I always struggled with this being a 408C offence. I have had discussions with lawyers within my office about it and at least one officer can see how you can make it a 408C offence, but that as I understand it is more a 'how can I' rather than 'whether I should' consideration. As far as I can see, this was a section 40 PID Act offence of retaliation, and even then on the evidence I think there would be insufficient evidence to prove that offence. But at least that goes to the heart of what was done—what was alleged to have been done—that this was a retaliation for the public interest disclosure. A jury can understand that. Dishonestly causing a detriment—that is a bit more convoluted. Does that answer your question?

CHAIR: Yes, thank you. We will go to the member for Macalister, herself a former police officer.

Mrs McMAHON: Throughout this inquiry, we did hear evidence from police officers from the CCC involved in the investigation and who ultimately made the decision to charge that during their investigation they either chose not to or disregarded the evidence or the submissions that were made by the applicants during the QIRC who would ultimately become the defendants in the 408C charge. Does this surprise you that investigators investigating such a complex matter would not even bother to read such evidence that was available through QIRC?

Mr Heaton: 'Does it surprise me?' is your question. I suppose I would have thought that any evidence which might paint a full picture of what it is you are dealing with and where your vulnerabilities are and what answer might be advanced to an allegation would be important information to know when deciding whether or not you have sufficient evidence to charge or to prosecute.

Mrs McMAHON: Do you believe that, if that information contained in those submissions was taken into consideration by officers, it might have had an influence on their decision to charge in terms of their sufficiency of evidence, given what came out during the committal was likely foreshadowed by a lot of that information that was contained within those submissions?

Mr Heaton: I guess there was an element of predictability as to where the vulnerabilities were, what answers might be advanced, what reasons might be advanced for the actions that were taken. I would have thought an objective and critical assessment of sufficiency of your evidence at every stage—be it investigation or prosecution—would be of benefit to the task of critically assessing the sufficiency of your evidence and exercising the discretion as to whether or not there was sufficient. I guess I am trying to be careful not to speak to the mind of others and what information they had or what they thought of it at the time.

Mrs McMAHON: I guess what I am trying to get to is: obviously, we discussed that information that came out from the commencement of the committal, which eventually led to the decision—as you said, those vulnerabilities and weaknesses were highlighted to the point where the decision was made. Do you believe that they were foreshadowed in the information that was available in those submissions to the QIRC? As you said, it was predictable that, if that information was adduced during the committal, we were going to have trouble.

Mr Heaton: I would have thought that that would give very telling insight into where the problems might be in the case and in the evidence, bearing in mind we are trying to prove what a state of mind was. Unless they tell us, we can only do it by inference, so all of the evidence that might tend one way or the other to support a conclusion I would have thought would be valuable evidence to consider in exercising any discretion.

CHAIR: No long preambles, please.

Mr CRANDON: Absolutely not. I have some questions following on from a couple of things that you have spoken about. First of all, you talked about jurors and sufficient doubt for people to come to grips with all of the ins and outs. Essentially, all seven would have to be found guilty by the jury to really justify all of the implications—this is a proposal that I am putting forward—of what happened on 26 April 2018 in charging all seven. Was that one of the weaknesses, that some possibly might have been found guilty of that but all of them? Is that one of the things that would have turned Mr Green's thinking or caused Mr Green to think?

Mr Heaton: I am not sure about that. I am not sure that I properly understand your question.

Mr CRANDON: Could I try to clarify—oh sorry. Go on.

Mr Heaton: I was going to say that, whilst there are seven—or indeed eight—defendants and where defendants are charged together and trials are run together, they are still essentially individual trials being run concurrently. There is certainly an allegation in this particular case that they were essentially working collaboratively to achieve an outcome, but the evidence that was relevant and that might go to the state of mind of each individual differed in relation to each individual. So it required an analysis of the evidence that was admissible against each individual as well as then the evidence that collectively might tend to support the conclusion that the Crown would seek to advance. All of that, I guess, necessarily is part of the consideration of the sufficiency of the evidence. Does that answer your question?

Mr CRANDON: I think so. Just to be clear, we have received evidence from others that there was some suggestion about perhaps charging one, two or three as opposed to all seven early on. That was dismissed somewhere. We cannot quite find where that idea was dismissed, but it was dismissed somewhere. Of course, charging one, two or three would not have been sufficient to cause the council to be sacked and, therefore, an administrator to come into the role which would then potentially give Ms Kelsey her job back. That is the background to what I was getting at.

Mr Heaton: Okay. I guess you are looking a little further into the future than I or indeed any of the lawyers at the DPP would be doing.

Mr CRANDON: Yes, I understand that.

Mr Heaton: In terms of consequences, we are looking at it on a legal, prosecutorial discretion kind of basis.

Mr CRANDON: I understand. I will get to the original question that I was going to ask you, and that relates to an email on 8 April 2021 from Mr Paul Alsbury to Makeeta McIntyre and Mark Reid at page 413.

Mr Heaton: Have I got that?

CHAIR: Which volume?

Mr CRANDON: That is a good question. Which volume am I talking about here?

CHAIR: Volume 2, I think.

Mr Heaton: Mark Reid, yes, I have it. 8 April did you say?

Mr CRANDON: Yes, that is right. It is from Paul Alsbury, as I said, to Makeeta McIntyre and Mark Reid. It is dated 8 April 2021—

I enclose the Director's memo—

which is the one we have been talking about—

I have taken some content out of para 31—Carl was provided with the QIRC decision by one of the defendant's lawyers and he had quoted from the decision. I thought it best to remove it, given we know there is some sort of suppression order.

He goes on to say—

You will note that Carl has not fully grasped what we say is the significance of the QIRC evidence.

Alan and I are meeting with Carl—

and then they discuss that you have met—

and Mark Green tomorrow. Feel free to email me your thoughts (or we can have a discussion)—

which seems to happen quite often with no notes taken of those discussions. Would you care to comment on that, one line in particular—

You will note that Carl has not fully grasped what we say is the significance of the QIRC evidence.

Mr Heaton: When we met we discussed the significance of the QIRC evidence. Initially, it had not been provided to me because it was, I guess, quarantined and there were questions about its admissibility, whether or not it was, strictly speaking, coerced and so, therefore, whether or not, in knowing about the contents of it, that might then conflict Mark Green, for example, the prosecutor, out of being able to continue in it. So there were issues about that. It had initially not been provided to me.

When my—and I cannot remember the time line, but undoubtedly it is a matter of record that I can check. At some point I had a conversation with Mr MacSporran where he told me that he was going to send that material to me. At that point he knew that my view was that there was insufficient evidence. So I agreed to receive it on the basis that there is insufficient evidence without it and if there is sufficient evidence with it then it would only be on the basis that it was admissible in some way in the prosecution so then the conflict issue was not so important.

I received it and I considered it. Mr Alsbury is entitled to his opinion, but I can say we discussed it. Both of them, Mr Alsbury and Mr MacSporran, had the opportunity to explain how they saw the significance of it to me, to Mr Green, to Mr Bain, who were all present for that meeting. Nothing that they explained changed my view as to the effect of that evidence in terms of the prospects of success. In fact, if anything it made it worse.

Mr CRANDON: Thank you. Do you want to expand on that?

Mr Heaton: No.

Mr CRANDON: Okay, thank you. We might take on notice the timing of when you received that material. You said you will give an undertaking?

Mr Heaton: Yes, I will see if I can find that.

Mr SULLIVAN: I have a more general question, Mr Heaton, in terms of your role in some CCC matters coming to you and others not. In terms of Mr Green and this case coming to you for formal advice, is it fair to say it is common practice for you as director, or the deputies or even heads of chambers for more junior lawyers, say, to either informally chat through how they think a particular offence is going or what angle they are going for a witness, to get advice, or seek formal advice from superiors as to whether to proceed or not? I am not just talking about CCC matters but also any given complex matter you have going on.

Mr Heaton: The structure of the office is such that every single lawyer has access to the advice and mentoring of a more senior lawyer. We have that—

Mr SULLIVAN: Perhaps not you.

Mr Heaton: I make myself available to them as well.

Mr SULLIVAN: Sorry, everyone has access to a more senior lawyer other than you.

Mr Heaton: No, they can come to me if they want to as well.

Mr SULLIVAN: Mr Heaton, I am saying that you do not have a more senior lawyer that you can rely on.

Mr Heaton: I am with you now. Okay.

Mr SULLIVAN: Sorry, I interrupted.

Mr Heaton: That is right: I have the advice of the deputies and other chamber heads to turn to, and I do that routinely as well.

Mr SULLIVAN: That relationship between the different lawyers can range from informal moral support or chatting through matters to more formal direction as to how to proceed?

Mr Heaton: Absolutely. That is an important part of the professional development and also the checks and balances that exist. Within the guidelines, there is an articulated structure in terms of the importance of decisions and the level that they need to go to for decision-making, including that some decisions in relation to homicides or public interest exercise of discretion must come to me. That is routinely promoted in the office; that is the way we have it structured. There are formal relationships between the junior lawyers and the more senior lawyers. The chambers are headed by a principal Crown prosecutor who has responsibility for the legal decision-making within the chamber, so nobody is left to their own devices.

Mr SULLIVAN: Thank you.

CHAIR: Mr Horton, did you want to round up anything?

Dr HORTON: There was just one matter. Mr Heaton, would you turn to volume 2, page 419 for a moment, to refresh your memory. That is headed 'Prosecution Protocol (policy)' of the CCC. I draw your attention to page 421, just below the middle of the page—

In June 2006 the CMC entered into an agreement with the DPP…

2006 is a long time ago. Is there, to your knowledge, an agreement to this day in force about such matters—that is, what is and is not referred?

Mr Heaton: If there is, it is not a document that I have personally seen. I saw that referenced in the material in relation to section 49 that was in the submission by the CCC, referred to as a memorandum of understanding. If such a document exists it is probably buried in amongst, and maybe should not be. The policy that was also referred to—the CCC policy that was referred to in their material about what matters will or will not be referred to me—was also news to me. Prior to seeing that material, I was not aware that there was any structure around what was or was not; nor was I able to discern that there was any structure about what was or was not referred to me.

Dr HORTON: Is that latter policy you are speaking about maybe the one that appears at page 425 of the same bundle: 'Operations Manual: Matter Management: Matter briefs'?

Mr Heaton: Okay. What I am referring to is in the submission of the CCC to this committee—paragraph 216 on page 42.

Dr HORTON: Thank you.

Mr Heaton: Then 217 on page 43.

Dr HORTON: Thank you.

Mr Heaton: I do not know if that is the same as that document. Again, these are not documents that I have seen outside of this process.

Dr HORTON: Thank you. Chair, they are my further questions to Mr Heaton. Might he be excused, subject to the matter he is going to get back to the committee on that Mr Crandon just mentioned?

CHAIR: Mr Heaton, thank you very much for your contribution here this morning. You used the term 'check and balance' in relation to your office and this is obviously a check and balance process, too, for the CCC. Thank you very much for that. You are excused. I hope you have a good day.

Mr Heaton: Thank you.

CHAIR: That would be a good time for a break, I think, Mr Horton, unless there is anything you want to say before that?

Dr HORTON: No, thank you.

CHAIR: We will take a break and come back at 11.20.

Proceedings suspended from 11.04 am to 11.29 am.

CHAIR: We will resume. Mr Horton, would you like to advise us of your next steps?

Dr HORTON: Yes. I would seek to recall Mr Alan MacSporran QC.

Mr Dunning: Chair, before that occurs, I would like to make an application under schedule 3(m).

CHAIR: Mr Dunning—

Mr Dunning: You at least have to hear my application. You can refuse it, by all means.

CHAIR: Would you like to address the committee on a particular point, Mr Dunning?

Mr Dunning: I would, thank you, Chair, yes.

CHAIR: Have you advised Mr Horton about this?

Mr Dunning: I had previously advised Mr Horton of the topic of my dissatisfaction, yes.

Dr HORTON: I am not aware of the specifics of what is to be raised.

CHAIR: You are not?

Dr HORTON: I am not.

CHAIR: Mr Dunning, please refrain. There was, as I understand it, a memorandum sent out to all parties in relation to this which advised that matters such as this should be raised firstly with counsel assisting. Given Mr Horton's advice that he is not aware of the specifics of what you wish to address the committee on, I will pause proceedings, at which time the committee will have an opportunity to liaise with counsel assisting and you, Mr Dunning, will have an opportunity to speak with counsel assisting as well.

Mr Dunning: Chair, can I just raise one matter?

CHAIR: No, Mr Dunning, you may not, because there has been very clear guidance given that issues of this type are to be raised with counsel assisting.

Mr Dunning: It is counsel assisting's correspondence with me I want to raise with you that says we have to speak with the secretariat.

CHAIR: Mr Dunning, this is not the forum for that to take place and I think that has been made clear in correspondence. If it has not, I am making it clear now. We will pause the proceedings at this point to have the opportunity for those discussions to take place. The committee will break and resume at a time to be specified.

Proceedings suspended from 11.31 am to 12.41 pm.

CHAIR: We will resume our hearing now. Mr Horton, prior to the break you were going to proceed with another witness, but is there anything else that you want to bring to the committee's attention?

Dr HORTON: Yes. Mr Dunning, barrister for the CCC, raised with me some issues—and thank you for the adjournment in order to discuss matters with him. What I have proposed to him, and which I would recommend to you, committee, is that the CCC be given an opportunity in writing to the secretariat direct to the committee to raise those matters with you, to be specific about what the difficulties are said to be, to state the reasons for that, the references to the material so far as appropriate to be as specific as possible and what remedy is said to be needed, if there is any, as a result of what problems are identified. Is that an appropriate course?

CHAIR: It is, and the committee unanimously agree with that approach. We have considered the matter in private session.

Dr HORTON: Thank you. That might be done, I would simply ask, as soon as possible, because the inquiry continues, so as to not delay your work and so that those matters can be taken into consideration as soon as possible.

CHAIR: I see a nod from Mr Dunning so I understand it has been noted.

Dr HORTON: I seek to recall Mr Alan MacSporran QC.

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

CHAIR: Mr MacSporran, welcome back to the hearing. I remind you your oath from previous hearings continues to apply. I will proceed with Mr Horton.

Mr MacSporran: Mr Chair, I wonder whether, before we proceed—I understand since I was here last there were some comments made about my language at the last occasion, on 18 August. I would like to put something on the record, if I may—a brief statement.

CHAIR: Now that you have raised that issue, Mr MacSporran, which I myself was not intending to raise, I would ask that you withdraw the unparliamentary language which you utilised in your evidence in the first session of the second day of the inquiry.

Mr MacSporran: Could I just place this on the record, then—

CHAIR: Mr MacSporran, in accordance with standing orders relating to these matters and the use of unparliamentary language, and as the chair of the committee, I am asking you to withdraw those comments.

Mr MacSporran: I would like an opportunity to speak with my lawyer, please.

CHAIR: Certainly.

Mr MacSporran: My advice is that the standing order does not apply to me in any event for the language I used for reasons that my advice states, but I am happy to apologise if I have offended anyone at all in respect of my language on 18 August.

CHAIR: Thank you for your apology. I would also ask that you withdraw the comments.

Mr MacSporran: I would like to get advice from my lawyer again, please.

CHAIR: Certainly. Just before you say anything, Mr MacSporran, I will be very specific. I am only referring to the use of profane language in one of your quotes in that session, which I ask you to withdraw.

Mr MacSporran: I am happy to withdraw the word itself, but the word is relevant, in our submission, to your deliberations.

CHAIR: In relation to the unparliamentary language, do you withdraw?

Mr MacSporran: On the terms I have just explained, yes.

CHAIR: I think we can move on, Mr Horton.

Dr HORTON: Thank you, Chair. Mr MacSporran, as I understand it, you may not have read, since you last appeared, the *Hansard* of other witnesses who gave evidence.

Mr MacSporran: That is so, Mr Horton, yes.

Dr HORTON: I think reference has been made to a best practice of why you did not. Could I just understand what that practice is?

Mr MacSporran: The practice is, as I understand it, whenever you give evidence and there are witnesses giving evidence following you about the same issues, you should not be reading the evidence if you are being recalled because then it could be suggested, appropriately, that you have had some knowledge that you should not have had and you have adjusted your evidence perhaps.

Dr HORTON: You were under the understanding, as I understand it, from your last appearance, that you would be recalled, yes?

Mr MacSporran: That is so.

Dr HORTON: In the course of your evidence you had said to me about, for example, the 3 October 2018 delivery to council that you look forward to seeing what the evidence was on that topic. Do you recall that evidence?

Mr MacSporran: Yes, I said that in the context of you being able to put to me what the evidence was for my comment when I returned here.

Dr HORTON: Yes. Page 32, *Hansard* of 17 August—

... I will be interested to hear the explanation in the evidence about what happened here.

I wrote to your legal representatives myself on 13 August 2021 at 1.48 pm and I said—

… that Mr MacSporran QC will be recalled at the end of the public hearings to be asked questions directed at more specific matters, and to deal with any matters which have arisen in the course of evidence given by others that require his comment.

Were those sentiments not communicated to you?

Mr MacSporran: I cannot recall. They probably were.

Dr HORTON: Understood. Is there some lack of clarity in those words that you were to be giving evidence about matters, including those which had arisen in the course of evidence given by others?

Mr MacSporran: I understood that to mean that when I came back you would either, before I arrived here, provide me with excerpts of transcript you wanted to ask questions about or at least during the course of the examination you would do so, and that is indeed consistent with the email you sent to Mr Dunning and Mr Wilkinson either yesterday or the day before.

Dr HORTON: Thank you. I would seek to have tabled two emails,: one of Thursday, 2 September 2021 at 8.33 am; the other of the same date at 7.38 am from me to the CCC's barristers, which are the topics advised for Mr MacSporran's evidence today. So it is clear, Mr MacSporran, I would ask that you read the entire *Hansard* which, apart from the day on which you gave evidence, is only a few extra days.

Mr MacSporran: How many pages is that, Mr Horton?

Dr HORTON: Mine, Mr MacSporran, which I have read several times, in old language is a couple of inches thick.

Mr MacSporran: How many pages, Mr Horton?

Dr HORTON: I ask that you read that, please, before you return to give evidence on Monday and take note of the topics to which your attention has been directed yesterday morning and any others that come through in the meantime. Are you able to do that over this afternoon and the weekend, Mr MacSporran?

Mr MacSporran: I will do my best, Mr Horton, but it is unlikely that I will be able to read that quantity of material between now and Monday. But I will do my level best to assist the inquiry to proceed as expeditiously as possible.

CHAIR: Thank you very much.

Dr HORTON: I think in light of that, Chair, it is probably not worth continuing because I had wished to ask Mr MacSporran about some matters in particular that are in *Hansard*. Mr MacSporran already has the volumes and had them since the last occasion. On that basis, I am sorry but we do not have another witness today. I am sorry to take up the committee's time today but it seems appropriate to adjourn until Monday out of fairness to Mr MacSporran.

CHAIR: Thank you, Mr Horton. The emails you have provided to me will be taken as tabled but not for publication at this time, in line with previous guidance. In accordance with counsel assisting's recommendation, we will adjourn now until 9.30 on Monday morning.

The committee adjourned at 12.50 pm.