



PARLIAMENTARY CRIME AND CORRUPTION COMMITTEE

Members present:

Mr JM Krause MP—Chair
Mr MJ Crandon MP
Mrs MF McMahon MP
Ms JC Pugh MP
Mr JA Sullivan MP

Counsel assisting:

Dr J Horton QC
Mr B McMillan

**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
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

MONDAY, 6 SEPTEMBER 2021

Brisbane

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The committee met at 10.00 am.

CHAIR: Good morning, everybody. Welcome to day 8 of the Parliamentary Crime and Corruption Committee's inquiry. My name is 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, the member for Stafford and deputy chair; Mr Michael Crandon, the member for Coomera; Mrs Melissa McMahon, the member for Macalister; and Ms Jess Pugh, the member for Mount Ommaney. We have apologies for the moment from Dr Mark Robinson, the member for Oodgeroo, and 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. As parliamentary proceedings, under the standing orders any person may be excluded from the hearing at my discretion or by order of the committee. 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 direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings by media and images may also appear on the parliament's website or social media pages.

I welcome the Parliamentary Crime and Corruption Commissioner, Mr Michael Woodford, to the inquiry. Thank you for joining us, Mr Woodford. I also welcome Mr Kunde and counsel assisting, Mr Horton and Mr McMillan. Mr Horton, could you please begin today's proceedings?

Dr HORTON: Yes. Chair, Mr MacSporran has returned. I seek to question him today about the matters in the email of topics that I have tabled. I think it will take at least today.

CHAIR: Please proceed, Mr Horton.

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

Dr HORTON: Mr MacSporran, if I can, today I would like to go through matters largely chronologically where necessary. I will pause after each segment in case the committee have questions. Where I need to put to you matters in the transcript I will take you to it directly. If there are matters that I need to understand in the transcript in order to put the questions for you to answer them, would you draw my attention to those as we go, please? I take it you do have a *Hansard* record in front of you, of the proceedings?

Mr MacSporran: Yes, that has been provided, thank you.

Dr HORTON: And the three bundles, volumes 1, 2 and 3?

Mr MacSporran: Thank you.

Dr HORTON: Some of the documents, Mr MacSporran, that would otherwise be interleaved in the bundles are in that volume 3, which are supplementary documents that have been pointed out as important.

Mr MacSporran: Yes.

Dr HORTON: We will come back to those. I start with this general topic. You and I covered it when you were here the first time. It is what has been described in other evidence as a mandate from you, but I may put it more neutrally for the moment as a decision 'to assist Ms Kelsey as much as we could'. Do you recall that evidence?

Mr MacSporran: I do, thank you, yes.

Dr HORTON: I do not need you to take you to it, but you dealt with it in evidence at page 23 and page 20 of *Hansard* on 17 August. I will take you to page 20, if that is convenient, Mr MacSporran, point 4, and then page 23, about point 9.

Mr MacSporran: Yes, thank you.

Dr HORTON: I really want to deal with this in a number of different ways for the moment. One is to point out to you some evidence Mr Hutchings gave about his understanding of what you had said and perhaps some interpretations of his own. Next is to try to work out the metes and bounds of what you meant by the assistance and, third—we have been across this a bit already—so far as you want to supplement it, the reasons for saying that. I think you have mentioned the importance of protecting public interest disclosers and so forth. Can we start with Mr Hutchings's understanding of these matters? You will have seen that Mr Hutchings spoke about this in his evidence. He had formed a view—I will take you to it—that the councillors had committed perjury. If you would go to the *Hansard* of 19 August, page 45, Mr MacSporran. At the very top of the page—

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.

Then at about point 6 on the page—

... 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.

Then there is one other reference I want to point out—the 18 August transcript, again Mr Hutchings's evidence, page 65, Mr MacSporran, and really here it is the whole of the page. Just note, would you, in particular reference is made to you at about point 4—

Mr Hutchings: The chair, and the CEO at the time and me.

Because he refers to 'us' there. Do you see that at about point 3 or 4 of the page: 'there was significant concern by us that the affidavits' were misleading? And the 'us' he says is the chair, the CEO and himself. Are you finding those references okay to follow, Mr MacSporran?

Mr MacSporran: I have found them, thank you, Mr Horton. I am trying to tie in, if it is possible, what period Mr Hutchings is talking about that those discussions occurred.

Dr HORTON: It might help to take you to one more reference and that is at page 45, at about point 6.

Mr MacSporran: 18 August, is it?

Dr HORTON: The 19th, Mr MacSporran, the next day. I am sorry to keep flicking between them.

Mr MacSporran: No, I understand. It is just a matter of me being able to turn them up, Mr Horton, that is all.

Dr HORTON: No trouble. Please do not feel pressured to rush.

Mr MacSporran: And on 45?

Dr HORTON: Page 45 on 19 August, about point 6. I suggested it was his meta-approach. On his evidence, it does not seem to need to be restricted to a particular point in time; he just formed the view. That is what I am suggesting is the effect of his evidence. Then see just under about point 7—

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 MacSporran: That is Mr Hutchings's assessment of what he thought I wanted him to do, yes.

Dr HORTON: I am asking you this because at page 24, when we spoke on 17 August, at about points 2 and 3, I suggested to you, and I think you agreed, that this position you had—the view you had formed—set the course for pretty much everything that followed and was the touchstone of the decision.

Mr MacSporran: I missed the page you quoted from my evidence, Mr Horton, I am sorry.

Dr HORTON: Sorry, Mr MacSporran, page 24, back on the 17th.

Mr MacSporran: Yes.

Dr HORTON: And the exchange between us occurs on the first half of the page. You will see the exchange between us about that.

Mr MacSporran: Sorry, Mr Horton, I am having trouble picking up the reference you mention—on page 24 on the 17th?

Dr HORTON: The 17th, page 24, then beginning the third exchange down. First of all you said you made a decision to assist Ms Kelsey and then the next half-page.

Mr MacSporran: Thank you.

Dr HORTON: The questions first we will limit to the extent to which you agree with Mr Hutchings. Is he right to say that—well, put it this way: start more simply. Did you form a view that the councillors had committed perjury of the kind that Mr Hutchings refers to?

Mr MacSporran: No, not as such. I think there had been discussions at some point, I think much later, about what the effect of their evidence in the commission had been.

Dr HORTON: Thank you. Next, were you aware that others in the organisation had formed a view that the councillors had committed perjury and were acting on that premise?

Mr MacSporran: I think at some point I became aware of views held along those lines.

Dr HORTON: Yes, but not views you shared, at least to that level of strength; is that correct?

Mr MacSporran: That is fair. It was not directly relevant to what I was thinking of and directing my attention to.

Dr HORTON: Do I take it from that that it was not one of the underlying drivers for your decision that Ms Kelsey ought be assisted?

Mr MacSporran: That is so.

Dr HORTON: Did Mr Hutchings ever communicate to you that he was acting on what he called your mandate because of a view he had formed about perjury?

Mr MacSporran: Not to my recollection.

Dr HORTON: Only answer this is if you able to, but it would be wrong for a lawyer to form a view in the circumstance of this case that perjury had been committed by the councillors in the affidavits they tendered to QIRC?

Mr MacSporran: I cannot say that directly.

Dr HORTON: Is Mr Hutchings right to call—and I think he has responded in my questions about it, to be fair—what you said about assisting Ms Kelsey as a mandate from you?

Mr MacSporran: I do not think so.

Dr HORTON: Part of what Mr Hutchings said about needing to act was premised upon needing to correct an imbalance. I think he calls it is a very serious imbalance. Do you recall that evidence? You in your evidence to me had spoken about a 'stark imbalance'.

Mr MacSporran: Yes.

Dr HORTON: I am quoting those words—you do not have to go there unless you feel you need to—on page 29 of *Hansard* of 17 August, at about point 5.

Mr MacSporran: No, I accept those remarks, Mr Horton.

Dr HORTON: Just focusing on you for a minute, not Mr Hutchings, what was the imbalance, as you saw it, that was stark?

Mr MacSporran: I think the imbalance that was most obvious was the legal representation funding. Ms Kelsey was self-funded, as it were, and the councillors and council were privately represented under insurance policies held by the councillors and council, as I understand it.

Dr HORTON: So it is clear, it is not suggested by counsel assisting that the councillors were not covered by a policy of insurance.

Mr MacSporran: I understand. We debated that the last time I was here—well, the time before the last time I was here.

Dr HORTON: Thank you. Second, I think it is probably common ground between you and me now that the policy was one held and taken out by the Local Government Association of Queensland?

Mr MacSporran: I think that is right.

Dr HORTON: And that that relevantly, for the purpose of our debate presently, covered their legal funding?

Mr MacSporran: As I understand it.

Dr HORTON: Albeit there were policy terms one would ordinarily expect about the limits of those arrangements?

Mr MacSporran: I would expect but do not know that as a fact.

Dr HORTON: My questions to you on the first occasion were about what you had done independently to inform yourself about your assertion that they were covered by insurance.

Mr MacSporran: Yes.

Dr HORTON: So the stark imbalance is one only then of legal funding—that is, that councillors had their funding paid by an insurer but Ms Kelsey had to pay her own?

Mr MacSporran: That is the main feature of imbalance as I saw it, yes.

Dr HORTON: I understand. You said the main one. Are there others that are important?

Mr MacSporran: Well, I thought just the fact that there were more than three legal teams, I think, lined up against Ms Kelsey as the applicant in the proceedings—that is, one team for the council, one team for the mayor and one team collectively, I think, for the other seven councillors, from memory. There is nothing wrong with having numbers—they are entitled to be separately represented—but it does mean they are outnumbered, I suppose is the simplest way of putting it.

Dr HORTON: I understand. Tell me if I am wrong, but your point seems to be that not only are there more parties against her—she is fighting a number of parties—but this litigation is hard fought?

Mr MacSporran: Hard fought and lengthy, as it turned out, and Ms Kelsey was self-funded and the others were funded by insurance, as an objective fact.

Dr HORTON: Thank you. Then I think you make note of this in your letter to the minister that was sent in August 2018.

Mr MacSporran: Yes.

Dr HORTON: In fact, I think you said there—I will just go to it to make sure my words are very accurate.

Mr MacSporran: Is there a page in the bundle I can follow, too, please, Mr Horton?

Dr HORTON: Yes, I am just trying to find it, too. I will tell you as soon as I know it. I am not withholding information.

Mr MacSporran: No, I was not accusing you of doing that, Mr Horton.

Dr HORTON: Yes, Mr MacSporran, in the larger volume, volume 1, pages 291 and 292 but particularly 292. In the third last paragraph on 292 you seem to raise the same sentiments there, Mr MacSporran.

Mr MacSporran: I think that is a fair summary of it, Mr Horton.

Dr HORTON: You say at the third and fourth last lines—

... their unfettered ability to pursue litigation at no personal cost.

You presumably there mean 'no personal financial cost'?

Mr MacSporran: Yes. That is the context, yes.

Dr HORTON: Yes, because you would accept there would be a cost to people conducting litigation in which they are the respondents—

Mr MacSporran: Of course.

Dr HORTON:—in neutral terms. Thank you.

Mr MacSporran: I simply summarise, as you see there, towards the end of that paragraph—

... there is not a "level playing field", resulting in a very high risk that Ms Kelsey will discontinue her proceedings as a result of her resources being completely depleted. This will mean that important issues are not determined.

Dr HORTON: Thank you. Were you ever aware of Ms Kelsey having been made an offer to continue to receive her salary from the Logan City Council?

Mr MacSporran: I think I became aware of that at some point. I cannot remember now or detail to you when that was, but that does—now, when I say that, I have to qualify it by saying whether I know that now from what I have seen in preparation for this or evidence I have read or whatever was my personal knowledge at the time. It might be difficult to pinpoint the awareness getting by me, but I was aware, or am aware, of that fact at some point.

Dr HORTON: Is this right: as at August 2018, when you wrote the letter to the minister, you were operating under the assumption Ms Kelsey had no salary coming in at all from the council?

Mr MacSporran: Yes, because she had been dismissed in February, so that was my understanding, yes—or belief anyway.

Dr HORTON: And you had had the meeting with her on 6 August 2018 in which she had, I think, said she was in 'dire straits'? I think they were the words she used, on the note.

Mr MacSporran: In the context of her financial circumstances, yes, as I understood it.

Dr HORTON: That is, really, the first subtopic about the extent to which this marries, if you like, with Mr Hutchings's understanding of things. The second topic is what are really the boundaries of what you understood your instruction to be, or your stated view to be—that is, about the stark imbalance and assisting Ms Kelsey. You said in the email you sent much later—I will take you to it if you need to remember—you were going on leave on, I think, 4 September. You said—

... we should do whatever we legitimately can to support Kelsey.

Mr MacSporran: Yes.

Dr HORTON: Do you remember that?

Mr MacSporran: I remember the email, yes. Could I see it again, please, just to confirm what I believe it said? I know those words were in it, I am sure—just to see the context.

Dr HORTON: You are just trying to test whether I know the page!

Mr MacSporran: If you do not find it, Mr Horton, I will never find it! It is 633, we are told, Mr Horton.

Dr HORTON: That is it. That is, admittedly, on 4 September 2019, but that seems to be the view you held from the outset with respect to Ms Kelsey; is that right?

Mr MacSporran: No, I would not say right at the outset. I think that is a view that we settled upon reasonably early but I would not say right at the outset, because we had to assess the matter.

Dr HORTON: Who is 'we'?

Mr MacSporran: Initially it was myself and the CEO and then ultimately myself, the CEO, the then CEO and Mr Hutchings.

Dr HORTON: Thank you. So Mr Hutchings was involved in discussions with you about the extent to which the CCC should assist Ms Kelsey from time to time?

Mr MacSporran: I had assigned him or appointed him, if you like—whatever the correct terminology is—to manage that side of the equation.

Dr HORTON: I think you said on the first occasion you were here that he reported regularly back to you about that, and we see that in the emails?

Mr MacSporran: Correct me if I am wrong; I am going from memory here. I do not know if I said 'regularly'. Certainly he reported to me as and when he thought necessary or I thought I needed an update. That will be in the material, I am assuming, as to the frequency of that.

Dr HORTON: I understand. Anyway, as regularly as the documentary material reflects he reported to you?

Mr MacSporran: Yes.

Dr HORTON: The limits, then, of this assistance were obviously, in terms of your 4 September email, whatever was legitimate? You only wanted being done what was legitimate to assist her? You used the word 'legitimately'.

Mr MacSporran: This is, of course—the 'legitimate' comment in September 2019, isn't it?

Dr HORTON: It is.

Mr MacSporran: Yes.

Dr HORTON: I presume that is a limit. It was not to assist Ms Kelsey at all costs; you had to limit it to what was legitimate—your instruction?

Mr MacSporran: Yes.

Dr HORTON: You are telling people: 'Assist her in whatever way but it has to be legitimate assistance'.

Mr MacSporran: In the context of what our jurisdiction permitted under our act, the PID Act and general considerations of fairness and other matters in that category. Once we had settled on a view, that was the way it was managed and that I supervised, from a distance—the management in that way.

Dr HORTON: I want to come to those subtopics in a moment and go to the legislation. Did you give the instructions about what 'legitimately' meant or what the limits were to be in any email that you are aware of that the committee should have before it, to understand what the bounds of this instruction were?

Mr MacSporran: Mr Horton, I cannot remember an email along those lines. I certainly remember discussions but I cannot remember an email, no.

Dr HORTON: So we have the 'legitimately' comment and I think somewhere else it is said—I am sorry, I cannot think of the reference—that you were keen for this not to affect the integrity of your corrupt conduct investigation.

Mr MacSporran: I think I said that last time here in evidence, from memory, yes.

Dr HORTON: So that is another, I want to suggest to you, expressly stated way in which you would have said you limited, if you like, the assistance that was to be provided to Ms Kelsey—that it was not to affect your corrupt conduct investigation?

Mr MacSporran: I think that is right.

Dr HORTON: Understood. Can you think of other ways in which you, at any time, limited the expressed view about assisting Ms Kelsey to the staff in the CCC?

Mr MacSporran: Not directly, except to say there were discussions ongoing about how that might be managed and from what I have seen it was, in a general sense, I must say, from the material I have seen, well managed.

Dr HORTON: I see. Let me take you to one more email, which really comes at the end of things, from Mr Hutchings from you. Then I want to go to the statutory provisions to understand what I am going to suggest to you is a limit on what assistance is properly provided to people by your organisation. The email from Mr Hutchings is in volume 1, at page 497. This is 15 February 2019, so well before your 4 September 2019 email.

Mr MacSporran: You said 497?

Dr HORTON: It is before your September email we have been to at page 633—well before. This is 15 February 2019, page 497.

Mr MacSporran: I have that, yes.

Dr HORTON: Just so you can get the context around this, there has been the production to QIRC, the QIRC has ruled, there has been the delivery of documents to the council on 3 October and their retrieval. Redelivered documents—a neutral term for a minute—had been delivered to the council on 19 November. Then Ms Alsbury has written to the council on 14 February, telling the council to disclose or reminding of its obligations. You can see that at page 469. It is been learned that, in fact, Ms Kelsey has already withdrawn her application for discovery in the QIRC proceeding. That has been found out, you will see, by Mr Hutchings at 495, because King & Company write to the CCC and say this is all ancient history. I think you and I dealt with this the first time you were here as well.

Mr MacSporran: I do not recall, Mr Horton.

Dr HORTON: If you look at Mr Hutchings's email at page 497 and which goes over to 498, I want to put some things to you about that. You will see you are a recipient of it.

Mr MacSporran: Yes.

Dr HORTON: I want to suggest a few things to you. First, this is an example of him reporting to you as he regularly did?

Mr MacSporran: It would appear to be, although I do not recall this, I must say.

Dr HORTON: You do not suggest you did not receive it?

Mr MacSporran: No, I am prepared to assume it came to me. I am one of the parties it is directed to.

Dr HORTON: Yes. You will see in first line it says—

This is a wrap up of the discussions had between Paul, Alan and myself since receipt of this letter yesterday—

Friday—

afternoon.

Mr MacSporran: Yes.

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Dr HORTON: 'This letter' must be reference to King & Company's letter of 14 February 2019?

Mr MacSporran: I do not know that, but I assume that is an interpretation that is open on the way he has described that.

Dr HORTON: Were you surprised by the fact that your organisation had pushed the council about its discovery obligations some months after Ms Kelsey herself had discontinued her application for disclosure in the QIRC?

Mr MacSporran: I am just not familiar with what is discussed here directly and I believe that the questions being raised there were more to do with Public Records Act issues.

Dr HORTON: I want to contradict that by reference to these documents I am putting to you.

Mr MacSporran: Yes.

Dr HORTON: I will put it a bit more squarely, because it might help to understand it. Even after Ms Kelsey herself had abandoned her application for disclosure in the QIRC—

Mr MacSporran: I am sorry, could I just ask when that was date wise, if we know?

Dr HORTON: I can show you the reference because it is important. At page 465 of that bundle is a letter from your organisation—Mr Alsbury—to the council on 12 February 2019. At the first paragraph it says—

... the ... (CCC) is closely monitoring the matter.

Mr MacSporran: This is the letter to Mr Trinca.

Dr HORTON: It is. The first paragraph is the one I want to point out to you—you are closely monitoring it—the second last paragraph on that page—

Mr MacSporran: Yes.

Dr HORTON:—and the very last paragraph. Mr Alsbury asks the council to advise—

... whether the LCC intends to make disclosure in this proceeding in the manner discussed above so that the CCC can consider its position.

Mr MacSporran: I note that is 12 February and on 7 February we had delivered a State Archivist report, dated 5 February, to Logan City Council which dealt with the material being public records.

Dr HORTON: Can I suggest to you this—and this is why I am putting it to you: the question of disclosure in the QIRC at this point is entirely separate from the question of whether what is being disclosed is a public record?

Mr MacSporran: I do not know that that is how you would actually characterise it. Certainly the QIRC proceedings and what was happening there in respect of disclosure was one issue. What the CCC was doing in respect of documents that ultimately would be in the hands of someone to disclose is a separate issue, if that is what you mean that they are separate issues?

Dr HORTON: Yes, that is what I mean.

Mr MacSporran: Yes, I accept that.

Dr HORTON: It seems that—giving you a chance to comment on this—what is occurring from 12 February, 14 February and then through to the email of Mr Hutchings of 15 February is now concerned solely with disclosure in the QIRC which is not about, at least at this stage, whether the documents to be disclosed are public records?

Mr MacSporran: I think those issues are related.

Dr HORTON: I accept they are related historically in these documents and the way some of the CCC staff dealt with them, but for the minute could you point me to documents here—and I do not mean earlier on, because we know that has been playing out—which show at this point that that is still an issue which bears upon why the CCC is talking about the council disclosing the documents in the QIRC?

Mr MacSporran: I cannot point you to any documents directly now, but I fully understand from my review of the material that those two issues were related. The effect on the disclosure in the QIRC was quite collateral, as I understand it, to what was our intent—this is material I have looked at—in respect of how they were to be treated by council because of, unless I am mistaken, and I may well be, the State Archivist's report.

Dr HORTON: I get your point about collateral. I get the assertion about collateral.

Mr MacSporran: That is not just an assertion. That is my belief about what was going on.

Dr HORTON: I am just putting it to you that way fairly because I want to say that that is your assertion, not my assertion. I get along the way the Public Records Act was mentioned and mentioned regularly—I understand that—and that some of the CCC witnesses, as you have seen, have said it is the purpose for which this is being done and others said that there was another purpose or a side effect, as Ms McIntyre said. We are going to go through that evidence in detail. What I just want to take you to for the moment is this end bit which seems at least, I am suggesting to you, by 15 February is all about disclosure in the QIRC and not about, by this stage, Public Records Act purposes.

Mr MacSporran: The letter may be, but the context is important. The context is what I have been saying about what was actually happening at the same time and is relevant to what the real purpose was, if you like.

Dr HORTON: We are going to come back to that in the context of the deliveries and the QIRC so we will not need to deal with that for the moment. The point really about this letter that I want to take from it and put to you is that the purpose of assisting Ms Kelsey is one still enduring at 15 February 2019; correct?

Mr MacSporran: Yes.

Dr HORTON: And that that assistance extended to assistance even after Ms Kelsey herself had abandoned the request in the proceeding for the very thing the CCC was, at the very least, drawing the council's attention to?

Mr MacSporran: I do not know that to be the actual situation.

Dr HORTON: That would go beyond the purpose of merely assisting Ms Kelsey to something more; correct?

Mr MacSporran: I do not understand your question, Mr Horton.

Dr HORTON: What this course of correspondence I have taken you to—12 February, 14 February, 15 February—shows is that the CCC is agitating for something to occur which Ms Kelsey herself has abandoned the request for in the QIRC on 4 December 2018?

Mr MacSporran: I do not know that that is correct, but I can see how you would come to that conclusion on the terms of this letter itself.

Dr HORTON: And that the motivation to assist Ms Kelsey seems by this stage to have taken on a life of its own in which the CCC has become an active protagonist in relation to the QIRC proceeding.

Mr MacSporran: If your suggestion ultimately is that the CCC's involvement went beyond the stated purpose of helping Ms Kelsey where it could legitimately, I do not agree, no.

Dr HORTON: That is one suggestion. The second suggestion I will bring you to in the context of the legislation is that it was an overreach now to be pursuing these matters certainly if, for no other reason, than that Ms Kelsey herself had abandoned the request for disclosure on 4 December 2018.

Mr MacSporran: I do not agree.

Dr HORTON: The third subtopic on this point I wanted to take you through was the legislation. We discussed before, on the first occasion you were here, what was the basis, if you like, of the CCC acting as it did in terms of assisting Ms Kelsey. You have mentioned that she was a public interest discloser on your first occasion here and you said that was, and is, an important consideration; correct?

Mr MacSporran: That is so.

Dr HORTON: I just want to understand the source of that consideration. Can we start with the Public Interest Disclosure Act?

Mr MacSporran: Yes.

Dr HORTON: Mr MacSporran, section 48(2) and section 49(2) refers to the CCC.

Mr MacSporran: Yes.

Dr HORTON: Are there any other provisions of that act that have a material bearing upon the question of the CCC's proper role with respect to public interest disclosers?

Mr MacSporran: Sections 40 and 41 firstly.

Dr HORTON: Yes—what is a reprisal and the offence of taking reprisal.

Mr MacSporran: And the CCC, of course, may investigate an alleged offence of taking a reprisal—if the person holds an appointment in a UPA, pursuant to section 67 of the PID Act.

Dr HORTON: Thank you.

Mr MacSporran: Let me confirm that for you. Yes, it gives us jurisdiction to investigate that sort of behaviour. PIDs made to the CCC need to be properly assessed and, where appropriate, properly investigated and dealt with. That is section 28 of the PID Act.

Dr HORTON: Yes.

Mr MacSporran: And to ensure appropriate action is taken in relation to any wrongdoing that is the subject of a PID made to us. That is section 28(1)(c) of the PID Act. Then, of course, you have our own provisions in our act.

Dr HORTON: We will come to your provisions in a minute. Can I just focus for the minute on the way in which the protection or help for a public interest discloser might be done in the context of court proceedings, because you accept that, in relation to the QIRC, there was a private civil litigation to which Ms Kelsey was the applicant but in which the CCC never became a party.

Mr MacSporran: That is so.

Dr HORTON: Section 48(2) and section 49(2) give the CCC the ability to apply for an injunction about a reprisal; correct?

Mr MacSporran: Yes.

Dr HORTON: A person must be a public officer and the person must give their consent to you doing that; is that correct?

Mr MacSporran: That is so.

Dr HORTON: It has to involve a matter that the CCC can investigate.

Mr MacSporran: That is so.

Dr HORTON: The suggestion I want to put to you is: when it comes to civil proceedings, it is very clear in sections 48(2) and 49(2) of the Public Interest Disclosure Act what the role of the CCC is and ought be.

Mr MacSporran: It gives the CCC the option of seeking an injunction in the terms set out in those sections, yes.

Dr HORTON: Yes, or not.

Mr MacSporran: You can apply for it or you might choose not to apply for it. That, of course, would not affect the CCC's jurisdiction more generally to protect PIDs as part of its overarching corruption jurisdiction in many respects—provisions which I can come to or you are about to come to, I think you said before.

Dr HORTON: Yes, we will come to those. For the minute I just want to focus on these sections. Protecting PIDs in the context of pending civil litigation is the specific topic of my questioning at the moment. The Public Interest Disclosure Act tells you, the CCC, there are ways in which you can be involved in civil proceedings about reprisals, and that is to seek an injunction with the consent of the employee.

Mr MacSporran: It is a specific provision allowing that to happen, but it does not preclude, as I said before, other jurisdictional aspects to the CCC's work—

Dr HORTON: I understand.

Mr MacSporran:—that can be taken and were taken.

Dr HORTON: What I want to suggest to you is: the specific provisions and the conditions which attach to them do in fact preclude you seeking to, as you put it, protect PIDs in civil litigation unless it is by the means in 49(2) and 48(2).

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

Dr HORTON: That is, the mention here of the specific means by which one does something does not confer itself a more general power or function to do something in connection with civil litigation.

Mr MacSporran: I reject that.

Dr HORTON: I want to talk generally about the principles. Let's go to the CC Act first, because you want to mention that importantly.

Mr MacSporran: Certainly.

Dr HORTON: You have referred I think already, on the first occasion, to the provisions that you thought bear upon the CCC having, I think you put it as, jurisdiction to protect PIDs. I think that is the public interest section and so forth early on in the act. Are there other particular provisions you say have a material bearing on this question? Could you limit it for the minute to the civil litigation, because that is the focus of my questions because it is in context of the QIRC proceeding and the CCC's involvement in it which I want to explore.

Mr MacSporran: Section 331 of the act deals with powers we have to continue investigations and hearings while proceedings are pending in other courts or tribunals. It clarifies, in effect, the fact that something else is in another court or tribunal does not prevent the CCC investigating and taking action it is otherwise obliged to take in its jurisdiction.

Dr HORTON: Yes, section 331.

Mr MacSporran: Section 334 provides for an injunction proceedings for conduct in contravention of section 212, which is, in effect, similar to the reprisal provisions I think in the PID Act. Just let me check that. Offence of victimisation under section 212 is similar to the reprisal matters detailed in the PID Act. Section 344 allows us to apply to the Supreme Court for an injunction in relation to that sort of behaviour. Section 212 itself is an offence provision. Then section 174 empowers us to do all things necessary or convenient to be done for or in connection with or reasonably incidental to the performance of our functions. The jurisdiction is pretty wide, in other words, I think. That is my interpretation of it.

CHAIR: What was that last provision you referred to?

Mr MacSporran: Section 174, Chair.

Dr HORTON: None of those provisions, I want to suggest to you, are ones which contemplate expressly, for the moment, doing in relation to private civil litigation what was done here; namely, volunteering documents in response to a subpoena and putting those documents into the hands of the council for the or a purpose of rendering them disclosable in civil proceedings.

Mr MacSporran: I do not accept that.

Dr HORTON: And none of them expressly state or give the commission the power to seek or advocate for funding for a private litigant in civil litigation to which the CCC is not a party.

Mr MacSporran: There is no express provision along those lines, no, and nor do I expect there to be.

Dr HORTON: And none is to be implied.

Mr MacSporran: Well, they are not the only provisions either. The other jurisdictional provisions I will come to if you wish me to. They are, firstly, section 33(1)(b), which is our corruption function, including—

... to ensure a complaint about ... corruption is dealt with in an appropriate way ... and investigating whether corrupt conduct ... may have happened, may be happening—

That is sections 33(2) and 46A. Principles for performing the functions include—

... an overriding responsibility to promote public confidence ... if corruption does happen within a unit of public administration, in the way it is dealt with—

That is section 34(d). And—

... to promote public confidence ... if corruption does happen within a unit of public administration, in the way it is dealt with—

That is section 34(d). We must have—

... primary regard to the ... capacity of ... a unit of public administration to effectively deal with the corruption—

and—

... any likely increase in public confidence in having the corruption dealt with by the commission—

That is 34(d) again. And here of course, with Ms Kelsey's case particularly, given that the public official, Ms Kelsey, would usually refer the complaint to the CEO to be dealt with, we had to consider the ability of the UPA to deal with it in those circumstances, which would involve a referral to the mayor, and that could not be done for obvious reasons. All of those jurisdictional matters were wide enough, in my view, to enable us to do what we did without directly seeking an injunction in the QIRC or the Supreme Court.

Dr HORTON: Probably better, is it, to refer to them as powers rather than jurisdiction? Do you claim jurisdiction, or is it more really a power that you are talking about?

Mr MacSporran: It is a power that scopes our jurisdiction.

Dr HORTON: I see. In any event, you say that the provisions you have just referred to give the CCC the power to seek funding for public interest disclosers in private litigation to which the CCC is not a party?

Mr MacSporran: It seems to me that is a necessary part of the jurisdiction or powers that I am referring to here. The way we do our work—

Dr HORTON: Really, my questions are not about what would seem to you to be necessary. I am interested in what the public command in the statute is. I get that sometimes that can be implied or implicit or evinced by intention, but for a minute I am really trying to be rigorous about this because I am going to suggest to you, as was opened, that what the CCC did here was enter into the fray in an impermissible way.

Mr MacSporran: I do not accept that at all. I do not accept that at all.

Dr HORTON: I understand, and I am striving to give you an opportunity to say what are the provisions which explain that the extent to which the CCC was involved was in fact authorised by your statute.

Mr MacSporran: There are no provisions which set out exactly, as you said before, that the CCC can if necessary apply for funding through the government for a private litigant in the QIRC who happens to be a whistleblower, but that sort of assistance would seem to me to be clearly open on the jurisdictional powers that we had that I have referred to.

Dr HORTON: Well, I have probably put it already, but I suggest to you: what the statutory regime tells—commands—is that, where the CCC is to involve itself in civil proceedings concerning a PID, that is to be done through the express manner of section 48(2) and section 49(2) of the Public Interest Disclosure Act.

Mr MacSporran: If your question is directed to it being done or can be done that way and only that way, I do not accept that.

Dr HORTON: It is. That the express treatment of the topic, for reasons I am going to come to, is to be regarded as the exhaustive treatment of that topic—namely, the CCC's involvement in civil proceedings about a public interest discloser's alleged reprisal.

Mr MacSporran: I do not accept that.

Dr HORTON: Thank you. Can I go to a wider principle. To the extent that I am taking you beyond knowledge, please stop me and say it is beyond your knowledge. I am going to go to a general principle about civil litigation and units of public administration. You have mentioned units of public administration as ones which—a term used by the act, not a very glamorous description of public institutions, but let us run with it for the moment because it is in the act. The council here was a unit of public administration; correct?

Mr MacSporran: Yes.

Dr HORTON: And did you form the view that so too was the QIRC for relevant purposes?

Mr MacSporran: It was, yes, in my view.

Dr HORTON: So we have seen in the documents that there was a belief held by many in the CCC that these documents ought be before the QIRC so that it would have all the evidence about the relevant matters.

Mr MacSporran: I have seen views expressed such as that in some material that I have reviewed.

Dr HORTON: Are they views you held?

Mr MacSporran: No, I did not enter that debate personally. They were operational matters that were being dealt with by those involved in the operation.

Dr HORTON: Well, it is important, I want to suggest to you, if you are going to help Ms Kelsey in the QIRC proceeding in whatever way is legitimate, because this might be one boundary of what is legitimate.

Mr MacSporran: I do not understand what you say about it being a 'boundary of what is legitimate', Mr Horton.

Dr HORTON: This is the boundary. The practice of the civil courts is well established; correct?

Mr MacSporran: Correct.

Dr HORTON: Ordinarily in civil litigation it is the parties to that litigation who frame, by reference to the law, what it is the issues which are to be dealt with by the court; correct?

Mr MacSporran: Yes.

Dr HORTON: And so too the material which comes before the court?

Mr MacSporran: Yes.

Dr HORTON: Those parties disclose and they have the ability, again, subject to the rules of court and the boundaries of the law, to seek disclosure from people who are not parties to the litigation; correct?

Mr MacSporran: That is so, and parties who are the subject of notices to produce or subpoenas respond in the way they choose to and then the court or tribunal decides those issues—

Dr HORTON: Yes, well—

Mr MacSporran:—between the parties.

Dr HORTON: Ordinarily, it is not choosing to respond to the subpoena. We would normally say the third party or notice or notice of non-party disclosure issues, and people act in obedience to them so far as they are properly framed.

Mr MacSporran: Yes.

Dr HORTON: Here, as you seem to suggest, the CCC did choose to respond to the notice of attendance to produce, despite not being lawfully obliged to do so.

Mr MacSporran: That is so, but of course chose to respond by producing the documents to the registrar, not the parties.

Dr HORTON: Not in dispute, Mr MacSporran.

Mr MacSporran: Thank you. It is a significant distinction, I think.

Dr HORTON: Well, yes, there is a distinction, and we will come to this when we come to 3 October and 19 November.

Mr MacSporran: Yes, certainly.

Dr HORTON: It is not usual, I want to suggest to you, for a person who is not party to civil litigation to agitate the state to fund their private legal expenses in that litigation.

Mr MacSporran: That is a fair comment, I think.

Dr HORTON: It is not usual for public bodies to respond to notices of attendance to produce and like processes, despite not being lawfully obliged to do so.

Mr MacSporran: I do not necessarily agree with that.

Dr HORTON: And it is not usual for public bodies to act for a purpose of putting documents into the hands of one of the parties to civil litigation for a purpose being that they would be rendered disclosable in that civil litigation.

Mr MacSporran: I think what you are talking about is completely out of context, with respect.

Dr HORTON: What context do I need to understand in order to put myself back in it, or what context does the committee need to understand?

Mr MacSporran: The context is that we had decided because Ms Kelsey was a PID, and the obligations under our act and the PID Act to not engage, as we have said, with her in terms of seeking the injunction but to help her as much as we could within the bounds of propriety, fairness and the other considerations that we spoke about last time, I think. If we were subject to a notice to produce, we would consider that on its merits, including whether we should respond at all. Having decided to respond, there was no subterfuge about the way we responded. It went to the registrar with notice to the parties. It was a matter entirely for the QIRC in control of those proceedings to make relevant determinations about the use, if any, to be made of those documents and materials.

Dr HORTON: Mr MacSporran, that context is all firmly understood by me and, respectfully I suggest, it is very well understood by the committee. You have said it now. You said it before. It appears obviously from the documents that are before the committee in volumes 1 and 2. Can you please not be concerned that the context you have just referred to is something that I am not aware of? I am firmly aware of every fact that you just mentioned.

Mr MacSporran: I am pleased to hear it, Mr Horton. I am gratified to hear it. To me, it is a significantly relevant factor in the assessment of all of this.

Dr HORTON: What I cavil with is this with you, so it is clear: those bases upon which you acted I am suggesting, for the reasons I have just taken you through—and it is the reason I took you through it—is that it exceeds what the statutory scheme lawfully permits the CCC to do in connection with private litigation.

Mr MacSporran: I do not accept that at all.

Dr HORTON: And in fact one cannot find, and one would expect to find, in the statutory scheme, if that were what parliament intended you doing the very sorts of things that were done in this case?

Mr MacSporran: I am sorry, are you asking me to comment on that?

Dr HORTON: Mm.

Mr MacSporran: Again, I do not accept your proposition.

Dr HORTON: And, specifically, seeking funding from the state for a person in conducting civil litigation to which you were not a party. Do you want to comment on that?

Mr MacSporran: Again, I do not accept it, for the reasons I have said.

Dr HORTON: Second, responding to a notice of attendance to produce which you were not lawfully obliged to do?

Mr MacSporran: I had a discretion to do, which we exercised, so I do not accept your proposition again.

Dr HORTON: Third, to the extent this was a purpose—and I will come to this in detail—delivering documents to council on 3 October 2018 and/or on 19 November 2018 for a purpose of rendering the documents delivered susceptible to disclosure in private civil litigation to which Ms Kelsey was a party.

Mr MacSporran: Well, there would be absolutely nothing wrong with 'a' purpose being collateral to 'the' purpose which, on my assessment of the material, was evident on 3 October and 19 November.

Dr HORTON: Then, finally, in the CCC pressing the council on 12 February 2019 to disclose the documents that had been delivered to the council in civil litigation in circumstances where the litigant herself no longer pressed for that.

Mr MacSporran: That was a side issue and it involved principles of model litigant in February 2019, it seems to me, from what I have seen in the material.

Dr HORTON: Explain to me: how does model litigant—I do not understand that. You are being the model litigant?

Mr MacSporran: No, the council.

Dr HORTON: It is not about you being the model litigant?

Mr MacSporran: No.

Dr HORTON: You want to ensure that council is being the model litigant?

Mr MacSporran: As I appreciate—you might have to take me to the documents—I thought there was some mention in the documentation as at that date about obligations of someone being a model litigant.

Dr HORTON: I see. And that is something which you also say the CCC has a statutory basis to interest itself in?

Mr MacSporran: No, I think it arose just in the correspondence between the parties—when I say 'parties', the council and the CCC—around this issue of the dissemination in February 2019. I might be wrong about that. You can take me to the documents if we want to go back to that, but that is my appreciation of—

Dr HORTON: Let's just focus on the evidence for a minute, not the document. The document says it or it does not. Are you suggesting the CCC had a legitimate statutory basis, if it did so, for suggesting that the council make disclosure on or about 12 February 2019 because it is your ability to require units of public administration to act as model litigants?

Mr MacSporran: No, I did not say that at all, Mr Horton. What I think I said was that that topic, of whether the council was complying with its obligations as a model litigant, had become an issue in February 2019 in the correspondence. I might be wrong about that. We might need to go to the correspondence—

Dr HORTON: No, we do not for a minute. Why would that be of concern to the CCC?

Mr MacSporran: I do not know whether it is right to say it is a concern. It arose in the context of the delivery of these documents as an issue.

Dr HORTON: Why is it the CCC's business? Put it that way. I am trying to be as neutral as possible.

Mr MacSporran: I suppose the CCC's business is to ensure that there is public confidence in the way councils retain and manage their records and comply with their obligations as a model litigant if they are involved in litigation.

Dr HORTON: No, we are now talking about disclosure in the QIRC. I thought you had accepted that that, for the present purpose, is separate from whether these things are public records, okay?

Mr MacSporran: Yes.

Dr HORTON: Because if these things are public records, the consequence is they should be archived properly and kept by council; is that right?

Mr MacSporran: Yes.

Dr HORTON: Whether or not they are public records really, for present purposes, is not about whether they should be disclosed. That is sort of a separate question, yes?

Mr MacSporran: It is a foundation question about whether they are held by the council as part of their public records. If they are, they have an obligation, as I understand it, to disclose if they are party to a proceeding which requires disclosure.

Dr HORTON: Yes, but that is a bit oversimplistic, isn't it? Not everything that a party holds is disclosable, do you accept, in civil litigation?

Mr MacSporran: Well, I assume so.

Dr HORTON: And—tell me if I am pushing the boundaries of knowledge—

Mr MacSporran: Well, you are.

Dr HORTON: Okay.

Mr MacSporran: Thank you.

Dr HORTON: Good. I will push once more to check, but the QIRC—you took that opportunity too readily Mr MacSporran!—had ruled on 24 August 2018—

Mr MacSporran: QC Black's decision, yes.

Dr HORTON: Yes, at least so far as they were about the documents which had been produced in answer to the subpoena—

Mr MacSporran: In July, yes.

Dr HORTON:—were in effect not to be before the QIRC; correct?

Mr MacSporran: Those documents, yes.

Dr HORTON: So far as council held documents now—later—which were covered by the ruling—

Mr MacSporran: Well, Mr Horton, were they covered by the ruling? That is the issue, isn't it?

Dr HORTON: Let's talk about that. Do you know what was produced specifically to the council in answer to the notice of attendance to produce?

Mr MacSporran: This is the July 2018 notice we are talking about?

Dr HORTON: Yes.

Mr MacSporran: I understand that the documents produced there were not the same documents that were produced on 3 October to the council or on 19 November, if that is the date, to council on that occasion. There may have been some overlap, but it was not the same package of documents which I think you have been taking it to be, as I understand the evidence here in earlier proceedings.

Dr HORTON: Yes, that is not correct.

Mr MacSporran: I am sorry if I have got it wrong.

Dr HORTON: I have put to witnesses that it was (a) not identical—

Mr MacSporran: I am sorry?

Dr HORTON: I have told witnesses that they were not identical—

Mr MacSporran: Not identical?

Dr HORTON: Not identical.

Mr MacSporran: I am sorry, I was not aware of that.

Dr HORTON: Understood. That what was produced to the QIRC in response to the notice of attendance to produce was not identical with what was delivered to council on 3 October and 19 November 2018.

Mr MacSporran: I see. Thank you.

Dr HORTON: But I think it is fair to say—and you should correct me if you think I am wrong—

Mr MacSporran: I am sorry, I was just going simply to say—not wanting to jump in and correct you prematurely—that my knowledge of this is not firsthand knowledge. I was not involved at the time. I am looking at it—with some difficulty, I might have to concede—trying to put together the pieces from looking at your bundles, many more documents that come from the material we have disclosed and gathered for disclosure and of course my knowledge generally about the matter, so I do not pretend for a moment my knowledge of these things is perfect.

Dr HORTON: Understood. You can proceed on the basis of that qualification, but the deliveries on 3 October and 19 November I have also put to witnesses on the basis of being substantially the same for this reason: for the purpose of the ruling, I want to suggest to you, the substance is no different. That is, they were documents covered by the ruling?

Mr MacSporran: No. You see, I think that is the issue.

Dr HORTON: Okay. Tell me why I am wrong.

Mr MacSporran: I might be wrong, but my assessment of it is this in brief summary: the material delivered on 3 October particularly was WhatsApp material. It was being delivered by Detective Sergeant Francis, who turned out to be the arresting officer—the main investigator in this case—to have the council acting CEO, Mr Trinca, determine whether those records were held in council's record-keeping system. He did that—

Dr HORTON: I understand.

Mr MacSporran: Can I please continue and finish my answer. He did that so that as part of the corruption investigation—

Dr HORTON: I want to come to 3 October as a particular topic. Is it possible for the moment, because I want to give the committee a chance after each segment to ask questions? For the minute we are still on the extent to which it was appropriate to intervene generally in pursuit of your comment about assisting Ms Kelsey. Can you just limit for the minute your answers to what the difference was between the 3 October delivery documents and what you say was produced in answer to the QIRC subpoena?

Mr MacSporran: I cannot give you chapter and verse about that, but I know that the 3 October documents were in a category that was not inadmissible material because it had been coercively obtained, if that is a shorthand way of referring to it.

Dr HORTON: Could I take you very briefly—

Mr MacSporran: I just want to illustrate that point by saying this: the WhatsApp records had been recovered by the CCC search warrant to obtain the phones and then the forensic tools internally had downloaded the WhatsApp material from the phone.

Dr HORTON: Yes.

Mr MacSporran: The question then became the probative value and relevance to the corruption investigation being undertaken by Francis and that in turn required an assessment by the council—and it happened to be acting CEO Silvio Trinca on 3 October—

Dr HORTON: I understand that. We are going to come to 3 October. We are going to come to the transcript. We are going to come to the reasons for delivery or not, but can I focus you for a minute on what was the subject of the QIRC ruling as distinct from what was delivered on 3 October? It is a point of difference and debate at the moment. I want to be very clear so that when we proceed this issue is very clear. At volume 1, page 223 you will see there is a schedule of material that was produced in response to the QIRC.

Mr MacSporran: 223?

Dr HORTON: 223. This is attached to a letter of 5 July 2018 from your organisation and this is a record of what was in fact produced in answer to the notice of attendance to produce. You will see item 1 is 'WhatsApp group communications' and 2 is 'WhatsApp group communications ...'. See that?

Mr MacSporran: Yes, they relate to various nominated councillors—

Dr HORTON: They do.

Mr MacSporran:—and others.

Dr HORTON: They do. And there is an extraction report in item 3 relating to the above noted WhatsApp group, all right, and there are many other documents there as well.

Mr MacSporran: I am sorry, Mr Horton. I missed your—

Dr HORTON: No, that is all right. If you need to—

Mr MacSporran: I am all right for the moment. I am just looking at your schedule.

Dr HORTON: Thank you. In short summary, the documents produced in answer to the notice of attendance to produce to the QIRC included the WhatsApp material is the point?

Mr MacSporran: It did, yes.

Dr HORTON: Yes. I need to understand—you seem to want to make a point that there is something different about the delivery on 3 October which was not in the material produced to the QIRC, and I am confused on that point.

Mr MacSporran: I think the answer—again, I may be wrong, but my appreciation of the issue is this: the WhatsApp material had been compulsorily obtained by search warrant, but it is actually evidence recovered. The question then becomes the probative value of the destruction of that evidence in the corruption investigation. So it is not like coercively obtained evidence in hearings in the CCC jurisdiction, for instance. So when the 3 October matter material is sent back to the council, it is to obtain a statement from the acting CEO, Silvio Trinca, to say, 'This material, which has been recovered by the CCC, is not in the council records. Therefore, it's been destroyed, not kept as a record by the councillors who are being investigated'—

Dr HORTON: Understood.

Mr MacSporran: '—and it is probative to the corrupt conduct investigation.'

Dr HORTON: Yes. I understand all that. I understand that is the assertion. I understand that that is what DS Francis says about it, and we have been in evidence with DS Francis, as you have seen, on this topic. But I want to go back for a minute first because there seems to be a difference of view that I as counsel assisting want to get to the bottom of, and that is this: what was delivered to the council on 3 October was material which had been produced also, along with other things, in answer to the notice of attendance to produce issued by the QIRC.

Mr MacSporran: That may be right, if I compare the schedule for July with what is known to have gone back. What went back was a subset perhaps is the better way of putting it. I do not know—

Dr HORTON: Precisely.

Mr MacSporran: I have not done the complete comparison.

Dr HORTON: We are at one: not identical but, I am going to suggest for present purposes, substantially the same for this reason—that is, it was before QCAT and was covered by the ruling. We will come to it—

Mr MacSporran: The QIRC, I think you meant.

Dr HORTON: I am sorry; QIRC.

Mr MacSporran: I knew what you meant, I think.

Dr HORTON: Good. I think we are at one on this, and I am sorry if the way I have put it the witness has not been totally clear. I accept it is not identical to what was before QIRC but I do not for the moment understand the material to have been delivered to the council on 3 October 2018 to be outside the scope of what was produced to the QIRC—I got that right—in response to the notice of attendance to produce?

Mr MacSporran: Yes, that may be right.

Dr HORTON: Great! Thank you. So when we go to the QIRC ruling about the material that was before it—do you remember, on 24 August 2018, and, Mr MacSporran, if I am wrong about what I said, please correct me later in your evidence.

Mr MacSporran: Yes.

Dr HORTON: When we go to the QIRC ruling about this on 24 August 2018, do you accept the QIRC's ruling on the material which was sought, if you like, in the notice of attendance to produce which the WhatsApp was part of?

Mr MacSporran: I am sorry; I just missed the question. If you could repeat it for me, please?

Dr HORTON: I am sorry. It was a bit of a complicated question too.

Mr MacSporran: Yes.

Dr HORTON: The QIRC ruled on 24 August 2018; correct?

Mr MacSporran: Yes.

Dr HORTON: And it ruled on the notice which had caught the documents which I have just taken you to at pages 223 and 224 of volume 1?

Mr MacSporran: Yes.

Dr HORTON: So the ruling of Mr Black on that date is a ruling which includes all of the documents on 223 and 224?

Mr MacSporran: Yes.

Dr HORTON: So I am trying to understand for a minute what your point of difference is in suggesting to me, if you are, that the 3 October 2018 documents that were delivered are somehow separate from what Mr Black ruled on 24 August 2018.

Mr MacSporran: Well, I think the point to be made is that Commissioner Black's ruling on 24 August did not really address the difference between the categories of documents, how they had been obtained and what they were being used for, I suppose, in our investigation. As I understand it, they were dealt with on a single basis of being all—I do not know if the word is—compulsorily obtained so they were completely inadmissible without further analysis. That is the ruling given. Whilst it did not bind the CCC, it is certainly not a matter where we would have sought to go out of our way or do anything to subvert the ruling. But the material that was delivered back to council on 3 October after this ruling, albeit containing a subset of that material, was, in our view, as I have seen the material, able to be done without a dissemination authority. It was properly done for the purpose articulated in the material—that is, to ascertain whether the council records held copies of that material—and was relevant to the wider corruption investigation being conducted by the CCC and in particular Sergeant Francis.

Dr HORTON: You say the ruling did not bind the CCC?

Mr MacSporran: We were not a party; that is just a fact.

Dr HORTON: Yes, but it is a ruling by a court of record; do you accept that?

Mr MacSporran: Absolutely. I am not saying that because we were not a party we could subvert the ruling. I am not saying that at all.

Dr HORTON: No, no; you said 'did not bind the CCC'. When I suggest that I am completely continuing on and I am saying to you it absolutely binds the CCC.

Mr MacSporran: All right.

Dr HORTON: Okay?

Mr MacSporran: I do not agree with that.

Dr HORTON: Because it is a court of record; do you accept that?

Mr MacSporran: Yes.

Dr HORTON: Second, there was no challenge to the ruling at all by any party who had the standing to do so.

Mr MacSporran: Yes.

Dr HORTON: And, third, I want to suggest to you, it is a completely orthodox, proper application of the law.

Mr MacSporran: Well, my view is we were not bound by it, but that is largely irrelevant because I am not saying we could, because it is not bound, subvert it.

Dr HORTON: I do not understand that. It does not bind you, but you cannot subvert it?

Mr MacSporran: It does not bind us. We are not a party.

Dr HORTON: Yes.

Mr MacSporran: But there was never any intention to subvert the ruling.

Dr HORTON: I see. So it does not bind you because you are not a party but you do not challenge the correctness of their ruling?

Mr MacSporran: Well, we cannot challenge; we are not a party. We had no ability to make submissions about how the documents delivered to the commission should be treated. We are simply answering a notice to produce.

Dr HORTON: Yes, it is just what it is: it is an authoritative ruling of law by a commissioner of the jurisdiction which has the power to rule on these matters.

Mr MacSporran: That is so.

Dr HORTON: Yes. So paragraph 155—I do not know if you have read it before; it does not matter for the moment. Did you read the ruling at or about the time it was handed down?

Mr MacSporran: I did not, no.

Dr HORTON: I see. That would make it rather hard, I want to suggest to you, to know whether what you were then doing was in conformity with what the commissioner had decided?

Mr MacSporran: They were operational matters, Mr Horton. I had nothing to do with them.

Dr HORTON: You do not have anything to do with operational matters?

Mr MacSporran: Occasionally, as required, I do, but I do not have a day-to-day hands-on approach, nor could I. I am the chair of the organisation; I am not running an investigation myself.

Dr HORTON: The ruling of a commissioner of this kind is not a day-to-day matter, I want to suggest to you.

Mr MacSporran: Well, it is an operational matter so far as it affected the course of the investigation. That is what I am saying.

Dr HORTON: It is a landmark, in fact, I want to suggest to you, in the course of this matter.

Mr MacSporran: Nothing—we had no direct concern with the QIRC proceedings other than to monitor them, as was done by Mr Hutchings, for the purpose of, where possible, protecting the PID.

Dr HORTON: Okay. I understand you say you had no direct concern, but you had sought funding for Ms Kelsey—

Mr MacSporran: Yes.

Dr HORTON:—in connection with these with which you no direct concern; correct?

Mr MacSporran: No, I said the only connection we had was to monitor the proceedings to fulfil our obligations that I determined were appropriate to protect a PID without taking injunctive action for injunctive relief.

Dr HORTON: Mr MacSporran, you cannot say that all the CCC was here doing was monitoring the proceeding in the QIRC.

Mr MacSporran: I did not say that. I said monitoring so that we could fulfil our statutory obligations and obligations I decided were appropriate.

Dr HORTON: Yes, and the fulfilment here took the effect of including seeking funding for Ms Kelsey for the action?

Mr MacSporran: Yes.

Dr HORTON: It included answering a subpoena which you were not lawfully obliged to but, as you point out, you had the discretion not to.

Mr MacSporran: Yes.

Dr HORTON: And it included—I will come to this—putting documents in the hands of the council for a purpose.

Mr MacSporran: A collateral purpose, Mr Horton.

Dr HORTON: Yes, a collateral purpose of putting into the hands of the council so they would be disclosable in the QIRC.

Mr MacSporran: The purpose was collateral.

Dr HORTON: Yes, and involved writing to the council on 12 February 2019 about its disclosure obligations and it being a model litigant maybe in the QIRC proceeding after Ms Kelsey had abandoned her application for disclosure in that proceeding.

Mr MacSporran: Well, what is the question?

Dr HORTON: That is really direct involvement in civil litigation, Mr MacSporran, not just monitoring it.

Mr MacSporran: Well, again you are using the word 'monitoring' out of context. I have explained that before when I answered you before.

Dr HORTON: You have.

Mr MacSporran: And it is completely consistent—the conduct that you have summarised globally is completely consistent with my understanding of what I intended to achieve by way of not becoming directly involved by taking injunctive action under the PID Act or our act but to fulfil what I considered to be the CCC's statutory obligations to do what we could to protect a PID.

Dr HORTON: Yes. Now, you want to make a point, as I understand it, that the ruling in the QIRC of 24 August 2018 for some reason did not cover or did not close off the documents that were delivered on 3 October for the purposes for which they were delivered; is that right?

Mr MacSporran: I think a better way of putting it, Mr Horton, is to say that the way the QIRC considered the availability and admissibility of the documents in respect of the July notice to produce was not something with which we agreed as being correct but in any event had no other impact upon the way the investigation proceeded from that point forward.

CHAIR: Could you say that again, please, Mr MacSporran? You did not think what was correct?

Mr MacSporran: We did not think the ruling made by Commissioner Black on 24 August, if that was the date—I think it is the date we are referring to—was a correct assessment of the position so far as the availability of those documents, because they were—I am summarising here; I might need to take this on notice to get the details correct for you, but, as I understand it, the way those documents were assessed was on a global basis. There was no categorisation of different types of documents et cetera and they were ruled in a blanket way to be all inadmissible. We did not take issue with that. We believed it was an incorrect assessment of the position. Whilst not a party and not strictly bound by the ruling, we nevertheless accepted it and moved on.

Dr HORTON: You did not read the ruling at the time, you said. When did you first read the ruling of 24 August 2018?

Mr MacSporran: I cannot recall specifically, Mr Horton, but it would have been sometime after.

Dr HORTON: Have you read it?

Mr MacSporran: Yes, I have read it. I just cannot tell you when it was. It might have—

Dr HORTON: Sorry, I did not mean to interrupt you. That was just because I had a thought. Sorry.

Mr MacSporran: No, I just cannot tell you when I had, in fact, read it.

Dr HORTON: Thank you. This is where we, I think, embarked on a detour a moment ago and that is I was suggesting to you really, with the involvement you had in the QIRC litigation, you would have needed to have read this ruling at the time it was given so that you knew what were the proper boundaries of the CCC's next step in assisting Ms Kelsey.

Mr MacSporran: No, I do not accept that. I had people below me, not just the investigators. I had Mr Alsbury who was, in effect, in charge of the investigation from a director of the corruption portfolio point of view. I was comfortable I was in safe hands; the matter was in safe hands. Mr Hutchings was dealing with the PID side of it. Mr Alsbury and the investigators were dealing with the operational side of it for the investigation and I was managing, if you like, at a higher level, both sides of that equation.

Dr HORTON: Mr Hutchings never read the ruling.

Mr MacSporran: All right.

Dr HORTON: Were you aware of that?

Mr MacSporran: I do not think I was, no.

Dr HORTON: No. It would be a problem, I want to suggest to you, as I put to him, that the director of legal services had not read the ruling which touched and concerned a matter in which he was closely involved.

Mr MacSporran: Well, I would have expected him to have read the ruling.

Dr HORTON: Absolutely. The point of it is this: if you are going to do whatever you legitimately can to assist someone, the question of 'legitimately' is framed by reference to matters which include, really, materially, what a judge rules about something that the CCC has done: here respond to the notice of attendance to produce. Do you want me to put that again?

Mr MacSporran: If you would not mind, yes. I was distracted.

Dr HORTON: No trouble. If you have formed a view and given the instruction that people are to do whatever they legitimately can to help Ms Kelsey, then to know what are the boundaries of what is legitimate includes really, importantly, a ruling of a judge in response to something the CCC did: here answering the notice of attendance to produce.

Mr MacSporran: I think that is a reasonable proposition.

Dr HORTON: Unless one had carefully read that decision, one would not know what the boundaries of 'legitimately' were going forward in the matter?

Mr MacSporran: Well, I think the other side of the equation is that that issue would also be covered by what the investigation activity resulted in. You have two parts of this: one is to manage, as Mr Hutchings was, protecting the PID as far as was possible without being directly involved in the litigation as such—when I say directly involved, taking the injunctive relief course—but the other more important part of this was how the investigation was proceeding with all the checks and balances concerning dissemination of documents, propriety of that and so on.

Dr HORTON: Understood.

Mr MacSporran: I was very comfortable because that was the main focus of my interest, the corrupt conduct investigation—that that was being managed entirely appropriately.

Dr HORTON: We will come to those in a moment, but just focusing on the ruling again—and I might ask the chair then if it is an appropriate time for questions or a break—this question of the ruling you say was dealt with, in effect, as a generic category rather than looking at individual classes of documents; is that correct?

Mr MacSporran: That is my impression, I must say, and I cannot be more specific than that.

Dr HORTON: You do not suggest the WhatsApp material was other than obtained under compulsion, do you?

Mr MacSporran: No, it was obtained by warrant.

Dr HORTON: So the ruling of Mr Black is about the general legal principles and common law principles enunciated in Justice Atkinson's decision in *Flori* and in *R v Leach* about materials obtained under compulsion; yes?

Mr MacSporran: *Flori* is a case—this is mentioned in the material. One of the dissemination authorities deals with the distinction between the *Flori* decision and what it means.

Dr HORTON: Are you trying to distinguish *Flori*'s application to the decision that the commissioner gave?

Mr MacSporran: It is difficult for me to say. What I am saying is that *Flori*, as I understand, is an authority for the proposition that if the powers that are exercised are given for a particular purpose and a particular purpose only, once those documents are taken into possession in a compulsory process, say a search warrant—and I think in *Flori*'s case it was a PPRA search warrant—they cannot be used for a different purpose.

Dr HORTON: And the commissioner also ruled—... dissemination of material obtained under compulsion—

not referencing *Flori* for the minute—

for use by the applicant in the substantive proceedings is not consistent with the performance of the CCC's functions;

That is ruling 155(f). Mr MacSporran, I just cannot understand for the minute how one could read this decision, know what was produced in response to the notice, look at the words 'obtained under compulsion' and not think the WhatsApp records were not covered and dealt with by this ruling if one accepted that one had to abide by this ruling, even if one did not personally agree with it.

Mr MacSporran: I cannot take my explanation any further, Mr Horton. I might need to have a further think about it and come back to you. I cannot really say much more about it other than what I have said.

Dr HORTON: Thank you. Chair, is that a convenient time for either questions or a break?

CHAIR: Mr MacSporran and Mr Horton, we might take a break if that suits. It being 11.31, we will resume hearings at 11.45.

Proceedings suspended from 11.31 am to 11.51 am.

CHAIR: We will resume our hearings now. Mr Horton, did you want to move on to another topic?

Dr HORTON: Yes, the 3 October document delivery is the next subtopic. Mr MacSporran, you have mentioned and I have mentioned the delivery to the council of the documents on 3 October. You and I dealt with the topic on your first occasion here on 17 August, at *Hansard* page 30, and then the retrieval of those documents, at *Hansard* page 32. The relevant reference is really point 6 on page 30 and the first half of page 32, on 17 August.

Mr MacSporran: Thank you.

Dr HORTON: Just drawing your attention to the middle of page 30, I say—

Now, on 3 October more or less the same documents which were given in response to the notice to produce were delivered ...

We know that it is a subset of the documents that were given to the QIRC; is that correct?

Mr MacSporran: I think so.

Dr HORTON: Anyway, your present understanding is that. I asked you what happened. You said, at about point 6 or 7—

I simply cannot, frankly, work out what happened and why.

Mr MacSporran: Yes.

Dr HORTON: Then you go on to say—

I cannot make head nor tail of it.

Mr MacSporran: That was my state of knowledge at the time, yes.

Dr HORTON: Yes, I understand. Then at page 32 you say, in effect, the same things with respect to the retrieval, I think?

Mr MacSporran: Yes.

Dr HORTON: Then you say at 5—

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

We do not have many on 3 October, but I think you have seen them in volume 1, largely; is that correct?

Mr MacSporran: I would have to be reminded about where in volume 1, but certainly the transcript references are what I said last time, yes, as it appears.

Dr HORTON: Can you work on this assumption at the moment, which I think is a fair characterisation of the documentary evidence: the main record of the delivery and the reasons for it is the 3 October transcript of Detective Sergeant Francis himself delivering those documents to the council, to Mr Trinca. I do not need you to have read it in detail, but are you familiar with that transcript?

Mr MacSporran: Generally speaking, I am familiar with what he says there and the references he makes to the tape-recorded handover with Mr Trinca and so forth, yes.

Dr HORTON: Detective Sergeant Francis said, in effect, the purpose in his mind for the delivery was twofold: one, to seek a statement from Mr Trinca about the extent to which these things were, in fact, public records, that is, council business; and, two, because—I am paraphrasing now—the natural home or the proper home for these documents was, because they may have been public records, the council itself.

Mr MacSporran: Well, they were believed to be—or there was a purpose to have Mr Trinca make that assessment as the proper office of the Logan City Council, as I understand it.

Dr HORTON: Yes. The retrieval which occurs on 8 or 9 November—there are no reasons stated, I think it is fair to say, in the volume 1 documents but that Detective Sergeant Francis said he had formed the view that he was not going to get the statement from Mr Trinca that he had wanted.

Mr MacSporran: You might need to remind me of Mr Francis' evidence in that respect, if you could.

Dr HORTON: Yes, I can, and I think a related comment was that Ms McIntyre had held some concerns, which I want you to assume for a moment might be about whether or not there was a dissemination authority, or should have been.

Mr MacSporran: Certainly.

Dr HORTON: I will take you to his evidence on this. Can we just go to the retrieval point first. That is at 20 August *Hansard*, page 56, mainly about point 4 or 5, and then the last paragraph. Then over the page, if you would, where the discussion continues about the first quarter of the page on page 57.

Mr MacSporran: If I have appreciated what he said, essentially he went there to get a statement from Mr Trinca of the kind I mentioned earlier before we adjourned. When that was not forthcoming—he also refers to a conservative view being taken by the lawyer, Ms McIntyre.

Dr HORTON: Yes.

Mr MacSporran: And then the documents ultimately being delivered from the council back to the CCC on 9 November, I think.

Dr HORTON: Yes. That is what I understood his evidence to be about that, and to assert at all times that what he did in delivering and retrieving the documents was a lawful and proper purpose.

Mr MacSporran: Yes, and that, from material I have seen, would appear to be the case.

Dr HORTON: You mentioned in the course of your evidence before the break about a collateral purpose for delivery of the documents. We are going to come to 19 November in a moment, but does that collateral purpose, as you understood it, apply in respect of 3 October 2018?

Mr MacSporran: I am not sure. All I was saying is: if there was collateral purpose, there was nothing wrong with that.

Dr HORTON: I see. What I will suggest is—maybe not now but so you have notice of it: if that collateral purpose, being one purpose, was a weighty or substantial one, I am going to suggest to you ultimately, in light of the QIRC ruling of 24 August 2018, it is an improper purpose.

Mr MacSporran: I will take on board your—

Dr HORTON: That it tainted albeit not the only purpose. We will come to this and explore it.

Mr MacSporran: Thank you.

Dr HORTON: But I am not suggesting to you in respect of 3 October that there is any evidence in the documents for the moment in the bundles that states as a or the purpose for the 3 October delivery that it was for a or the purpose of putting the documents into the hands of the Logan City Council for discovery in the QIRC.

Mr MacSporran: Okay. Well, there might not have been a purpose of that kind at all.

Dr HORTON: It is possible that it will be suggested that you infer that was a weighty or substantial purpose in the 3 October delivery for reasons I will come to.

Mr MacSporran: Did you say it is possible you may make that suggestion?

Dr HORTON: It may be open to the committee to find that, but I want to put that to you after you have been through 19 November, because there there is different evidence about that delivery, which obviously is a subsequent delivery, and next, in light of the letter which I have put to you already, which I will come back to, of Mr Alsbury of 12 February to council asking the council about its disclosure obligations and, moreover, constant requests from MinterEllison, Ms Kelsey's lawyers, that the very thing that was done be done.

Mr MacSporran: Well, I think they are all different events with different circumstances and considerations, but, as you say, you will come to each of the propositions which I will reply to, yes.

Dr HORTON: And because in relation to 3 October it is an inference, I want you to have seen all those facts before I put to you what might be the effect of that.

Mr MacSporran: Well, you will take me to them individually and collectively, yes, thank you.

Dr HORTON: Yes, if that is all right.

Mr MacSporran: Yes.

Dr HORTON: That is 3 October. I wanted to put to you that you yourself at the time had no knowledge or involvement in the 3 October delivery or retrieval of documents at the time?

Mr MacSporran: That is my memory, Mr Horton, yes.

Dr HORTON: Do you remember when you first learned that those events had indeed occurred?

Mr MacSporran: I am sorry, I cannot pinpoint that date.

Dr HORTON: Is it likely—only if you remember—to have been very recently, that is, in the last 12 months, or is it likely to be soon after that occurred?

Mr MacSporran: My best guess would be in the last 12 months, but that is literally my best guess.

Dr HORTON: I understand. It just governs a bit what other questions I might have been able to ask you. In relation, then, to the purpose of delivery, I did want to take you briefly to Mr Hutchings's evidence on 19 August at page 13. Could you just note here that I think Mr Hutchings is probably more squarely speaking about the November delivery than the October delivery?

Mr MacSporran: I notice towards the first third of page 13 he talks about a date of 12 December 2018.

Dr HORTON: Yes.

Mr MacSporran: So you might be right about the timing.

Dr HORTON: But I want to draw your attention at point 6 to him saying the two objects were complementary.

Mr MacSporran: I need to know, Mr Horton, I think, what he is actually referring to by date, period, because that page deals with firstly 12 December 2018, then at the bottom 12 February 2019. Nowhere on the page do I see 3 October 2018, although it may be in the preceding pages, I am not sure. You might be able to direct me.

Dr HORTON: It is. I want to put this to you for completeness before we go to 3 October. At about page 11 you will see the reference there is 15 November, at about a quarter of the way down the page on page 11.

Mr MacSporran: That is November, yes.

Dr HORTON: Yes. So what Mr Hutchings is here speaking about may relate more to November?

Mr MacSporran: Well, it seems to relate entirely to November, does it not?

Dr HORTON: Yes. I am just drawing this to your attention—he may be. Then I wanted to draw to your attention what he says about the 3rd, talking about the purpose of it being complementary.

Mr MacSporran: Do you want me to read these passages now?

Dr HORTON: Just note them, but would you note particularly what I said about Mr Hutchings maybe intending only about the November delivery. Just note that for the moment.

Mr MacSporran: Sorry, can you just repeat that again?

Dr HORTON: I am sorry. Just note for the moment in your mind that the bit I have taken you to from Mr Hutchings—he may be intending to be only about the 19 November delivery.

Mr MacSporran: Well, all right.

Dr HORTON: I am showing it to you for completeness because it is possible, I want to suggest to you here, that he is talking about both deliveries, for a reason I will come to. I am just showing it to you out of fairness. It is arguably going to bear upon the evidence you give and I wanted to show it to you.

Mr MacSporran: I do not know that I understand, Mr Horton, frankly.

Dr HORTON: Well, would you note what is said on page 13 on 19 August by Mr Hutchings at particularly point 6—

But my recollection was that the two objects were complementary, both consistent with our objective, and I would not routinely record for posterity ... that would achieve the same objective—or two activities would achieve the same objective.

Mr MacSporran: I am sorry, I am just having trouble picking up the passage you are referring to.

Dr HORTON: About point 6, Mr MacSporran, Mr Hutchings speaking.

Mr MacSporran: 'The two objects were complementary'?

Dr HORTON: Yes.

Mr MacSporran: What is he saying were the two objects? Can you tell me that?

Dr HORTON: As I understand here the Public Records Act purpose and putting the documents into the hands of council for disclosure in the QIRC disclosure.

Mr MacSporran: Does he say that prior to this page 13, does he?

Dr HORTON: The paragraph above, which is me asking the question—

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?

This is what I am exploring with him.

Mr MacSporran: And this is all to do with his evidence about the 19 November, it would seem, dissemination.

Dr HORTON: Yes, except the reason I have taken you to this, out of fairness, is to show you what I say in response. Then I say—

Thank you. Now, the documents, of course, go back to council.

So I think I am still back on 3 October, do you see?

Mr MacSporran: It is a bit hard, Mr Horton, to follow.

Dr HORTON: Good. That is all right. I just wanted to point it out to you out of fairness to show the nuance in that evidence which you might otherwise have read and been confused about. The 3 October delivery occurs and there is retrieval of them. MinterEllison, you understood, both before 3 October, after 3 October and before 19 November, was agitating the CCC to give documents to the Logan City Council so that, for the purpose, for the moment—MinterEllison's purpose—they would be discoverable in the QIRC proceeding to which his client was a party?

Mr MacSporran: I think I would need to see the documentation you refer to in that global way to give some responsive answer, if I could.

Dr HORTON: Certainly. There are very many examples of this in volume 1, and I am going to take you only to a sample of them because I am going to suggest to you it was fairly consistent.

Mr MacSporran: This is in the lead-up to the 3 October one first we are talking about?

Dr HORTON: Yes. So you recall, I think, that immediately after the QIRC ruling on 24 August 2018 MinterEllison is writing to the CCC—331 of volume 1. The Tuesday after the Friday upon which that has been delivered—Thursday, I am sorry. It was delivered on the 24th and Dan Williams writes on the 28th. Last paragraph—

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

It is not an email suggested to be to you.

Mr MacSporran: So it is Mr Williams to Mr Hutchings?

Dr HORTON: Correct.

Mr MacSporran: I see, yes, thank you.

Dr HORTON: Page 333, Mr Alsbury is not clear on what the suggestion is in the last line of the email that I have just taken you to. I want to suggest to you that the suggestion is: 'can you please give the documents to the council so that they are disclosable in the QIRC proceeding?'

Mr MacSporran: Mr Alsbury says he is not clear about the point.

Dr HORTON: That is right.

Mr MacSporran: That is on 28 August.

Dr HORTON: I am giving you a chance to comment on this proposition: the only way in which the last line of Mr Williams's email of 28 August 2018 can be read in the context is that it is a request to put them in the hands of the council so that they can be disclosable in the QIRC.

Mr MacSporran: Well, I do not know that is necessarily the case. I can see why you might conclude that.

Dr HORTON: Then at page 335 is a note of Mr Hutchings, you can assume for a moment, and you can assume that that is brought into existence in connection with the delivery by the QIRC of its ruling of 24 August 2018.

Mr MacSporran: I am having trouble reading the last two lines of Mr Hutchings's file note. Just bear with me for a moment.

Dr HORTON: I think it is—

We have historically on basis we can make derivative use.

Mr MacSporran: I see, thank you.

Dr HORTON: And then reference to two High Court cases, one of X7 and one of IBAC.

Mr MacSporran: Thank you.

Dr HORTON: I think I have taken you through these before and you have these in the bundles, at page 341—

Mr MacSporran: I do not think you have taken me through these before that I remember. I might be wrong about that.

Dr HORTON: Page 341.

Mr MacSporran: Have you taken me through there?

Dr HORTON: I have taken you through some of them. I do not want to take you through every one. You have had these bundles for some time, and I do not want to take up the committee's time. The point is: the CCC is being urged by MinterEllison at all material times to the 3 October delivery and the 19 November delivery to deliver these documents for the purpose—the purpose and the only purpose—of putting them in the hands of the council so they might be disclosable in QIRC and, therefore, available in the proceeding to Ms Kelsey.

Mr MacSporran: Is that a question to me for comment?

Dr HORTON: Yes.

Mr MacSporran: I have seen some documentation that suggests that MinterEllison were agitating for that outcome.

Dr HORTON: Well, I will put it in a more open way. Is there some document that I need to have in order to understand that MinterEllison might have been making its request for purposes different from the one that I have just put to you?

Mr MacSporran: I cannot immediately point to anything, Mr Horton.

Dr HORTON: Thank you. Then you will see at page 341—these are just examples.

Mr MacSporran: 341?

Dr HORTON: Page 341—

We'll deliver them to A/CEO Silvio Trinca, tomorrow, as soon as you give us the go ahead & nice letter from the SEO.

That is a not MinterEllison request. And by then there is in play a Public Records Act purpose, or research going on within the CCC.

Mr MacSporran: I thought the Public Records Act research issue was earlier than this but I might be wrong.

Dr HORTON: Would you repeat that?

Mr MacSporran: The Public Records Act research you refer to from the CCC was earlier than that, I thought?

Dr HORTON: Yes.

Mr MacSporran: Can you give me the dates?

Dr HORTON: Well, for example, the one I have just taken you to I think is an example of it—

Section 9.2 says WhatsApp is prohibited.

Attached to it is a Public Service Commission policy about the use of emails, so it is clear that, at least by this stage, your organisation has looked at the relevance of the Public Records Act idea in the context of what is about to happen. I cannot see that as MinterEllison's stated motivation anywhere, and I wonder if I am wrong—

Mr MacSporran: No, it is the CCC's motivation.

Dr HORTON: Yes.

Mr MacSporran: The Public Records Act matter.

Dr HORTON: Understood. That is the context in which they are delivered on 3 October. I want to suggest to you two things: one, in the context of urging by MinterEllison solely on the basis of it becoming disclosable in the QIRC proceeding for their client's benefit; correct?

Mr MacSporran: That is what they seem to be agitating for, yes.

Dr HORTON: Yes. That is as high as I am asking you to put it. But second, before then you have seen there is some discussion of—let's just call it generically for a moment—a Public Records Act purpose?

Mr MacSporran: It is not really fair to the CCC to characterise the Public Records Act discussions along those lines. From what I have seen, I think it is fair to say that there was a clear focus on the Public Records Act side of things. That was consistent with a chain of events that had started as far back as the private email account of Minister Bailey.

Dr HORTON: Yes, you said that last time. We know—I will just show it to you, which is consistent with what you are saying, just so it is complete—a bit earlier in volume 1 there is already liaison between Detective Inspector Preston and the Queensland State Archivist—

Mr MacSporran: Yes. There is an email from Inspector Preston to the team, I think, referring to the Public Records Act issues. There were earlier meetings with the State Archivist personnel and a presentation given by the State Archivist to the CCC. The State Archivist's involvement in the Public Records Act issue was an ongoing feature of the CCC's concerns about the public sector generally but particularly in this respect the local government sector.

Dr HORTON: Yes, understood. So it is clear, Detective Inspector Preston in *Hansard* says the same thing here. He says that it is perfectly lawful and proper that Detective Sergeant Francis was doing what he did?

Mr MacSporran: Yes, and Preston had documented that process at the time it happened, as opposed to after the event.

Dr HORTON: Yes, he met with the State—

Mr MacSporran:—Archivist. Yes, thank you. Agree.

Dr HORTON:—beforehand. When we come to the transcript—I do not need to go through it in detail because the committee has seen it many times—on page 351, Detective Sergeant Francis attends with Detective Sergeant Troy Newman, and that is the purpose he gives or the purpose he states?

Mr MacSporran: That is the tape-recorded conversation.

Dr HORTON: Yes.

Mr MacSporran: Thank you.

Dr HORTON: Were you aware—I think we discussed this last time but we did not get very far into it—the material delivered to council in fact included material which was arguably or possibly material to which legal professional privilege was attached?

Mr MacSporran: Only potentially, as I now understand, having looked at further documentation and come to understand as much as I can, in the circumstances I am in, what was going on there. There was a very conservative view taken, I think it is fair to say, by an in-house lawyer, who was doing their level best to make the right decision about what should happen, that there had been no dissemination authority given—

Dr HORTON: No.

Mr MacSporran:—perhaps one was needed and so on. You know the area we are talking about.

Dr HORTON: Yes. Can we pause on that for a minute? It is undesirable to be in the position afterwards where one is debating whether or not legal professional privilege attached to documents that were delivered. It should be done beforehand and the issue resolved; correct?

Mr MacSporran: There should be some assessment done—

Dr HORTON: Yes.

Mr MacSporran:—if that issue arises. I do not think there was any assessment done here initially, or even afterwards.

Dr HORTON: No. Detective Sergeant Francis did the assessment, as I understand it—he said himself—without the assistance of a lawyer?

Mr MacSporran: I think that is right, from what Francis said, yes. I think that was his evidence.

Dr HORTON: Better practice—proper practice—would be that before a police officer took the documents out someone with legal expertise, a lawyer, had looked and assisted in knowing whether and to what extent documents within what was to be delivered were ones to which legal professional privilege attached?

Mr MacSporran: Ideally, yes. There is no doubt about that.

Dr HORTON: Yes. I am putting it a little bit below 'ideally', as I have before with you, to 'proper practice'.

Mr MacSporran: Yes, I think that is fair. That is a fair conclusion.

Dr HORTON: And that is one of the rationales, I want to suggest to you, of the dissemination authority process that you have in place at the CCC?

Mr MacSporran: It is part of it, yes.

Dr HORTON: That a lawyer has to look at it and apply for the authority, and that would involve a lawyer himself or herself turning their mind to questions including privilege?

Mr MacSporran: Yes.

Dr HORTON: So on the occasion of the 3 October delivery there ought to have been a dissemination authority?

Mr MacSporran: No.

Dr HORTON: And it would have been good practice for there to be such authority, or at least an application for one?

Mr MacSporran: No. It was not required because of the purpose of the dissemination under our policy. Whatever the section was—it was amended, I think, later in 2018.

Dr HORTON: Yes, 60 and 62 were amended together.

Mr MacSporran: Yes. There is no material difference, I do not think, for the requirements of the section after it was amended.

Dr HORTON: Yes.

Mr MacSporran: From what I have come to appreciate from the material, I do not think there was a need for a dissemination authority. There should have been perhaps something to reflect the delivery—something as simple as a covering letter or something to the acting CEO perhaps. I do not think there was even a covering letter with the material.

Dr HORTON: There was not.

Mr MacSporran: But certainly not, in my appreciation of the position—whether I am right, I am not sure. I did not think there was a need for a dissemination authority to be applied for or authorised.

Dr HORTON: The gap I want to fill in your evidence is this: there should have been an assessment of privilege but there need not have been a dissemination authority.

Mr MacSporran: Again, an assessment of privilege—the question is: did the material which had been disseminated require a lawyer's or other assessment of whether it contained privilege?

Dr HORTON: I understand you to have agreed with me that it did.

Mr MacSporran: Well, it may have.

Dr HORTON: I understood we got down from 'ideally' to—

Mr MacSporran: We are probably at cross-purposes, Mr Horton. I have looked at the 3 October 2018 WhatsApp dissemination material.

Dr HORTON: Can we stick with at the time, for the minute. We will then come to what you now think. At the time—

Mr MacSporran: Sorry, I was not involved at the time.

Dr HORTON: I want to keep your frame of mind for the moment on the time, recognising you were not involved, because it is about proper practice at the time—not what is now known about that. I said to you: one wants to know about the assessment of privilege before one delivers, not do it afterwards; correct?

Mr MacSporran: If an assessment is required.

Dr HORTON: You do not know if an assessment is required until you have assessed it; correct?

Mr MacSporran: Until you look at the material which you are disseminating.

Dr HORTON: I thought we got to this stage in the evidence where I was saying to you that proper practice would be that you would have the material that is going out the door assessed by a lawyer for whether legal professional privilege attached to it.

Mr MacSporran: I think the point of difference might be who assesses the material in the first instance. I do not know—I have not come across it in the material that I can recall now—whether Sergeant Francis or someone else in the investigation team had assessed the WhatsApp material.

Dr HORTON: Assume for the minute there was no assessment by a lawyer within the CCC.

Mr MacSporran: But there was an assessment, was there, of the investigation team or part of the investigation team about that issue?

Dr HORTON: Detective Sergeant Francis.

Mr MacSporran: So Detective Sergeant Francis examines the WhatsApp material and his best assessment is that there is no LPP relevant to it.

Dr HORTON: Hence my question to you was: it is proper practice before documents like that go out that there be an assessment by a lawyer of whether legal professional privileges attaches?

Mr MacSporran: I think that is certainly the position now. It may have been the position under our procedures at the time, I am not sure. I suspect it is certainly our procedures now.

Dr HORTON: At the time, I am suggesting to you, it was, whether in your procedures or not, proper practice to do so?

Mr MacSporran: I do not know that I can comment, frankly.

Dr HORTON: It is proper for this reason, is it not: otherwise, you would have material going out about conversations—here WhatsApp—which might well, hypothetically for the moment, include people talking with their lawyers?

Mr MacSporran: You could exclude and prevent the dissemination of highly relevant material by some very overly cautious assessment that was not required.

Dr HORTON: Yes, but you put to me an extreme and I am not putting to you 'overly cautious'. I am just putting to you proper, ordinary, routine practice for the minute. I am not putting to you overly cautious; I am not putting to you bullish. Just assume we are dealing with routine, proper practice—not ideal; not hopeless. You have these WhatsApp records. There is a chance that someone is going to have spoken to their lawyer using WhatsApp or referred to someone else about what they have spoken about to their lawyer; correct?

Mr MacSporran: There is a possibility that that might be in the material.

Dr HORTON: Proper procedure would be that you would have a lawyer look at that to make that assessment before they went out the door of the CCC?

Mr MacSporran: Possibly, after some assessment was done by those intending to disseminate—as I suspect happened here; I do not know—by Detective Sergeant Francis as to whether there was any material, in his view as an experienced police officer, that contained LPP which needed to be assessed and redacted.

Dr HORTON: Let me test it this way. Are you saying that in every case where you have material such as the WhatsApp material you would be content for the police officer himself or herself to make an assessment of privilege?

Mr MacSporran: It would not normally happen that way. There would be knowledge by the investigator of the material contained in the proposed bundle to be disseminated. It would have happened in this case ordinarily, I am sure, although I do not know whether the policy at that time required—I think it may have, I do not know; it certainly does now, I think—that a lawyer run their eye over it.

Dr HORTON: That would be proper procedure and it would have been proper procedure—leave aside whether it is in a written policy for a minute—at the time of the 3 October delivery?

Mr MacSporran: I just do not know what the position was on 3 October 2018. That is what I have been saying.

Dr HORTON: I am just asking you what, at 3 October, was proper procedure. Do not worry about your policies for a minute—just in the ether proper.

Mr MacSporran: I think you need to know how the operation was conducted in that respect at that time to be able to comment.

Dr HORTON: You are the head of the organisation. That is why I am asking you.

Mr MacSporran: I had no involvement in it.

Dr HORTON: That is your answer?

Mr MacSporran: Yes.

Dr HORTON: The documents go back to the council on 19 November.

Mr MacSporran: They went back on the—to council, sorry, yes.

Dr HORTON: They come back to your organisation on the eighth or ninth and they go back to council on the 15th. Do you recall what happens between the eighth and the ninth and the 19th in terms of communication with MinterEllison?

Mr MacSporran: No, I do not. I would need to be reminded of the—

Dr HORTON: What happens is MinterEllison asks your organisation to deliver them back to the council. It does so at page 415 of volume 1. It does so in unmistakable terms, I want to suggest to you, at 415 at the third last paragraph—

So that the First Respondent can if ordered comply with its disclosure obligations and so that Ms Kelsey's application is not defeated by the divestment of relevant documents by the First Respondent ...

I think we have agreed before MinterEllison's stated purpose—I know you cannot get inside MinterEllison's mind—is that it is interested in the disclosure of these documents in the QIRC proceedings; correct?

Mr MacSporran: As I understand the sequence, very briefly, the documents went to Logan on 3 October, came back to the CCC on 9 November and then on 24 October—in between those two dates—Ms Kelsey had applied for, would it be, disclosure in the commission.

Dr HORTON: Yes.

Mr MacSporran: Clearly, that must not have been known to the CCC because they took the documents back on 9 November which arguably would have defeated her application for disclosure filed on 24 October. They are back at the CCC. MinterEllison then have to write to the CCC and say, 'Can you send them back to the council? Otherwise you will defeat our lawful application for disclosure in the QIRC.'

Dr HORTON: Did you say 'awful'? What was the adjective you used?

Mr MacSporran: 'Otherwise you will defeat our application.' Then there is a dissemination authority which sets out the basis for the dissemination from the CCC on 19 November to the council.

Dr HORTON: I think you understand the sequence but you are getting ahead of me because you know the documents too well. Can I go back a bit?

Mr MacSporran: I am sorry; I did not mean to get ahead of you.

Dr HORTON: MinterEllison is agitating the CCC for the stated purpose of getting these documents disclosed in the QIRC proceeding because Ms Kelsey wants them disclosed?

Mr MacSporran: MinterEllison wants the documents back so their application is not defeated by them going from the council back to us.

Dr HORTON: Yes. This is where the rubber hits the road, so to speak. When they go back, I am suggesting to you, they go back to fulfil that purpose from the CCC and for this time a CCC purpose of meeting that request?

Mr MacSporran: I do not accept that. From what I have seen, I think it is quite different to that.

Dr HORTON: In fact, they do not go back for the public record purpose because that has just been dealt with by Detective Sergeant Francis' delivery and his retrieval and he said, 'I cannot get a statement from Mr Trinca. Ms McIntyre has taken this risk-averse view'—is the words he uses—'so I am going back to get them.' The only explanation for the delivery on 19 November is in direct response, in timing and causatively; that is all we have. That is the reason they go back to the Logan City Council?

Mr MacSporran: I think the reason is set out in the dissemination authority, which was in writing and in some detail about the purposes.

Dr HORTON: On the evidence it is not, I want to suggest to you. I want to take you to Ms McIntyre's evidence—

Mr MacSporran: Sorry to interrupt, but can we go to the dissemination authority itself first to see what the purpose was?

Dr HORTON: Can we please. I want to take you to two things. One is Ms McIntyre's evidence which is in *Hansard* on 20 August at page 13. At or about the same time you might look at her application for the dissemination authority, which appears at page 425 of volume 1 and following.

Mr MacSporran: I am sorry, I am just a little behind with the references. It is Ms McIntyre's evidence of 20 August?

Dr HORTON: Yes, we will do that first. At page 13, from about point 2 to about point 6 of the page.

Mr MacSporran: I am just looking at what we have here. We have Ms McIntyre agreeing that a purpose of the material going back to Logan was to assist Ms Kelsey.

Dr HORTON: Yes, which seems to be your point about collateral?

Mr MacSporran: I think that is a fair comment, yes.

Dr HORTON: She goes on to say 'side effect'. You will see at point 6.

Mr MacSporran: Does she?

Dr HORTON: Just above point 5, she says—

One of the purposes, not the primary.

Then she accepts she 'should have included the side effect'.

Mr MacSporran: When you say 'included', do you mean included in the dissemination authority?

Dr HORTON: Yes, the application for the dissemination authority. I think Mr Alsbury actually gives it, but Ms McIntyre would apply and set it out.

Mr MacSporran: Apply for it, yes. I think I would like to be reminded of the terms of the dissemination authority itself or the application, as you say, for the dissemination authority.

Dr HORTON: The relevant terms appear at 427 of volume 1. The point being taken with Ms McIntyre is that, under paragraph 6 of that application, 'Reasons why the entity is appropriate to be given the information', it does not seem to state this side effect or this purpose as one of those reasons.

Mr MacSporran: That is true, Mr Horton, but it certainly sets out the clear purpose from our point of view in the investigation of the corrupt conduct for the dissemination to Logan—pages 427 and 428. Then there are 'No conditions', signed off on 429 on the 19th by Ms McIntyre.

Dr HORTON: Yes, the terms of it are undoubted. What was suggested to Ms McIntyre and what I am suggesting to you is that the terms do not and should have included all reasons—and one reason was the purpose, as she said first—but, say, collateral purpose, if you like—of putting them into the hands of the council so they would be disclosable in the QIRC.

Mr MacSporran: I do not necessarily agree with that. It is clearly a collateral purpose. The purpose for dissemination is as is set out very carefully and clearly in this application. Perhaps in hindsight there should have been a reference to that aspect to it, but I do not see that being necessary, frankly, for this dissemination.

Dr HORTON: But Ms McIntyre, on the references I have taken you to, seemed to accept it ought to have stated.

Mr MacSporran: Ms McIntyre is a very careful lawyer in our organisation, and we value that care that she takes in her work.

Dr HORTON: Then if we go back to the evidence of Mr Hutchings, which I took you to earlier, about which we had some exchange and you had expressed the view you were not entirely sure about what I was putting—page 13, 19 August. Now we are in 19 November, assume for the purpose—you assume that, at the very least, Mr Hutchings here is talking about the 19 November delivery; correct?

Mr MacSporran: Yes.

Dr HORTON: The two objects were complementary. I put to him—

... 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.

Mr MacSporran: Yes. I do not agree with that necessarily.

Dr HORTON: I see. That is what I wanted to ask you. Do you agree with Mr Hutchings or not?

Mr MacSporran: Just remind me again what he said.

Dr HORTON: Do you agree that one of the material reasons for him acting as he did was that the documents delivered on 19 November ought be before the QIRC by way of disclosure obligations in order to help correct the imbalance?

Mr MacSporran: I accept that that is what Mr Hutchings said about his purpose, but I see very clearly that the purpose was for the investigation, as detailed in the application for dissemination by Ms McIntyre on 19 November.

Dr HORTON: So you disagree with Mr Hutchings?

Mr MacSporran: I disagree with the way he has expressed that, yes.

Dr HORTON: It was not a purpose that was operative in your mind at the time?

Mr MacSporran: I had nothing to do with this at the time.

Dr HORTON: You disagree, I take it, with what Ms McIntyre says, that the dissemination authority application ought to have stated the other purpose or the side effect?

Mr MacSporran: I think I said before that in an ideal world and in hindsight perhaps that dissemination authority should have referred to the collateral purpose, but it certainly very carefully articulated the purpose, which was for the investigation, that the material is going back to Logan.

Dr HORTON: It does very clearly articulate a Public Records Act purpose. That is—

Mr MacSporran: The purpose of the dissemination.

Dr HORTON: It suggests that is the purpose; correct?

Mr MacSporran: From the material I have seen, it correctly suggests that is the purpose.

Dr HORTON: What I want to put to you is this: it is not the case—it cannot be the case—that the only material purpose of the delivery of 19 November was for the purpose of the Public Records Act.

Mr MacSporran: I do not agree with that.

Dr HORTON: I am going to put to you some facts as to why the committee—I will ask them to infer this—ought infer this and give you a chance to comment. One, the evidence of Mr Hutchings, to which I have taken you, and you have—

Mr MacSporran: I have dealt with that, I think, yes.

Dr HORTON: Second, the evidence of Ms McIntyre, to which I have taken you.

Mr MacSporran: Yes, I have dealt with that.

Dr HORTON: Third, the fact that it comes immediately after the request from MinterEllison, to which I have taken you, seeking expressly return of these documents to council for this sole purpose.

Mr MacSporran: That is MinterEllison's purpose.

Dr HORTON: Yes, which is why I am going to ask the committee they should infer it from this because it is not your purpose as stated. I agree.

Mr MacSporran: It is simply MinterEllison asking for us to return the documents to enable them to meet their obligations on disclosure.

Dr HORTON: Yes. Then the fact that when the documents are in fact sent to the council on 19 November 2018, Mr MacSporran, page 431—a letter from Mr Alsbury but for which the contact officer is Ms McIntyre. On page 432, the last paragraph—

I enclose the documents requested.

Mr MacSporran: This is the letter of 19 November from Mr Alsbury to Mr Trinca.

Dr HORTON: It is.

Mr MacSporran: Yes.

Dr HORTON: I am suggesting that the word 'requested' can only be a reference to the request that was made by MinterEllison because there is no request, unless you point to the contrary, that was made by anyone else other than MinterEllison.

Mr MacSporran: I do not know what is meant by that term in that letter.

Dr HORTON: Do you know of any request made by anyone other than MinterEllison, to which I have taken you, that the documents be provided to council?

Mr MacSporran: Not as I sit here, no.

Dr HORTON: Do you know of any request by council that they be provided to council?

Mr MacSporran: I do not—not on the material I have seen that I can recall at this stage.

Dr HORTON: Then—and I suggested this to Mr Alsbury as well—if we turn to 12 February 2019—and I have taken you to his letter already and promised to return and now we are returning—his letter to the council drawing to its attention its disclosure obligations is another fact upon which I wanted to give you notice I intend to ask the committee to infer that a substantial purpose of the 19 November delivery was to put the documents in the hands of council for disclosure in the QIRC.

Mr MacSporran: I think I have dealt with that earlier in terms of the report from the State Archivist and so on.

Dr HORTON: Put it this way: if this was a Public Records Act purpose, your purpose—the CCC's purpose—had been fulfilled once the documents had been delivered back on 19 November, had it not?

Mr MacSporran: I am not sure that is right.

Dr HORTON: That is, these documents are back home in the council where you considered they should be, and it is now not for you, as the CCC, whether the documents in fact find their way into or do not find their way into the QIRC proceeding?

Mr MacSporran: I think that is right.

Dr HORTON: What I am having difficulty reconciling is why—and you may not know because you are not Mr Alsbury—he would write on 12 February, after Ms Kelsey has withdrawn her application for disclosure on 4 December 2018, drawing to council's attention something which does not seem to me anyway, on the face of it, I am suggesting to you, to be a Public Records Act purpose.

Mr MacSporran: I cannot advance anything further than I have said and made the same reservation before we adjourned, I think, for the break. If I think of anything as the day goes on, I will certainly bring it to your attention. Thank you, Mr Horton.

Dr HORTON: Thank you. And the reason I have drawn this to your attention is—it will ultimately be suggested by counsel assisting, and of course it is a different matter what the committee accepts or does not accept—that the delivery on 19 November, if not also 3 October 2018, was an example of overreach by the CCC beyond its statutory powers and beyond what was appropriate in involving itself in civil litigation in a way which was inappropriate and constituted a taking sides in it.

Mr MacSporran: I do not accept that for one moment at all.

Dr HORTON: Thank you. Chair, I have come to the end of that topic about the delivery. I propose to move to a new topic. Is that a convenient time for questions?

CHAIR: Yes, it is. Member for Coomera, do you have questions?

Mr CRANDON: Yes.

CHAIR: Go ahead.

Mr CRANDON: In relation to those particular matters, first of all, I just want to try to bring it into one place for my thinking. In relation to the 3 October documents that were retrieved on 8 or 9 November, was it the case that Ms McIntyre was in charge of proceedings and that it was her instruction that DS Francis was acting on, or was it someone else?

Mr MacSporran: I am sorry. I missed the start of it. Were you saying when they were returned?

Mr CRANDON: In relation to the 3 October documents that were retrieved on 8 or 9 November, was it the case that Ms McIntyre was in charge of proceedings, in charge of what was to happen to those, and that it was on her instruction that DS Francis took action on retrieving the documents, or was it someone else?

Mr MacSporran: I do not know directly because I was not involved. I did not think it was, from what I had seen. It was done because Ms McIntyre wanted them back. I do not think so, but I might be wrong about that.

Mr CRANDON: Would she have the power to instruct DS Francis to go and get those documents? Would that be in her power?

Mr MacSporran: She was the lawyer for the team. She may have had the ability to make that request, but I just do not know whether that is how the documents came back. I have seen material. I was not involved and I cannot tell you now from my memory what that sequence was—why, I should say.

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

Mr CRANDON: The documents we were looking at earlier were page 341 and then we went to 351. The page 341 document is dated Tuesday, 11 September, and this was the subject of our conversation earlier. It was to Makeeta McIntyre; cc-ed in were Preston, Beattie, Francis, Newman and Borlase. 'Private Email Use Policy' is the subject, and there were some attachments. It reads—

Hey Makeeta,

Section 9.2 says WhatsApp is prohibited.

I have copies of Smith & Dalley's WhatsApp printed out & good to go to LCC.

Of course, that is Logan City Council.

We'll deliver them to A/CEO Silvio Trinca, tomorrow, as soon as you give us the go ahead & nice letter from the SEO.

Cheers, Mark

So we are aware of that letter going to Makeeta McIntyre.

Mr MacSporran: That is 11 September.

Mr CRANDON: 11 September, yes. And then nothing happened, it would seem. What did happen was that Makeeta McIntyre went on holidays, and I just have not been able to quickly find the date that Makeeta McIntyre went on holidays.

Mr MacSporran: I am sure we can help you with that at some point.

Mr CRANDON: It will be somewhere in the documents that she went on holidays. I am just wondering, other than her going on holidays, what has occurred. Clearly, they are asking her to give something to them—a nice letter et cetera.

Mr MacSporran: I do not know what that means, but I do notice from page 341, as you said before and read out correctly, obviously—

Hey Makeeta,

Section 9.2 says WhatsApp is prohibited.

That is really reference to 'you should not be using WhatsApp because it is not permitted as a public record and your duty under the Public Records Act' and so forth.

Mr CRANDON: It says—

I have copies of Smith & Dalley's WhatsApp printed out & good to go to LCC.

So they are talking about taking those documents to the Logan City Council.

Mr MacSporran: Yes.

Mr CRANDON: But nothing happened. On 11 September nothing happened.

Mr MacSporran: No.

Mr CRANDON: At some time after 11 September, Makeeta McIntyre went on holidays.

Mr MacSporran: Yes.

Mr CRANDON: And then out of the blue, without giving any consideration to nice letters or getting a go-ahead from anyone, in Detective Francis' witness statement to us I believe he has simply said that he has made the decision that there is no—

Mr MacSporran: LPP?

Mr CRANDON: LPP. There are too many initials around here—CCC, LCC, LPP.

Mr MacSporran: It is confusing.

Mr CRANDON: What happened is she has gone on leave. No-one—and you used the term before—has run their eyes over the documents other than Francis, according to his witness statement here.

Mr MacSporran: Well, I do not know that for a fact myself, but I am assuming that might have been the case because the lawyer was away. That is just my assumption. I think Mr Alsbury has the same take on what happened here. That is what I think happened. I can understand—if you run your eyes over the WhatsApp material from 3 October delivery, it is very difficult to see how there was any LPP contained in it, frankly, but that is what Francis assessed I think before he took them—

Mr CRANDON: That is what he assessed, but nobody cast their eye over it—run their eyes over it, as you were saying earlier—and certainly Makeeta was asked for a nice letter et cetera on 11 September and no nice letter was forthcoming. No approval—'as soon as you give us the go ahead
Brisbane

& nice letter'. The officer, DS Francis, has decided that it was good to go, as far as he is concerned, and he has taken the opportunity to just take them on 3 October. Then they come back, and eventually McIntyre completed a dissemination authority and the documents arrived back just in time for MinterEllison. They arrived back on 19 November and I believe the deadline was the 20th. I think that was a fairly strong indication from MinterEllison: 'We need them back there and this is our deadline.'

Mr MacSporran: I am sorry to interrupt, Mr Crandon, but I think the documents came back to the CCC on 9 November, not the 19th.

Mr CRANDON: You are quite right. They came back on the 9th, but they came back in time then for Ms McIntyre to complete her dissemination authority. This is the one I am talking about. I think we have agreed that she has probably said, 'Bring them back.'

Mr MacSporran: I am not sure, to be fair.

Mr CRANDON: Okay. Somebody said, 'Bring them back.' They have been brought back and then 10 days later they have gone back, on the flow of letters, it would seem, as a result of the MinterEllison document. That is supported by a couple of things. First of all, they arrived just in time for MinterEllison's date. They needed it by the 20th.

Mr MacSporran: No, not just in time. They were 10 days earlier, the 9th. The point I was making before—

Mr CRANDON: No. The 9th is when they came back to the CCC.

Mr MacSporran: Yes.

Mr CRANDON: They went back from the CCC to the Logan City Council on the 19th.

Mr MacSporran: Yes, I beg your pardon. That is the sequence, yes.

Mr CRANDON: Just in time for the MinterEllison matter.

Mr MacSporran: MinterEllison had asked for them to go back to meet that timetable, yes.

Mr CRANDON: MinterEllison had asked them to go back, and without any inference in the dissemination authority that it was for MinterEllison's purpose, we have Alsbury saying 'documents requested', at the bottom of his letter which you have just—

Mr MacSporran: I think that is actually Ms McIntyre's letter, isn't it? I am sorry. It is Mr Alsbury's letter but I think it is drafted. The reference is Ms McIntyre, I think, if I am not mistaken about that.

Mr CRANDON: Well, it is under his signature.

Mr MacSporran: Yes, he signs it.

Mr CRANDON: Under his signature, he said 'documents requested'. No-one has requested the documents, other than MinterEllison. Do you agree?

Mr MacSporran: Well, I do not know that for a fact but you may well be right.

Mr CRANDON: I just wanted to try and put that in a fairly succinct order, because when counsel was trying to go through that it seemed to be going backwards and forwards. It was difficult for the layperson—me—to try and get my head around the set of circumstances. On 11 September: 'Hey Makeeta, give us a nice letter and the okay to go.' Makeeta does not do that. On 3 October, Francis, off his own bat, decides he is going to give them to council. On 9 November, someone tells Francis to bring them back to the CCC. On 19 November, following a letter—and it is referred to in various correspondence; in fact, there was one urgent telephone message from MinterEllison about this document—it gets back just in time for the 20th, which is when they needed it by. It has a dissemination authority knocked together for it for that. Alsbury, who seems to be part of the conversation, says 'Documents requested'. To the layperson, that looks like it was just set up and, although the dissemination authority had no mention of it, the real reason was MinterEllison's letter requesting that it go back?

Mr MacSporran: As I said before, I reject out of hand that conclusion to be drawn from that sequence. That sequence really falls apart, as I said before, when you look at the documents going to Logan on 3 October. They are brought back to the CCC on 9 November. While we have been talking about this, I am remembering—it may well have been the case that the Logan council or the council's lawyers requested that they be taken back by the CCC, which they were on 9 November. That potentially frustrates Ms Kelsey's application of 24 October between those two dates. If it is suggested that the CCC's purpose was to help Ms Kelsey at all costs, or any cost, they have done a pretty bad job of it by taking the documents out of a place where they were available to Ms Kelsey and back to the CCC.

Mr CRANDON: It would seem from some of the material we have read that there were a few people quite upset about the fact that the documents had come back to the CCC. It was like, 'What happened?'

Mr MacSporran: It is not a bad point: what did happen? It is inconsistent with the conspiracy theory being advanced here, it seems to me.

Mr CRANDON: Perhaps it might be Makeeta saying, 'Hang on a second, they shouldn't have gone.' Chair, I am still talking on those particular documents. Can I continue with this line of questioning?

CHAIR: Succinctly, please.

Mr CRANDON: Thank you. There has been quite a bit made about a conspiracy, if you like, amongst the seven councillors. No-one else appears to agree with that. I am talking now about the courts, the QIRC and so forth. Quite a bit has been made about the WhatsApp documents. I take you to volume 2, page 53, of the disclosure section. The 'covert' app, which is what someone from your team described it as—the WhatsApp document. Do you regard the WhatsApp document as a covert app?

Mr MacSporran: It is a means of communicating—

Mr CRANDON: Between groups.

Mr MacSporran: Between groups, yes,

Mr CRANDON: Do you use it yourself?

Mr MacSporran: No, I do not.

Mr CRANDON: I think counsel has indicated he uses it. I certainly use it with my doctor, of all people.

Mr MacSporran: I think the federal government use it and I think it is a standard means of communication. The point is, if you use it, how you record it as a public record—not whether you use it or not, per se.

Mr CRANDON: Of course. That is where I want to go because there is a better way, isn't there, of talking that does not leave a trace? We see it often through these documents where, 'Oh, look, send me back your thoughts or if you like we can have a quick chat.' The problem is: the quick chats are not properly documented. More often than not, notes are not taken on them. We have asked many times in these hearings about whether any notes were taken, whether there are any documents et cetera—just catching up for a chat. It seems like that then enables people to say, 'I can't recall.' There was an interesting document that I wanted to bring you to on page 53 of 'Disclosure' in volume 2. They are notes taken by RH—Rob Hutchings, I am assuming.

Mr MacSporran: I have it now, thank you.

Mr CRANDON: What I am trying to get to is this state of concern that I have about a lot of conversations going on that no-one can recall the detail of. Fortunately in this case we had Rob Hutchings taking notes in this particular example. There was discussion with yourself regarding Kelsey. In the first sentence or so it talks about—in fact, you might be better at reading his notes—

Al not sure if we need to go into such detail about what transpired at the meeting with Hinchliffe. Concerned ab—

'ab' is short for 'about'—

Nicholls + Crandon's agenda.

Do you see that?

Mr MacSporran: Yes.

Mr CRANDON: Do you agree with what he said there?

Mr MacSporran: I can see that he has recorded that, yes.

Mr CRANDON: Then, if you like, the beginning of the next paragraph—

Al suggested a compromise whereby we let the PCCC know we met with Kelsey and in light of her revelations about her dire circumstances—

the little asterisk over to the left says 'status of the litigation'—

decided to brief the Minister.

Then further down—

Al was aware of the ultimate responsibility to the PCCC (as opposed to the govt of the day) but there were also circumstances where our own legislation contemplated keeping certain information confidential.

It seems like, in this particular case, one of those conversations was had where the only person—that I can see anyway—who took any notes was RH, Rob Hutchings, and it seems like you are trying to work out what the PCCC that oversees your organisation, the CCC, should be told.

Mr MacSporran: Yes.

Mr CRANDON: How far you should go with the information you provide to us.

Mr MacSporran: Yes.

Mr CRANDON: Is that a common thing, that you will have just a conversation about things like that where you do not take notes?

Mr MacSporran: These are—notes are taken.

Mr CRANDON: These were his notes.

Mr MacSporran: Oh, yes. I am in the meeting with him and he takes notes so the meeting is noted. We would not normally take notes—each of us—and then compare notes and decide on a final version.

Mr CRANDON: You do not take them for your own benefit?

Mr MacSporran: I would not where he took notes, and he was managing this issue.

Mr CRANDON: Yes.

Mr MacSporran: I should also add—

Mr CRANDON: I suppose where I am going is that a lot has been made of the WhatsApp stuff, but is it the case that it is a much easier way of keeping things confidential just to have a quick chat in the hallway? There is no indication between 11 September and 3 October as to what transpired. All of a sudden, out of the blue, we see 22 days later—three weeks later—in the documents that it seems like a more senior officer indicated that we needed some sort of a nice letter and approval for what just went through to the council, but there must have been a lot of conversation in the meantime, in between. So the big issue that is being made about WhatsApp on the one hand, where there are records as opposed to these conversations that have been going on in the halls of the CCC on the other, is a little bit concerning for the PCCC, given it looks like you get together regularly to decide what you are going to tell us.

Mr MacSporran: I think of course, Mr Crandon, the WhatsApp, which does record the conversations—in this case the WhatsApp records were destroyed and the CCC had to recover them by forensic tools to see what the conversations were.

Mr CRANDON: Chair, that is all I have for this particular topic. I do have other questions, but I know others have questions as well.

CHAIR: Mr Horton, it being one o'clock, we might take a break. I do have a couple of questions on this matter, but we can resume after lunch in that respect. It has been a busy morning, so let us take a break and come back at two o'clock.

Dr HORTON: Thank you.

CHAIR: Thank you.

Proceedings suspended from 1.01 pm to 2.00 pm.

CHAIR: We will resume our hearing now, and I think counsel assisting had finished questions for the moment. Mr MacSporran, if it is okay, I might ask a couple of questions myself in relation to the dissemination of documents matters that counsel assisting was inquiring about before our lunch break.

To start with, I just wanted to ask about one particular issue, and it relates probably to the whole process around the dissemination of documents but in particular the November dissemination, which from the correspondence we have seen and the dissemination authority referred to Public Records Act purposes as being the reason behind that dissemination. There is also a lot of correspondence which could lead one to see another purpose for that dissemination.

In evidence from yourself and other staff members of the commission, particularly Mr Alsbury and Mr Hutchings, it was made pretty clear to the committee that the CCC would do all they could to help Ms Kelsey in her QIRC actions, so I just wanted to put to you a question. That is, in relation especially to the November dissemination, why would the CCC not just own it as a dissemination made to assist Ms Kelsey? Why was there this need to—and I am going to use my words, not anyone else's—cloak it in a Public Records Act reason when it is fairly apparent that there was another reason why those documents were being disseminated to the Logan City Council?

Mr MacSporran: I do not agree, Mr Krause, that it is obvious there was another reason. The CCC could have, at any stage really, directly disseminated material to Ms Kelsey in the exercise of its powers and discretion to do so. We had taken—I had taken a decision very early in the piece that we would not directly benefit her by getting an injunction or doing any one of a number of other things we might have done because I was concerned that we should pursue the greater public interest, which was in investigating what we clearly believed to be, and turned out to be, serious corrupt conduct. I was very concerned that that purpose, appropriate and mandated though it was under our legislation, should not be interfered with—undermined—by any other activity.

Having said that, I recognised very early in the piece that we did need to do what we could, bearing in mind our main objective, but still what we could do to protect Ms Kelsey as a PID, and that is consistent with all of our other statutory provisions under our act and under the PID Act. So it is not a matter of in any way dressing something up to be what it is not. My assessment, although I was not involved personally, reviewing all the material, is that the purpose was a Public Records Act purpose and collaterally of benefit to Ms Kelsey as she had been asking for the dissemination for the purposes of obtaining the documentation which was relevant to her action.

CHAIR: Okay. One of the other documents we referred to earlier today was a letter from Mr Alsbury to the Logan City Council on 12 February 2019, at page 466. I cannot recall if it is volume 1 or volume 2, but I think from your nod you acknowledge you recognise or understand the letter I am speaking of. This is after Ms Kelsey's application for disclosure, or to have those documents obtained from Logan City Council, had been withdrawn and Mr Alsbury wrote to Logan City Council intertwining the issues of the Public Records Act and the QIRC matter quite intricately in that correspondence and at the end of that he requested that the council inform them—inform him—whether or not they intended to make disclosure so that the CCC could consider its position. At this point in time, when the application for production has been withdrawn, in what respect would the CCC need to consider its position in that matter? They have already given the documents to Logan City Council.

Mr MacSporran: Yes. I am not sure I can answer that because I was not involved personally, but I do know that that letter of early February 2019 arose in circumstances where the public records—the State Archivist, who had been involved for some time, had finally reported that there was a public records aspect to the documentation being considered there, and that is clearly the context in which that letter of 12 November must have been written, because the report from the State Archivist was delivered by us to Logan City Council on 7 February, just prior to that letter being written. And as I apprehend it, on 27 February the council confirmed that the extraction reports identified by the State Archivist were public records and that they had been saved to council's document management system. And then, as I understand, none of those public records acknowledged by the council as being such were disclosed in the QIRC proceedings.

CHAIR: So in that letter, in the second last paragraph on page 465, it says that, as a party to PID 2017/3, the Logan City Council is required to disclose any document relevant to the proceeding?

Mr MacSporran: Yes.

CHAIR: Why is this letter being written at this stage of proceedings?

Mr MacSporran: You would have to ask Mr Alsbury, who wrote it. I have given my explanation for the context in which it was written and, as I think I mentioned earlier in the evidence in response to Mr Horton, the council was in a position of needing to behave, we thought, as a model litigant and disclose, appropriately, documentation in its possession to satisfy its disclosure obligations in the action. There had been what appears to be—if you look at the history of this, there had been a lack of that being done. As at this stage, the State Archivist had put it beyond doubt that they were public records—if there was any doubt ever, and that is debatable. The council had acknowledged, as one would think it would have to, that they were public records and had entered them into their management system and then had not disclosed in the proceedings.

CHAIR: So you were not a party to drafting this letter?

Mr MacSporran: Not at all. I was not aware of it at all. It is an operational matter, the same as the 3 October 2018 letter was. I found out about this after the event, but having looked at the documents after the event I can see nothing of the kind of concern you have, frankly. I am not being critical; I am just saying that my assessment of this material does not lead me to have concerns about what was going on here. I cannot see an improper, ulterior motive that is suggested here. That is my assessment of it. I might be wrong, but that is my assessment of this material.

CHAIR: I will just take you to another point in that letter, if I may, and I will put another reading of that letter to you and ask you to comment about it. Could it be, Mr MacSporran, that that letter is an attempt by the CCC to force the Logan City Council to act in a way in relation to the QIRC

proceedings at a time when they did not really have a legitimate interest in what the Logan City Council was doing with those documents? The notice to produce had been withdrawn, the documents had been put in the hands of the council and yet this letter, written by the second in command, so to speak, at the CCC, was sent to Mr Trinca saying, 'When are you going to produce them to the QIRC?' How else is one to interpret that other than seeking to insert the CCC into those proceedings?

Mr MacSporran: Mr Krause, the CCC has an overriding obligation to promote integrity in the public sector, including local government, to promote public confidence in that sector and to prevent corruption in the sector and to be aware, as we were at this stage very clearly because of the State Archivist report, that the council appeared to not be complying with its obligations independently, as it should, to meet its disclosure requirements. That would be clearly a concern of the CCC, with respect.

CHAIR: But you are not a party to proceedings.

Mr MacSporran: No.

CHAIR: If Mr Kelsey's lawyers had written this letter to the Logan City Council, having the knowledge that the documents were at the council, I could well understand it because they are a party to the proceedings and it is their job to get documents and to make sure the other party or parties involved in the litigation do what they are supposed to do under the law, but the CCC was not a party to the proceedings.

Mr MacSporran: We are not a party, but we are investigating corrupt conduct which has involved this council from back in 2017. We have observed the way they handled or failed to handle their public records. Just because we are not a party, with respect, does not mean we do not have an obligation to maintain integrity in the sector and we cannot, frankly, legitimately ignore their failure, it seems to me, to meet their obligations under the Public Records Act—same as we could not ignore when Mr Bailey appeared, on complaint, to have failed to comply with his obligation.

CHAIR: I understand the point you are making, and if the letter of 12 February had limited itself to encouraging compliance with the Public Records Act then that would be a perfectly legitimate explanation, but it does not. It goes quite squarely to the litigation in the QIRC and to that extent, with everything else that we have seen in the correspondence, it looks for all intents and purposes as an example of the CCC inserting itself into that litigation at a time when it did not have an interest in it, with the notice to produce having been removed. Anyway, you have answered that line of questioning. I will not reinterrogate it. I think minds will differ about the intent of that letter.

Mr MacSporran: I suppose in that context, and I do not mean to continue on unnecessarily, it is a matter for Mr Alsbury to say what his intent was. I cannot recall now what he said. But my take on the documents is as I have said. Whether I am right is another issue and we can interpret that, but that is my assessment of the situation.

CHAIR: When it comes to the 3 October 2018 dissemination, I have listened to evidence today and previously and it seems to me that you are resisting a concession that a dissemination authority was required for the dissemination on 3 October 2018, despite the fact that those documents were retrieved because there was a concern, as I understand, that there could be legal professional privileged material in there. Why are you resisting that?

Mr MacSporran: Because our policy did not require a written authorisation for that dissemination because it is for a function of the commission, the dissemination. I am imagining—and I think I have seen some evidence of it, Mr Alsbury explaining this, but that is my explanation. As I understand our policy at the time—the dissemination policy—such a dissemination did not require a written authorisation to disseminate. After it was disseminated without other than Detective Sergeant Francis assessing the documents himself and no lawyer doing so, a lawyer, Ms McIntyre, at the commission took a very conservative view about there being a need for a dissemination. I do not think there was—my personal opinion. I think that is Mr Alsbury's personal opinion, as I understand he expressed here in evidence.

CHAIR: It is a bit cavalier, is it not?

Mr MacSporran: I do not think so, Mr Krause, no. I do not think it is cavalier at all. I think it is just the way it was at the time. There was a distinction between disseminating information for the commission's purposes or disseminating for another party's purposes. The latter required a written authorisation for the dissemination under the policy. Even though there are amendments to the policy or the requirements in late 2018, they did not change materially the terms of the dissemination sections. So dissemination is not required for a CCC purpose, but it is required for a related party's purpose. And that is reflected in what happened here, ultimately.

CHAIR: Remind us again what the purpose was for the 3 October dissemination?

Mr MacSporran: I am just trying to think. It was a CCC purpose to ascertain from the acting CEO, Mr Trinca, whether the documents being returned to Logan council, the ones that we had seized by warrant, downloaded the contents of the phones forensically—returning the WhatsApp material to have Mr Trinca give a statement to the investigators as a witness in the corruption investigation of the mayor and councillors as to whether those records being returned were, in fact, retained as records in the council document management system.

CHAIR: Which function does that come under?

Mr MacSporran: That is just our corruption investigation function. It is covered within the terms of reference of this investigation.

CHAIR: Can I ask, then, in relation to that 3 October retrieval: when they were retrieved because of the perceived issues with possible legal professional privilege in there between Mr Smith, I think it was, and his lawyer, why was there no section 329 notification given to the committee at that time?

Mr MacSporran: Because on that issue the lawyer took a very conservative view that there should be material redacted without actually making the assessment as to whether there needed to be redactions, if that makes sense. There was no actual assessment undertaken; there was just a conservative global view taken that there should not be the possibility of LPP being released considered. Normally you would do an assessment and if you are comfortable, having assessed the matter, that there was LLP present, you would then take steps to make sure it was not disclosed. This was just a blanket, as I understand it—I might be wrong; this is my assessment of the material I have seen—a blanket assessment—sorry, a blanket conservative approach taken rather than an assessment of whether LPP was in the material.

CHAIR: When they were re-provided in November, certain material was removed on the basis that it was privileged, was it not?

Mr MacSporran: Yes, but different items were disseminated in November to those that had been disseminated in October. They were not the same. As I said before, as I apprehend this, the July dissemination to the QIRC, the October dissemination to the council and the November dissemination to the council all involved different aspects of a larger bundle of material.

CHAIR: But the material that was thought to be privileged was removed from the November dissemination?

Mr MacSporran: I cannot recall the detail. That may have been.

CHAIR: I think we have heard evidence in the past that it was—from Ms McIntyre.

Mr SULLIVAN: And Mr Alsbury, Mr Chair. There is an email from Mr Alsbury that authorises it on the basis that the LPP material be taken out and a proper authorisation given.

CHAIR: Thank you.

Mr MacSporran: Whether that was actual LPP or just a very conservative statement that anything that mentioned 'lawyer' would be taken out, because there are different considerations about whether it is LPP.

CHAIR: I understand, but either way the issue was one that Mr Alsbury and others in the CCC would have been aware of and they also would have been aware that it had gone out in October, so surely that should have given rise to a notification to this committee under section 329 that action had been taken which may be against policies of the CCC—if it is acknowledged by Mr Alsbury that it can go now with the LPP removed.

Mr MacSporran: I understand, I think, the question but I think that, if I remember what Mr Alsbury said about this topic, he maintained—I think quite properly, frankly, and accurately—that it was not a matter that would be, in his view, reportable as a 329 because he maintains the dissemination authority was not needed in October and the one that was given in November was accurately constructed.

CHAIR: So you are right on both occasions, even though the position changed?

Mr MacSporran: The difficulty I am having, frankly, is that I am assessing this from a distance, not having been involved. I am looking at what I see in the material and what I have seen in evidence from those people and trying to give a view about these things. I am doing the best I can to express my view after that assessment.

CHAIR: I understand.

Mr MacSporran: From what I have seen in the evidence and in the documentation, I think Mr Alsbury is right about no dissemination being needed and, therefore, it is not a 329 issue. In any event, can I add for completeness that, not because of this case but more generally, since these events, in the last number of years, we have improved governance in the commission, we have put in place procedures, we have an operations manual that covers many things including, I think, this aspect and so on. The issue that you may be concerned about—and this is a matter for evidence down the track, I think, and perhaps submissions, but the 329 issue you might be concerned about I think is now, not because of this case but as it currently exists in the commission, in fact addressed, hopefully to your satisfaction, but that is a matter we can deal with.

CHAIR: I am still concerned about it in this matter too.

Mr MacSporran: I am not suggesting you would not be.

Mr SULLIVAN: Chair, for completeness, I refer to page 417 in terms of the email from Mr Alsbury.

CHAIR: Which volume?

Mr SULLIVAN: Volume 1.

CHAIR: I have another question on a slightly different topic. This morning, counsel assisting took you through the process of the WhatsApp material. It was obtained under warrant. It was the subject of a notice to produce in July 2018 in the QIRC. There was a ruling from that court—Commissioner Black I think it was—on 24 August 2021 that that material was inadmissible. This morning you said words to the effect that this did not bind the CCC in the sense that you were not a party to the proceedings. I understand that. You have also mentioned to us the issue of council in these proceedings being a model litigant and you brought that up this morning. If the Supreme Court of Queensland or even the High Court had ruled that those documents were inadmissible, would the CCC have desisted from trying to put it into the hands of other parties in these industrial matters?

Mr MacSporran: I said we were not bound because we are not a party to those proceedings, but I was not meaning to convey that that gave us carte blanche to ignore the ruling. We would never do that, clearly, and I was not suggesting we could or would. What I am saying is that we had a proper purpose for doing what we did after the ruling of 24 August. That is all I am saying.

CHAIR: Around that time in your evidence this morning—and I cannot refer you to it as we do not have the transcript with us right now—you gave us the impression that at that point in time the CCC was merely monitoring the QIRC proceedings. You have the bundle in front of you and produced a lot of documents to the committee as part of this inquiry that indicate a significant degree of involvement in correspondence between MinterEllison for Ms Kelsey and the CCC in terms of how they could assist. In fact, the notice to produce for the QIRC was arranged to be timed in a way that gave it the greatest potentiality to be accepted within the CCC. There is correspondence that shows that, especially between Mr Hutchings and Dan Williams from Minters. How can you say that you were just monitoring the proceedings when people in your organisation were actually working quite closely together with MinterEllison to get documents into those proceedings? That is not monitoring; that is actively participating.

Mr MacSporran: Mr Krause, when you say I said 'monitoring', I said twice, if I remember, to Mr Horton's questions that the monitoring was in the context of doing what we could to fulfil our statutory obligations under our act and the PID Act, which were extensive. I put on the record the sections that were involved and our obligations more broadly jurisdictionally and our powers that we could exercise. We were conducting as a prime objective, that I had decided as the prime objective, the corruption investigation into the mayor and the seven councillors for reasons that we have articulated in the material. In that investigation Ms Kelsey was a witness, which required our investigators to deal directly with her and cooperatively with her for the reasons of obtaining her statement. Any material in the QIRC proceedings as it proceeded which benefited or were relevant to the corruption investigation would be used and should be used.

The traffic the other way was quite different—that is, anything that we could give Ms Kelsey or facilitate the giving of within the bounds of how we proceeded, which was to provide material to the registrar to let the commission decide how it should be used if ever, if at all. All those things are consistent with our duty under our legislation and the PID Act to protect Ms Kelsey if we could in the ways nominated there and in the way we proceeded but to also protect the integrity of our investigation. I do not see anything in that or that I have seen in documentation that is inconsistent with what I intended to happen, albeit from a higher level, that this should proceed on the one hand

under the superintendent's management of Mr Hutchings in the PID Act side of things and our act side of things, and with the investigation side of things with Mr Alsbury and the investigation team quite separately.

CHAIR: In relation to the notice to produce back in 2018, it was acknowledged that the CCC had a discretion to comply or not to comply with that notice to produce, but in this instance the discretion was taken to produce the documents. Under the Crime and Corruption Act, section 57 imposes the obligation on you and the commission to act independently, impartially, with fairness and in the public interest. Do you concede, though, that there is a potential problem here when, from a public policy perspective, you have a discretion to respond or not respond to notices to produce in civil litigation or industrial litigation and you have a situation where sometimes you may exercise that discretion positively and sometimes you will not? Do you see the issue with how that might be perceived from an independence and impartiality perspective?

Mr MacSporran: I can to the extent, Mr Krause, that it is not black and white. There are nuances. There are shades. It is a very difficult exercise but, critically importantly, just because it is difficult does not mean you should not do it. This was extremely difficult. Having decided not to actually participate by getting an injunction in either the Supreme Court or more likely here, because she was there in the Industrial Relations Commission, I thought—it was my call—that we should not be seen to be directly favouring one side over the other. So whenever we receive requests which we were prepared to facilitate, we did it in a way that the other parties were aware of us doing it and it went to the commission to make the call. We did not disseminate directly to Ms Kelsey, which we could have under our legislation quite easily. We took the view that because we had not become involved directly with the injunction we would do it with notice, which there clearly was, to all the parties involved. They could then take what steps they needed to take, if any, to protect their interests and Ms Kelsey could do the same to promote her interests if she thought that was appropriate.

CHAIR: Are you aware of whether the commission ever asked the other parties to the proceedings what their view would be on the dissemination of documents?

Mr MacSporran: They were aware, as I understand, that those disseminations were in the pipeline, as it were. There were letters that I have seen, backwards and forwards. Mr Alsbury took great care, as I understand it—unless I am mistaken about the sequence of events—that the parties were aware and nothing ever went directly, as I understand it, to Ms Kelsey's lawyers. They went to the registrar and to the council and so forth, as we know in the material. I do not see that what I intended to occur miscarried during the course of it, although I was not directly involved. What I have seen since, I must say, satisfies me that the original purpose and the way it should proceed looks to have gone exactly that way.

CHAIR: What did you mean just then when you said what you intended to occur? 'What I intended to occur' is what you said?

Mr MacSporran: What I put in place as the head of the organisation as to how these disparate, separate issues should be managed, on the one hand by Mr Hutchings in the PID space, if I can use that terminology, but more significantly by Mr Alsbury and the investigation team in the investigation operational space. They were two separate but interrelated, in ways that you have seen, parts to this process. Managing that was not easy for either side, but that does not mean it should not be done.

CHAIR: You were across it all, though, were you not, Mr MacSporran?

Mr MacSporran: I was not, Mr Krause, not at all. I did the best I could to be aware of the direction it was taking and I saw nothing during the course of it that gave me cause for alarm about the direction either side—either part of the exercise—was taking.

CHAIR: So you were overseeing it all, both elements of what was going on, but were not aware of some of the things that went on?

Mr MacSporran: No, because I am the chair of the organisation, with respect; I am not the operational arm. Mr Alsbury had more knowledge of the investigation than I did, but that was appropriate, given his role. People below him in the investigation team had more knowledge of the day-to-day aspect. That is how organisations have to operate. You cannot have me as the chair understanding every operational step that is taken and being aware of it and giving it my approval personally. We would never get anything done if that was the case, with respect. It could not work that way.

CHAIR: In evidence this morning at page 498—again, I am not sure if it is volume 1 or volume 2—there was reference to the need to keep parties honest in litigation generally. Perhaps counsel or one of the other members could point out whether it was volume 1 or volume 2.

Mr MacSporran: Volume 2, I think—or volume 1.

CHAIR: When it comes to the CCC sending letters or otherwise working with parties or intervening to keep parties honest in litigation, what other matters has the CCC done this in?

Mr MacSporran: Mr Krause, without notice of that topic, I could not possibly hope to give you a sensible answer on the spot. I am happy to take that on notice to see if we can search our records.

CHAIR: No, that is okay. Nothing comes to mind at the moment?

Mr MacSporran: Not as I sit here now, I am afraid, no.

CHAIR: Interestingly, page 497 as well of volume 2—sorry, volume 1, my apologies.

Mr MacSporran: Is that the 15 February 2019 email from Mr Hutchings?

CHAIR: Yes, that is the one.

Dr HORTON: Page 498, Chair, is the reference you made to keeping parties honest, which is the second page of that email.

CHAIR: Yes. I made a note about 497 this morning, that there was a need to head off the prospect of a miscarriage of justice in relation to providing the WhatsApp material. This was 15 February 2019. That was the very reason, as I recall, or one of the reasons, that Commissioner Black ruled those documents to be inadmissible. There it is; thank you to the committee secretary for highlighting that. It is the third last paragraph on page 497.

Mr MacSporran: That is the miscarriage of justice mention, yes.

CHAIR: Yes—

... I consider the position taken ... from the start ... has been the right one—to stay in touch ... to head off the prospect of a miscarriage of justice.

This is in the context, I believe, of just before the documents were to be disseminated—sorry, after the documents had been disseminated to the Logan council the second time but prior to Mr Alsbury's 19 February letter to the council urging them to disclose them. My question is: if Commissioner Black thought the documents were inadmissible and their admission to the proceedings could in fact result in a miscarriage of justice, or words to that effect, how is it that you can support the CCC taking a view that not having them in there would lead to a miscarriage of justice? Is that not a decision for the court to make or for a tribunal?

Mr MacSporran: I do not know that we are talking about the same documents, firstly. That is the first thing we need to consider. Secondly, on page 497, in the paragraph you have referred to, the third last paragraph which starts, 'In this regard'—this is Mr Hutchings to Mr Alsbury, copied to me and the investigators.

CHAIR: Yes.

Mr MacSporran: He says—

... I consider the position taken by the CCC from the start of this issue has been the right one—to stay in touch with the litigation, to head off the prospect of a miscarriage of justice. Naturally, some parties to the litigation will take the view that that represents a partisan approach but my view is different. We have in my view discharged the s.57 obligation to act fairly, and (importantly), in the public interest.

CHAIR: Yes.

Mr MacSporran: It seems to me again, from what I see here, he is actually managing this to the best of his ability in the way that I intended, that we are looking after protecting a PID. If that translates to being concerned about an alleged miscarriage of justice occurring in the commission, subject to our need to act fairly under section 57 of our act, we should be doing whatever we can legitimately to assist in that process.

CHAIR: And independently and impartially as well?

Mr MacSporran: Independently and impartially, absolutely. To that extent, that is why these documents, when they went there, went to the registrar in the July case with knowledge of the parties and for the purposes articulated in the dissemination on the other occasions. All of those things are recorded in our database as records. They are carefully considered. That is why you are able to make these assessments of the material to form your own views about what the purposes were. Without those records that are so carefully constructed within our office, you would not have any basis to be concerned about what we did. We have disclosed all of these to you for your information.

CHAIR: Mr MacSporran, in relation to the letter you wrote to Minister Hinchliffe seeking legal funding for Ms Kelsey, have you ever written a letter like that before?

Mr MacSporran: No, I have not.

CHAIR: Have you ever had a meeting like that before?

Mr MacSporran: About funding?

CHAIR: Yes.

Mr MacSporran: No. This was, I would have to acknowledge, an exceptional case where a CEO, who I understood as a CEO—all CEOs in local government—there had been a pattern, it seemed to me, of people going away with payouts and confidentiality clauses and so on as a context.

CHAIR: It is interesting you raise that, because we heard evidence from another witness in relation to the Logan City Council that they had had two CEOs in, I think, 34 years, from memory, and then unfortunately after the second one left there were a couple of short appointments before Ms Kelsey. Were you aware that in respect of Logan City there had actually been very much stability in that role prior to this coming about?

Mr MacSporran: No, I was not aware of that prior to this. It does not surprise me, but the ones that I was concerned about are the ones that occurred after the new mayor came in, in 2016, and there was a series of payouts—CEOs and other staff members—and that is in our chronology. It was certainly a concern of ours as to what was actually going on there.

CHAIR: Is it fair to say that your concern stemmed, if not solely, largely in part due to what was going on at other councils, not Logan?

Mr MacSporran: No, that is not true.

CHAIR: No? Okay.

Mr MacSporran: A number of other councils were on our radar. Ipswich is the obvious example. But Belcarra had Ipswich, Moreton, Gold Coast and Logan as the primary councils that were being investigated or in respect of which public hearings were held, and what flowed from that you would be aware of.

CHAIR: Yes.

Mr MacSporran: And local government remains, I must say, a focus of ours for the same reasons.

CHAIR: In relation to that request for legal funding from the minister, I asked Mr Hutchings about this and I asked him about whether the commission, in his view, would have acted any differently if Ms Kelsey had been given legal funding support by the state. His answer, as I recall, was really that you would have acted in very much the same way, to help her as much as possible, through these other steps that had been taken, which led me to put to him that it was not really about the money when it comes to levelling up the playing field. So I put that to you as well, Mr MacSporran: if Ms Kelsey had been given legal funding support from the start from the state, you would not have acted any differently, would you?

Mr MacSporran: There may have been some aspects to it. It is very hard to know now, because we are far removed from those situations, but a large concern of ours was the fact that it was not a level playing field with the funding, because of the difficulty she faced just prosecuting—as everyone is entitled to do—her claim in whatever tribunal or court she could. She happened to be in the Industrial Relations Commission. She was facing very much an uphill battle, primarily because she did not have the financial capacity to run it as long as it seemed the others were intending to. So it was a very precarious position she was in, and in those extraordinary circumstances I went to the minister and asked what, if anything, could be done.

CHAIR: If that request had been granted, would correspondence between MinterEllison and CCC, the production of documents and the agreement to cooperate in relation to the notices to produce and things like that have fallen by the wayside?

Mr MacSporran: No. Even after that, what might have been relevant to the investigation process in the commission would still have been the subject of cooperation between Ms Kelsey's lawyers and the investigators, bringing probative evidence back into the investigation. If it assisted Ms Kelsey's claim in the QIRC, even though well funded, and it was still within our ability to deliver, within the bounds that I have been talking about, we would have done so as well.

CHAIR: If you were going to still assist in that way, despite the funding level playing field, can you see how others might view that as the CCC actively taking a side in a dispute?

Mr MacSporran: No. Those that understood what our jurisdiction was and the need to protect whistleblowers as a fundamental and important part of our operations would well understand, if they thought about it, that it was not us taking sides, as you put it, Mr Krause.

CHAIR: Any other questions from committee members? Mr Crandon.

Mr CRANDON: Thanks, Chair. Mr MacSporran, I will just go through a couple of things to tick them off for my own benefit. The chair talked about section 329 of the act, the suspicion of improper conduct. He was asking questions about why the matter of 3 October was not regarded as a section 329 under the act. It states—

329 Duty to notify the parliamentary committee and the parliamentary commissioner of improper conduct

Subsection (3) states—

In forming a suspicion for subsection (1)—

subsection (1) being 'The person mentioned in column 1 of the following table ... must notify the parliamentary committee and the parliamentary commissioner of all conduct of a person mentioned opposite the notifier'—

in relation to the conduct of a person, the notifier must disregard the intention of the person in engaging in the conduct.

Then I bring your attention to subsection (4)—

(d) disclosure of confidential information without the required authorisation, whether or not the disclosure contravenes an Act; or

...

(f) exercise of a power without obtaining the ... authorisation, whether inadvertently or deliberately; or

(g) noncompliance with a policy or procedural guideline set by the commission, whether inadvertently or deliberately, that is not of a minor or trivial nature; or

(h) exercise of a power conferred on the person under this or another Act in a way that is an abuse of the power.

Are you suggesting to this committee that, whether intentional or not, none of those parts of subsection (4) were potentially triggered by the delivery of the documents on 3 October?

Mr MacSporran: That is my assessment from afar but I make the point again, as I have before, that I was not involved in it. I have been assessing my opinion on that based on the materials I have now seen, or seen since the events occurred, and in particular what I understood to be Mr Alsbury's assessment and evidence about this, that he did not consider a dissemination authority was required and he maintained it was not a section 329 issue. I would defer every day of the week, given Mr Alsbury's involvement—if he did say that—to his view. I do not purport to have a definitive view because I have never been in the position we are talking about now on this topic, but my assessment from afar is, no, it was not a 329 issue.

Mr CRANDON: Ms McIntyre must have had some concerns, because she recalled the documents?

Mr MacSporran: Yes, but that does not translate of itself to it being a 329. What if, for instance—just taking the hypothetical—Ms McIntyre was wrong in her assessment that it required a dissemination authority? So she has been ultraconservative and cautious, as opposed to correct, about the need for a dissemination authority.

Mr CRANDON: Thank you.

Mr MacSporran: That is, as I understand, where Mr Alsbury is assessing this and giving his view, but I might be wrong about that. This is just my assessment of material from afar.

Mr CRANDON: You talked about three legal teams on the side of council, the mayor and the seven councillors as though that was something that was unprecedented. I interpreted it as though you were suggesting that that was perhaps unprecedented or somewhat over the top. With Ms Kelsey's experience in matters of a legal nature, given her background, would she not have expected that there was going to be individual representation for individual sections—the council on its own, the mayor and then, of course, the seven councillors?

Mr MacSporran: I do not know what—

Mr CRANDON: Did it come as a surprise?

Mr MacSporran: I do not know what was in Ms Kelsey's mind about the likely line-up against her in the applications in the proceedings. My point was simply that, as an objective fact, she was outgunned. That is a fact. I am not suggesting there is anything improper with that, because everyone is entitled to representation and to run the case the way they determine—whenever the proceedings are and whatever form they take. The objective fact was in this case she was outnumbered and she had limited funds. And her funding was self-funded, whereas the other parties all had—and good luck to them; they were very fortunate—insurance funding.

Mr CRANDON: Were you aware that Ms Kelsey had been offered the equivalent of her salary?
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Mr MacSporran: I think I acknowledged earlier that I had some awareness of that at some point. I cannot tell you when that was.

Mr CRANDON: And that is in excess, as I understand it, of \$500,000 a year.

Mr MacSporran: I do not know the details, Mr Crandon. I accept what you say about that.

Mr CRANDON: Evidence before the committee is that she actually refused that offer on at least two occasions, so money did not seem necessarily to be the biggest issue for her.

Mr MacSporran: You would have to ask Ms Kelsey about that, with respect. I think what she told me on the occasion we met, on 6 August, was that she was virtually destitute, and I think it has turned out to be the case, frankly.

Mr CRANDON: But you were going into bat for her on the basis of lack of funds, yet she has said no to that particular offer.

Mr MacSporran: You would have to ask her personally what her circumstances were, I think, to resolve that conundrum.

Mr CRANDON: I understand that. I fully appreciate that we would have to ask her those questions, but you were going into bat for her in a pretty big way. Were you aware on 26 April that the QIRC matter was coming up on 2 May?

Mr MacSporran: I think I was, yes.

Mr CRANDON: You think you were?

Mr MacSporran: I said last time, and it is the case, that I am fairly certain I knew what stage it had reached, which was the end of the evidence and submissions were to be spoken to, I think.

Mr CRANDON: I think *Hansard* will reveal—

Mr MacSporran: I think I said that last time, from memory.

Mr CRANDON: That will do for now, Chair.

CHAIR: Mr Horton, was there anything you wanted to recap on?

Dr HORTON: There were just a few matters arising.

CHAIR: Please go ahead.

Dr HORTON: The first is in terms of Ms Kelsey being outnumbered. Ms Kelsey, as the applicant, chose who was a respondent to the proceeding; is that right?

Mr MacSporran: Yes, she initially chose the mayor and then added the seven councillors at a time after that. Certainly it is her choice; I agree entirely.

Dr HORTON: She could have sued one or nine?

Mr MacSporran: She chose the forum and she chose the respondents, yes.

Dr HORTON: I want to go back a little bit to what has been said about the documents that were delivered on 19 November. I want to be very clear about this, as I was with 3 October—what was and was not delivered. We have the QIRC response to the notice of attendance to produce. I think you have accepted that what was sent to the council on 3 October was a subset—your word—of what was produced to the QIRC in response to the notice of attendance to produce; correct?

Mr MacSporran: Yes, and to be clear on what that actually consisted of you would have to do the comparison, which you can do in the material we have disclosed to you.

Dr HORTON: I have taken you already to those documents. I rather thought we had got this clear. I do want to leave today with these matters very clear. I took you not only to the schedule to what you produced in response to the QIRC, but then I took you to what was in the 3 October delivery; yes? I think we had come to this point?

Mr MacSporran: I do not think you did. No, you did not. You did not take me to the 3 October list of what was delivered, as I recall it.

Dr HORTON: As I understood it—your words; I am adopting them now—what was delivered on 3 October was a subset of what was delivered to the QIRC in response to the notice of attendance to produce.

Mr MacSporran: Yes, but my point simply is that we have not actually gone to what those documents in fact were as a subset. That is my point. You can do that by comparing the bundles in the material we have disclosed if you needed to.

Dr HORTON: We did in fact, because remember I took you to the schedule and I asked you in response to one, two, three and four—remember the items I took you to in that schedule, which were WhatsApp and WhatsApp extractions?

Mr MacSporran: That is in the July notice to produce document?

Dr HORTON: Yes, we are with each other. Let us go back through it. Page 223 in volume 1 in front of you is the schedule of material subject to the attendance notice to produce. It is there on 223. It goes over to page 225. This is the absolute record, is it, of what was produced in response to the notice of attendance to produce?

Mr MacSporran: I will just turn it up. Give me a moment, Mr Horton.

Dr HORTON: We have been here before this morning.

Mr MacSporran: Yes.

Dr HORTON: There is nothing incorrect, so far as you know, on pages 223, 224 and 225 about what was in fact before the QIRC for the purpose of its ruling on the notice of attendance to produce?

Mr MacSporran: Yes.

Dr HORTON: Good. So then on 3 October not all of the documents in the schedules at pages 223 to 225 were delivered to the council; we are at one on that?

Mr MacSporran: Yes, but if you can show me the document that reflects what was delivered, I would be grateful.

Dr HORTON: I am going to suggest to you it was the WhatsApp material and not, for instance, the statements at item 4. It was not the transcripts at item 5. It was not the exhibits in item 6. It was not the lawfully intercepted information at item 7. It was not the disk marked 'QIRC dissemination' in item 8.

Mr MacSporran: Yes. So it was some of the WhatsApp material.

Dr HORTON: Yes. I think we agreed on this earlier. You said that what was delivered on 3 October is a subset of what I have just taken you to; yes? I do not understand why this is complicated, but it seems to be.

Mr MacSporran: I just need to know at each step of the way what you are actually referring to rather than summarising things, I suppose. I think we have it now. I think we can accept that some parts of the WhatsApp material that had been on this schedule as being produced to the QIRC in July 2018 had been delivered by Detective Sergeant Francis to Logan City Council on 3 October 2018.

Dr HORTON: Nothing new was delivered to the council on 3 October that had not been produced to the QIRC in response to the notice of attendance to produce?

Mr MacSporran: I do not know that that is actually the case.

Dr HORTON: If I am wrong about that, I want you to write to the committee and tell them that. I am asserting to you that what was delivered on 3 October was all material which was within the schedules to which I have taken you at pages 223 to 225. If I am wrong—not now—would you please correct me by letter to the committee as soon as possible? It is very important.

Mr MacSporran: Well—

Dr HORTON: We do not seem to be able to move beyond this and I am very keen to because we are coming to the end of the evidence and I think this point is clear, but if I am wrong you need to disabuse me of my error.

Mr MacSporran: Perhaps for that purpose if you can articulate your point so we can comment on it.

Dr HORTON: I think I have articulated, by reference to documents, as clearly as I can. I am about to do the same thing in relation to 19 November. I could be clearer with you, to be clear, if there had been a dissemination authority for 3 October which I could take you to or a covering letter which set out what in fact was delivered to the council. What I am trying to do is understand, in the absence of those documents, what was delivered. I have put to you my understanding is that nothing new was delivered that had not previously been submitted to the QIRC in response to the notice of attendance to produce. That is as clearly as I can put it.

Mr MacSporran: All I am saying is whether you are right or not would depend ultimately on a comparison of the items on that schedule for July 2018 with the items that were taken to Logan City Council on 3 October.

Dr HORTON: And what was taken on 3 October—where do we find that?

Mr MacSporran: It has been disclosed, as I understand it, to you by us.

Dr HORTON: Thank you. And what I am suggesting to you back is thank you for that. That appears to me to be a subset—to use Mr MacSporran's words of this morning—of what was produced to the QIRC in response to the notice of attendance to produce.

Mr MacSporran: I do not know that directly.

Dr HORTON: Right. This is your opportunity, in response to this question, not now but promptly, to do this: if the assertion I put to you is wrong, please notify the committee of my error and why I am wrong.

Mr MacSporran: Very well.

Dr HORTON: Can we move to 19 November because I want to pursue the same sort of clarity with respect to it. At page 425 of volume 1 is the dissemination request and authority to disclose information. The point I want to suggest to you here is that what is delivered on the 19th is a subset of a subset of what was delivered.

Mr MacSporran: Again, the same considerations would need to apply to do—

Dr HORTON: Read the document first before you give a kneejerk response. I want you to have a considered response. Look at 425 and look at what is said to be being disclosed—items 1, 2, 3 and 4 under heading 2. I really would like to bring this issue to clarity and to a conclusion, if possible. Now we see all of what is being delivered under items 1 to 4 is WhatsApp material; you agree with me on that?

Mr MacSporran: Yes.

Dr HORTON: And some of it is redacted in item 1 and item 2; correct?

Mr MacSporran: It is said to be redacted, yes, on application for a dissemination authority.

Dr HORTON: Yes, so again I am going to invite your organisation to correct me by letter to the committee if I am wrong, that what is disseminated to council on 19 November 2018 is a subset of that which was delivered to council on 3 October 2018, being that in respect of items 1 and 2 listed on page 425 some material was redacted. You can answer now or later.

Mr MacSporran: I will take that on notice.

Dr HORTON: Please, a prompt response and a clear response because this seems to be an issue between us that we are unable to clarify. I have tried to do it today. It is important, you will understand, because my contention to you is that the QIRC ruling dealt with this matter—that is, with the documents which were the subject of the notice of attendance to produce which the Queensland Industrial Relations Commission set aside on the grounds of the conclusions I have taken you to at 155 of its ruling. The redactions, I want to suggest to you, were ones made for legal professional privilege.

Mr MacSporran: I cannot confirm that.

Dr HORTON: I understood you would be able to confirm that because you told the committee in response to their questions that the redactions were a conservative view—your words—taken on legal professional privilege.

Mr MacSporran: I think what I was actually saying was that, as I understood it, no assessment had been made of whether it was legal professional privilege or not and some things were simply redacted. I do not know whether I am right about that. That is my assessment of this material.

Dr HORTON: I want to be clear about what you know and what you are speculating on, because this is important. Can we go to 417 of volume 1? The documents have come back already from the council. It is 15 November. Mr Alsbury says—

I have no problem sending them back. I think we would need to make sure:

1. There was a proper written dissemination authority; and
2. The versions with potential LPP material redacted were sent.

I am suggesting to you that (a) he thinks there needs to be a dissemination authority and (b) he thinks the potential LPP material needs to be attended to in terms of redaction. If you want confirmation of this, you could look at 375 as well, which is an email from Ms McIntyre to others on 16 October 2018.

Mr MacSporran: That is Ms McIntyre?

Dr HORTON: It is—375.

Mr MacSporran: Yes, I see what she says.

Dr HORTON: Her assertion there is that they 'are subject'. You see her word 'are'—it is a positive assertion—at about point 4 of the page—

... a number of these conversations are subject to Legal Professional Privilege—extracted from Luke Smith's mobile phone

If you return to the itemisation on the application for dissemination, one of those redactions on the items is that very thing. You do not know whether the assessment of legal professional privilege was conservative or not conservative; correct?

Mr MacSporran: That is so. I do not know what this refers to, what was actually done.

Dr HORTON: Precisely.

Mr MacSporran: I have a view on it looking at it all, but I do not know whether my view is sustainable after the event. I had no involvement directly at the time.

Dr HORTON: One of your lawyers asserted conservatively or robustly that this material was in part subject to legal professional privilege; correct?

Mr MacSporran: That is what she says in this material that you have pointed me to.

Dr HORTON: That is right, and you have never done an assessment afterwards yourself of whether indeed it is subject to legal professional privilege or not?

Mr MacSporran: No, I have not.

Dr HORTON: I see. So when you have given evidence to the committee about it being a conservative view, in fact you actually are not able to form that view, either then or now, because you have not done the exercise?

Mr MacSporran: No. I thought I had made it clear, Mr Horton, contrary to what you are saying, that my assessment was made after the event without any personal involvement, looking at all the material in these documents to try to see what actually happened.

Dr HORTON: I thought you just agreed with me to say you had not done the assessment on legal professional privilege.

Mr MacSporran: I did not hear what that question was.

Dr HORTON: I thought you had agreed with me you yourself have never done an assessment on legal professional privilege.

Mr MacSporran: That is so. I have not looked at the documents.

Dr HORTON: I just wanted to show you a document at 424, which is a record of a conversation which occurs immediately before the disclosure. Mr Williams left a message for Mr Hutchings of your office—

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. Um so you know you'll-you'll have our correspondence about that but e-eager to try to resolve that issue today if possible.

That is 19 November. That is the same day that the dissemination authority is granted.

Mr MacSporran: That is what we spoke about before, yes.

Dr HORTON: Yes. That is a voicemail message left. I just wanted to show you that. That coincides, if you like, with the generation of the dissemination authority. That is rather a prompt production of a dissemination authority, in your experience; is that right?

Mr MacSporran: I do not know whether you would say it is prompt. The coincidence of timing would suggest it is very efficient.

Dr HORTON: Yes. Then I want to suggest to you there is no material difference between what we have discussed on the 3 October delivery and the 19 November delivery to maintain your assertion that the dissemination authority was not required in respect of the 3 October delivery.

Mr MacSporran: I do not agree with that.

Dr HORTON: That is, if one was required on the 19th, one was required on the 3rd because they are relevantly, substantially, materially the same.

Mr MacSporran: I do not accept that.

Dr HORTON: Could you enlighten for a minute just very briefly what is the difference between the two that you rely upon to say no dissemination authority was required in one yet it was produced in the other?

Mr MacSporran: I would be wasting your time to try to articulate it further, Mr Horton. I am happy to take it on notice and produce something in writing for you that might properly reflect my thoughts on this.

Dr HORTON: No. If you think you have done it in *Hansard*, I will read it in *Hansard*. I just have not understood it and I wanted to—

Mr MacSporran: I think I have gone as far as I can in *Hansard* to properly articulate my reasons. As I said, whether I am right or wrong is a different issue, but my thoughts about it are on the record, I think, already.

Dr HORTON: Thank you. In response to some questions about the letter of 12 February 2019 in which Mr Alsbury writes to council about discovery disclosure, I want to draw your attention to the *Hansard* of 18 August, page 32—Mr Alsbury's evidence about this topic—second half of the page. I want to draw your attention to his explanations—I will do it specifically—which seem to accord with what you have said, but I want to put the same proposition to you that I put to him. If you read the second half of 32 and over the page at 33, please.

Mr MacSporran: Yes.

Dr HORTON: You will see what I am putting to him is this: I say, when you disseminated on 19 November, it must have been for a purpose which was about discovery because you end up insisting that there be discovery on 12 February. I put it to him that it was false saying there was no purpose in there that was about discovery because the letter of 12 February is inconsistent, I say or will suggest, irreconcilably inconsistent with that assertion. He says—a bit like you today, I want to suggest—well, by then, 5 February 2019—this is in the bundle—the Queensland State Archivist had formed views about these records being public records; correct?

Mr MacSporran: Exactly.

Dr HORTON: Yes. As well as the letter of 5 February 2019 in the bundle, there is an attachment to that which the committee members have but which is in the bundle which is the report of the Queensland State Archivist about it.

Mr MacSporran: Yes, which shows threads from those bundles being public records.

Dr HORTON: Yes, so we are not apart on that as we framed it. What I think we are apart upon is this: I simply do not understand, if these things are now public records, determined by the Queensland State Archivist to be so, how that in any way changes their disclosability in the QIRC proceeding.

Mr MacSporran: Did you put that to Mr Alsbury?

Dr HORTON: Yes, this is what I am discussing at 32 and 33.

Mr MacSporran: That is the basis on which you suggested to him that his evidence was false about the purpose.

Dr HORTON: No. That is a different issue. What I am saying is to him, first of all, it cannot just be about the Public Records Act because you end up insisting on discovery on 12 February.

Mr MacSporran: And he does not agree with that.

Dr HORTON: He does not agree with that.

Mr MacSporran: I don't either.

Dr HORTON: Then I go on and say at the bottom of page 32—and this is really what I want to take up with you because I think it might be a point of difference you have with the committee at the moment in my perception on the questioning—

In your mind, that would change a disclosure obligation how?

That is really what I am putting to you now—that is, I am suggesting to you that whether or not these things are public records does not (a) change their disclosability in the QIRC and (b) does not matter a jot in terms of the ruling which Commissioner Black has given clearly in relation to these and other documents on 24 August 2018.

Mr MacSporran: Then, as I perceive it, Mr Alsbury disagrees with that proposition at page 33, about a third of the way down.

Dr HORTON: Yes, he does.

Mr MacSporran: And so do I—deferring to him because he knows more about this. In fact, he was the sign-off on the dissemination—

Dr HORTON: Before you defer, hold on a minute. Before you defer, I am suggesting that what he offers there is not at all a reason why things have changed.

Mr MacSporran: But he denies your proposition.

Dr HORTON: Yes. I understand he denies it, but we are trying to get to whether the denial is a proper reason for objecting to what I am saying. He and I do not agree—I get that—and he gives a reason why he does not agree with me. What I am saying is—and I am giving you a chance to comment on—that reason is not a good reason.

Mr MacSporran: I do not agree.

Dr HORTON: Good, and you gave the reason earlier to the committee so it seems to be your reason as well?

Mr MacSporran: I concur with Mr Alsbury, yes.

Dr HORTON: Tell me if I am pushing your knowledge of civil matters. It would not change a disclosure obligation in the QIRC one jot to know or not know, in terms of what has occurred, whether or not these things had been considered to be a public record by the Queensland State Archivist.

Mr MacSporran: Mr Horton, you are pushing my knowledge of civil matters. I am just a poor old criminal lawyer.

Dr HORTON: I understand. You feel confident enough to offer this as an explanation, but when I push you on it you want to say that your knowledge of civil litigation is limited.

Mr MacSporran: Because it is.

Dr HORTON: Right, but it does appear, though, that people were able to take steps—Mr Alsbury—on the basis of a view about this rendering or changing their disclosability because there had been an opinion by the State Archivist.

Mr MacSporran: That is Mr Alsbury's view and I can see how he formed it and I accept it.

Dr HORTON: I cannot see how you would form that view, I am putting to you, as a basis for saying that things had changed in terms of disclosability. The documents were always what they were. The fact that a State Archivist—

Mr MacSporran: Safe to say, I do not agree. I am accepting what Mr Alsbury says about this. I know you do not want to hear that, but that is my view.

Dr HORTON: Your view is your view, but I am politely disagreeing and giving you the chance to know that so that you can explain further, if you wish to, and if there were other points you wish to make.

Mr MacSporran: Thank you, Mr Horton. I have nothing to add, but thank you.

Dr HORTON: And, more importantly, it does not change anything said by Mr Black in terms of the basis upon which he set aside the notice of attendance to produce and made rulings about the use that could be made by the applicant and the dissemination of material obtained. I suggest to you it does not change one jot the way one would read that ruling in relation to the documents given to the council on 19 November 2018.

Mr MacSporran: I cannot comment on that sensibly.

Dr HORTON: Thank you. Chair, I have finished for the moment on that topic. I wanted to move now to the decisions in connection with charging.

CHAIR: Before you do that, Mr Horton, it might be appropriate to take a break until 3.30, if that is a convenient time because of a change of topic. We will break for a few minutes and come back at 3.30.

Proceedings suspended from 3.12 pm to 3.30 pm.

CHAIR: Welcome back to our hearing. Mr Horton, we were going to move on but the member for Coomera has a couple of quick questions which he thinks relate more to the previous section than the next one.

Mr CRANDON: You confirmed earlier that on 26 April you were aware of the 2 May hearings at QIRC.

Mr MacSporran: Yes, that is so.

Mr CRANDON: I refer now to Supp. 2 1/9, which is the opening remarks at a press conference for Operation Front on 26 April 2019.

Mr MacSporran: Yes.

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

Mr CRANDON: In that document at paragraph 3 you say—

It is one of the most significant investigations this agency has ever carried out ...

At paragraph 4 you say—

This is the only occasion upon which I will speak about these matters, because the people charged are, as you know presumed to be innocent until proved to be guilty beyond reasonable doubt.

Is that true? Is that the only time you spoke about these matters?

Mr MacSporran: No. I think I did speak about these on at least one other occasion at a conference or presentation somewhere. I cannot tell you the exact date of that. I know it is referred to, I think, in one of the submissions to the inquiry.

Mr CRANDON: In that respect, you elected to go beyond what you indicated in there to talk about it again. That is fine; thank you. Paragraph 5 states—

Operation Front was originally focused on the then Mayor of Logan City Council but as our investigators progressed their work they identified other allegations that warranted further investigation.

Next paragraph—

... 14 serious criminal offences. (*Smith x 7, 7 councillors x 1=7*)

Over the page you say—

As you would expect following amendment to the law recently, I will be providing a briefing to the Local Government Minister ...

That is the paragraph I want to ask you about. It seems like, and the evidence we have received from one of the police officers—I would have to go back to find out who; you would have read their witness statements. They made it clear to the committee in their statements here last week that it was not from them the decision to charge the seven with fraud, that it came from higher up.

Mr MacSporran: Excuse me if I am mistaken about the question you have asked, but it is important to bear in mind that the actual decision I make ultimately is to refer a matter to a police officer to exercise their discretion to charge. That is done within the framework of lawyers, including myself, at the CCC who assess the evidence, who assess the appropriateness of particular charges to be laid. As you have seen in my cover sheets and Mr Alsbury's memos on I think 24 April 2019, there was approval for a police officer to consider charges of fraud and other charges on Mr Smith separately.

Mr CRANDON: Yes. They did not come, though, up the pipe to you; they went down from further up the pipe. Mr Horton might be talking to you more about this in a moment so I will leave that for now. Let me go to these last couple of points. You make some remarkable or astounding comments in this document—

The charges from Operation Front are a stark reminder of the problems in the local government sector in Queensland.

Mr MacSporran: Yes.

Mr CRANDON: How many people have you brought to the courts and successfully prosecuted?

Mr MacSporran: I cannot give you the exact figure, but there are a number from Ipswich. There were these ones from Logan charged—

Mr CRANDON: Elected representatives.

Mr MacSporran: I cannot tell you off the top my head, but there were a number. We can give you the figures if we get—

Mr CRANDON: 'One' is not correct—only one who has been charged, gone through the court system, found guilty and did not win on appeal?

Mr MacSporran: Are you asking me to nominate one?

Mr CRANDON: No, I am asking you if there is only one.

Mr MacSporran: No, there were more than one, I am sure.

Mr CRANDON: More than one elected representative?

Mr MacSporran: I think so, but I would have to take it on notice.

Mr CRANDON: Could you take it on notice?

Mr MacSporran: Yes, certainly. We will give you the figures.

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

Mr CRANDON: You were very aware of the impact on the people of Logan—

Today's news may come as a shock to many of you. It will undoubtedly cause some turbulence for the Council and the community more generally.

That is fine. Mr Horton is going to talk to you about that. I want to take you to Supp. 2, at 4/9 and 5/9. I want to bring out into the open more about the thinking within the CCC when it is thinking about reports to the PCCC. At 5/9, on 15 February there is an email from your—I will not mention her name—executive assistant—

Sharon Kelsey phoned and requested an in-person meeting with you today. I explained that I would need to speak with you first and then get back to her. You are free at 3:30pm onwards today.

I asked whether she would be happy to speak over the phone given the short notice, and she said no she would prefer to meet in person.

After that, there was a second email from your executive assistant that says—

Forbes says he wants to attend meeting with Sharon Kelsey AI—also, as this meeting will need to appear published in our report on your activities to the PCCC, once the meeting concludes, can you please give me a short description e.g. 'discussed matters relating to Local Government etc.'—

That is a 15 February 2018 email. She then goes on to say—

so that I can put something non-controversial in the report.

Would you care to comment on the thinking that goes around that sort of thing? Your executive assistant is aware of this almost cleansing activity that goes on with what is going to end up in our reports and what you are going to report to us?

Mr MacSporran: I suspect what she is saying here is drawing the distinction between matters that need to be reported to the PCCC as of right and operational matters that are not required to be reported other than to the parliamentary commissioner, who has completely open access to all of our records as the agent of the committee. That is the first thing. The second thing is: the CEO, Mr Forbes Smith, was the then CEO who I had engaged at this stage with Mr Hutchings to manage the PID side of these things, bearing in mind, from an operational point of view, Sharon Kelsey at this stage in February 2018 is a PID and entitled to not only protection but confidentiality and so forth.

Mr CRANDON: Okay.

Mr MacSporran: And we have commenced a corruption investigation at this stage which is ongoing. In fact, it went from October/November 2017 to the charging in April 2019.

Mr CRANDON: But it does appear as though it is something that needs to appear in the report to us and her suggestion is that it might be something—she can put something in non-controversial to discuss matters relating to the local government.

Mr MacSporran: And she would not be revealing the nature of the operational details that we were discussing at that time because, as I say, concurrently with her PID status she was also a witness as a PID in a serious corruption investigation and she is entitled to protection and some confidentiality. I am putting two and two together about what my EA has said here, but I am assuming that is it, because we report, as you know—my routine activities as a chairperson is to report about what I have been doing for the three-month period or whatever leading up to this, the reporting to the PCCC.

Mr CRANDON: Thanks, Chair.

CHAIR: As there are no more questions on that point from committee members, Mr Horton, would you like to move on?

Dr HORTON: Thank you; I would. Can I just say before we do, Mr MacSporran, tying off on the issue of the nature of the documents delivered on 3 October and 19 November, we have again checked what the CCC has disclosed as those documents. It does appear to us—please, I will stand corrected if it is wrong—that what is delivered on the 19th is a redacted form only of what is delivered on 3 October.

Mr MacSporran: I understand your proposition, Mr Horton. I do not agree with it for the reasons I have said before, but we have undertaken to take your proposition on notice and provide any additional material or explanation we can about our view of that proposition.

Dr HORTON: Okay. I think we might be at cross-purposes. If I am wrong about my understanding that the 19th is a redacted form of what is delivered on the 3rd, please tell me. That is my understanding at present on the basis of folders that your organisation has disclosed—

Mr MacSporran: Yes. We will—I am sorry.

Dr HORTON:—and, second, that both those things were within what had already been produced in response to the QIRC notice back in—

Mr MacSporran: And that is what we understand is the question on notice we have taken and we will come back to you with any material we can.

Dr HORTON: Thank you. Can we move now to the question of the various—the decision-making about charges? You and I discussed that on the first occasion in *Hansard* really at about 17 August on page 41, and that is by reference to volume 2, page 77. Now, this memorandum at page 77, I think it is safe to say to you, seems to be that which was before you on 30 January when you made certain decisions in connection with charging the mayor.

Mr MacSporran: Yes. Can I just clarify if I could, Mr Horton, please: there is no date on the memo itself. I am not suggesting it is not the memo, but you have had other evidence no doubt that it is.

Dr HORTON: Yes, and the reason I am saying that—I do not think anyone has cavilled with it so far—is if you turn to page 316—I know it is a long way to turn in front—in the same volume it is reannexed next when you come back to the position on 24 April with this document number as being what seems to be the 30 January memo, and that number is the one at the top right hand of the page on page 77.

Mr MacSporran: You said 316, I think?

Dr HORTON: 316.

Mr MacSporran: My 316 is the second page of the Preston memo.

Dr HORTON: That is right, and if you look at paragraph No. (2) on that page. It is hidden away. I am sorry; it took me a while to find it. Paragraph No. (2)—‘Original memo’ and then a number beginning with ‘19’.

Mr MacSporran: I see what you mean. Bear with me—19/016561. Yes, I see your point; yes, that is right.

Dr HORTON: I have just made that connection; I think that is right.

Mr MacSporran: No, I think it is a fair point. It is the same number, so it must be the same memo, I suspect.

Dr HORTON: Yes.

Mr MacSporran: By reference, yes.

Dr HORTON: Thank you. And then we cannot see in the shaded boxes, but I think it is only because of copying, not because they have been redacted.

Mr MacSporran: Yes.

Dr HORTON: And then you will see in the top discussion points—point 1,2, 3—the second one is about councillors by the mayor, so it seems to be about the mayor, and then the various points underneath you will see focus on the mayor. I suggest to you—and I think you have agreed with me—the decision-making on the 30th is only about the mayor?

Mr MacSporran: Yes.

Dr HORTON: Just for the benefit of the committee, can we just recap for a moment what offences are in play in effect at this time, just in the abstract sense. There is reprisal under section 40 of the Public Interest Disclosure Act, and that does not include any element of dishonesty?

Mr MacSporran: That is so, yes.

Dr HORTON: And, in short, that is causing detriment to another person because or in the belief that that person has made or intends to make a public interest disclosure. That is a paraphrase of it, but that is the idea between the act. And 41 is the offence a person must not take a reprisal, and then there seemed to be two others in play—one is misconduct in relation to public office under section 92A of the Criminal Code which does include an element of dishonesty and which is an offence which under the Local Government Act would have caused the person charged to be disqualified from holding office?

Mr MacSporran: Yes.

Dr HORTON: And then there is fraud under section 408C of the Criminal Code which is causing a detriment relevantly to Ms Kelsey but with dishonesty?

Mr MacSporran: Yes, dishonestly causing a detriment, yes.

Dr HORTON: Dishonestly causing a detriment—‘dishonestly’ being tested by reference to the views of ordinary people?

Mr MacSporran: Yes.

Dr HORTON: And that misconduct—sorry, fraud, too, would result, as it did, in the disqualification of the accused upon charge?

Mr MacSporran: Yes, both misconduct in public office and fraud had the same consequence as integrity offences in the local government amendment.

Dr HORTON: Yes. Can I deal with a topic which was the subject of debate between us last time and which we explored with Detective Sergeant Francis, and I think it has become clear, I want to suggest to you, but I am going to run through it in this way. You on 30 January and you on 24 April are not yourself deciding to lay the charges?

Mr MacSporran: That is so, yes.

Dr HORTON: You are on one view referring it—deciding that it is suitable to be referred to someone who can then decide whether charges should be laid?

Mr MacSporran: Yes.

Dr HORTON: And maybe in a different organisational sense, in a general sense you need to communicate whether or not that person who might charge has the organisational backing to do so?

Mr MacSporran: Yes.

Dr HORTON: Quite appropriate, because one would not want people commencing charges who did not have the organisational backing for doing so?

Mr MacSporran: That is so.

Dr HORTON: And I think you have said that may not be the way in which—as in terms you have notated it, but it is clear that that is what you are doing?

Mr MacSporran: Yes. I think when I came back on the 18th—the morning of the 18th—and stepped through what I then termed to be an overly generous concession the night before, I could see the sense in what I had actually said on the cover sheet in my own handwriting did reflect my decision to refer it to a police officer to conduct their own independent assessment and exercise their discretion to charge or not, and they did. That was Francis.

Dr HORTON: Yes. And I think—I probably took you to it, but in the memo that is produced afterwards—not this January one but the 25 March one—there is reference to you having in paragraph 9—

Mr MacSporran: Given approval for the—

Dr HORTON: Yes, but again which you would say is a proper summary—sorry, is a summary only of what you are properly doing in the sense I have described and which you have—

Mr MacSporran: That is right, yes.

Dr HORTON: I understand. And it follows—and, again, I am not suggesting improperly—that if a person who was deciding whether to charge did not have the institutional backing, ordinarily they should not be charging?

Mr MacSporran: I suppose nice questions of procedure would apply if we said no and they went ahead and charged anyway, as they are entitled to do, but it would be career threatening, I suspect.

Dr HORTON: Yes, and I do not want to go there because, of course, it did not happen in this case.

Mr MacSporran: That is so, yes.

Dr HORTON: But, yes, right—and nice questions might arise in public law, but in any event—

Mr MacSporran: But that would not be the way it would happen, yes.

Dr HORTON: Yes. Understood. I think it is clear on the evidence, from what you have said earlier—we have here in volume 2 the record, so far as it is, about what was considered and on what basis on 30 January, in these few pages going back to I think page 69, 70 and so forth.

Mr MacSporran: Yes.

Dr HORTON: And so we do not see in this 30 January memorandum at page 77 a specific recommendation in relation to fraud or misconduct, unless it is in the black boxes which we cannot read for the moment.

Mr MacSporran: My understanding, Mr Horton, is there is no such recommendation articulated in writing. If I might explain why?

Dr HORTON: Yes.

Mr MacSporran: What was happening: this was being considered on a number of occasions in discussions between the investigative team, Mr Alsbury, Mr Alsbury and myself, and I think there is an email, if I remember seeing it, from Mr Alsbury to the investigation team, although not me included, that talks about the offence of fraud as being I think what is referred to as a fallback position if misconduct in public office, for whatever reason there analysed, is not available.

Dr HORTON: Yes.

Mr MacSporran: Or not sustainable, I suppose is a better way of putting it.

Dr HORTON: Yes.

Mr MacSporran: Now, that is the background to what happened on 30 January. There had been many discussions. Sometime between the 9th, when Mr Alsbury wrote that email, and the 30th, when I met with Mr Alsbury and the investigation team and made that statement or recommendation, I had come to the view with Mr Alsbury that an offence of fraud was the most appropriate one to be referred to the police officer ultimately, but that was not recorded at that stage because, ultimately, there needed to be further consideration given to others involved with the mayor before the investigation came to a conclusion for the corrupt conduct side of it.

Dr HORTON: Understood. And the matter is still developing, I think seems to be an understanding at least between those who were at the meeting.

Mr MacSporran: Yes, and I think what had been included also on 30 January was the misconduct in public office charges in respect of two parts of the mayor's alleged conduct which involved the staff member—who I do not know whether I should name here, but the staff—

Dr HORTON: We understand who you are talking about.

Mr MacSporran: Yes, and Ms Kelsey—those two component parts of misconduct in public office charges. So it was those two plus a fraud charge on the mayor potentially and then the matter moved forward, without the formal recommendation being recorded, to consider the rest of the investigation, which came to a head on 24 April the same year.

Dr HORTON: Yes. Can I just go back a little bit to reflect what you have said. In the bundle, just for completeness, at page 15 is an early memo to David Preston from Mark Andrews.

Mr MacSporran: That is 50, is it?

Dr HORTON: 15, sorry: 'Consideration of a further charge against' the mayor '(s92A Misconduct in Public Office)'.

Mr MacSporran: Yes, relating to Ms Kelsey. Yes.

Dr HORTON: And the evidence matrix is set out there at page 17 about the sorts of things that would inform the elements.

Mr MacSporran: Yes.

Dr HORTON: Fraud is not mentioned at that stage.

Mr MacSporran: No.

Dr HORTON: We will come to this in a moment, but if you look at page 27, consideration is given by someone—not you—to the effect of the Local Government Act on certain charges having been laid. We will come back to that point.

Mr MacSporran: I am just trying to pick up whether he refers to both offences.

Dr HORTON: I do not think they do and, in fact, I think it is focused around, as you will see, meaning of material person interest.

Mr MacSporran: Yes, all right.

Dr HORTON: And then you will see it is a slightly different context.

Mr MacSporran: This is back in September 2018?

Dr HORTON: It is. I am just reading—

Mr MacSporran: Yes, very early.

Dr HORTON: Yes, and I have just gone back in time to show you this and then 43 is a legal advice, draft only ever, written by Makeeta McIntyre.

Mr MacSporran: Yes.

Mr HORTON: Assume the date is on or about 14 December 2018.

Mr MacSporran: Yes.

Dr HORTON: And you will see that mentions fraud at page 57, but only in a draft way and against the mayor.

Mr MacSporran: Yes, and that is, as you say, December 2018, the draft.

Dr HORTON: Yes, because she goes on leave on about the 14th, we think. She agreed with us about that.

Mr MacSporran: Yes.

Dr HORTON: And page 59 is the fallback email.

Mr MacSporran: That is the one I referred to earlier, the 'lot of noise' email.

Dr HORTON: Yes, and can I understand that thinking for a minute? Is this right: if you charge, you might have an offence in mind which neatly fits it in description, but if you do not necessarily have that on a consideration of all the evidence you might go for a more generic—and that is not to be pejorative—offence of fraud which is not tailored necessarily to a specific situation like a reprisal might be but to be more general?

Mr MacSporran: I think it is more than that, Mr Horton. It is really in this case, as in most cases where these sorts of issues, the complexity of them, are considered, the misconduct in public office offence, which is in the code, if you like, specifically for abuse of office with a dishonest intent, that sets the bar reasonably high in terms of ease of proof. It is an integrity offence, as is fraud. There is no difference between the two of them in that sense, but this case really was not, in terms of the mayor and the seven councillors, in our view, a case of abuse of office as such to cause the detriment to Ms Kelsey; it was a case just of sheer dishonesty. That is what this case was all about, in our view. It was not misusing their position as councillors as such; it was just engaging in dishonest conduct and, to that extent, 408C called fraud rather than the separate offence of misconduct in public office, we thought was a perfect fit, allowed evidence that was probative to be admissible—that is, the WhatsApp and telephone intercept evidence particularly—and was easier to prove and sustain than the more difficult task under the misconduct in public office charges.

Dr HORTON: Yes.

Mr MacSporran: That is a very brief way of saying what the rationale was. This was all about dishonesty, in our view. That is how the evidence was assessed and collated.

Dr HORTON: You have seen, no doubt, the evidence in *Hansard* of Detective Sergeant Francis, who says his memos—and I think he would not limit it to just one—were really, I put to him, a download about dishonesty focused on that element.

Mr MacSporran: Because that was the case. Whilst there are four elements of 408C—a person, one; causes, two; dishonestly, three; a detriment, four—the only contentious one in this case ever was whether the conduct which was conceded was dishonest.

Mr HORTON: Yes.

Mr MacSporran: Or not.

Dr HORTON: Sorry?

Mr MacSporran: 'Or not' is what I meant to say—it was dishonest or not.

Dr HORTON: Understood, but the element of dishonesty is the one I want to take up with you a bit in the documents that follow, because dishonesty itself, although an element, has within it certain material considerations about how one goes about assessing whether or not it actually does satisfy the legal standard of dishonesty.

Mr MacSporran: Yes.

Dr HORTON: I think one of them, we have agreed, is determined objectively—not by the defendant's standards but by the standards of ordinary honest people; correct?

Mr MacSporran: Yes, you take the conduct of the person established in the evidence and look at it objectively to see whether it is dishonest by those objective standards.

Dr HORTON: Yes, and those standards are of ordinary honest people.

Mr MacSporran: They are jurors, yes: what you expect jurors to bring to bear on the issue.

Dr HORTON: Yes. Good. Thank you. Then the outcome of 30 January is you have approved, in the sense you have described, that this be referred to the police officer for consideration whether to charge?

Mr MacSporran: Subject to the balance of the investigation, which was to deal with the seven councillors.

Dr HORTON: Yes, there was, and there is a statement coming as well which had not yet been signed. I accept all that.

Mr MacSporran: Yes.

Dr HORTON: But that sets it running, so to speak. Then you receive, as I understand it, on 26 March, a memo from Detective Inspector Preston. That is probably the next major thing we see happening on the documents.

Mr MacSporran: I am just not sure whether I received that. I see on the material that came to me on 24 April that memo that I think you are referring to, endorsed by Mr Alsbury, to say he has replaced that memo with his own memo of two pages, dated 23 April from memory.

Dr HORTON: And you think that might be replacing Detective Inspector Preston's?

Mr MacSporran: I am pretty sure it is, but I am not sure whether Preston's memo came to me earlier anyway. I am just not sure of that sequence.

Dr HORTON: It does not matter for present purposes. I am just trying to understand.

Mr MacSporran: It is at page 316, I think I am referring to.

Dr HORTON: Yes, I think that is right.

Mr MacSporran: You will see Mr Alsbury endorses Detective Inspector Preston's memo, which goes to his superior, Detective Superintendent Reid, and then to Paul Alsbury. He says, if I have read Mr Alsbury's writing correctly—Noted. Replaced with cover sheet and memo of advice from me, forwarded with other material to the Chair.

He signs it and dates it 23 April 2019.

Dr HORTON: So you cannot say definitively that you saw, at the time it was written or when you were making your decision, the memorandum that appears at 323 of the bundle, which is to Mr Alsbury from Detective Inspector Preston?

Mr MacSporran: I definitely saw the memo. It was in the bundle that came to me. I did not pay attention to it because it had been replaced by Mr Alsbury's endorsement with his memo, which dealt with all those issues.

Dr HORTON: Understood. And Mr Alsbury's memo at pages 321 and 322 mentions 92A and mentions 408C.

Mr MacSporran: That is so, yes.

Dr HORTON: In terms of the documents that come to you, would you ordinarily get to see the legal advice observations of the kind that I have shown you that Ms McIntyre had prepared in draft?

Mr MacSporran: I would normally. I am not sure at that time. I think I may normally have received them. Certainly now we do routinely under our operations manual, which postdates this case. But ordinarily you would expect to see observations from a lawyer attached to the team—in this case, as you say, Ms McIntyre, who had commenced the process but not completed it as at, I think, 4 December, as you say, or 14 December the previous year.

Dr HORTON: Yes. What I really want to suggest to you about these memos—it applies to all of them—is this: if the focus is dishonesty, which one can understand being, for the moment, the operative or controversial limb of the offences that you are considering, wouldn't you need, in considering that memo, some unpacking or systematic treatment of this download of things which might or might not amount to dishonesty and how?

Mr MacSporran: I do not think so. In this case, Mr Alsbury and I in particular discussed the applicability of fraud, the quality of the evidence. As you know, he expressed in the material, and I am sure he confirmed in evidence, that he had some reservations initially about the prospects of success, in particular in respect of the seven councillors. I took very seriously Mr Alsbury's reservations for obvious reasons. He is a person whose view I respect. He is a very good lawyer. He has good judgement. When he came back to me—and I cannot tell you the date but it was certainly between 9 January, when that memo expressed the noise around this case, and it got to 24 April, when we had the meeting in my office—he had changed his view, as I think he has explained in the evidence here.

Dr HORTON: He has.

Mr MacSporran: I was totally satisfied by his view because it coincided with mine about the quality of the evidence, the sufficiency of it to make a prima facie case and, more particularly, the prospects of success and the public interest considerations had all been properly considered.

Dr HORTON: At 318, at the very top of the page, just for your reference. You have no doubt seen it. The reservation that Mr Alsbury conveys—and, with respect, you have recalled it correctly—against these councillors, in effect and not to be overly strong: would you say that reservation is firmly before you?

Mr MacSporran: He had more significant reservations before this date.

Dr HORTON: We have seen those.

Mr MacSporran: Yes. The only reservations he had as at this date were not reservations that translated to insufficiency of evidence in the traditional sense of a prima facie case and prospects of success or to defeat the public interest consideration. What he is saying here, to my interpretation, and I am sure he has told you this, is he considered that the matter was appropriate to recommend to me that I give it to a police officer to consider charging on the basis he recommended. And I did so.

Dr HORTON: Yes. Mr MacSporran, if you look a little further down on page 318, it is said to be an urgent matter for you—Urgent Yes

Mr MacSporran: Yes.

Dr HORTON: You can enter reasons, the footnote says. But there are no reasons given here other than 'Yes'.

Mr MacSporran: That is so.

Dr HORTON: In the memos that came to you, going back to DI Preston's memo, bearing in mind what you said about that in terms of it maybe having been superseded at 323, there is reference to the lawyers for Ms Kelsey having—

... provided a submission they have lodged with QIRC for determination on 2 May 2019.

Mr MacSporran: Yes.

Dr HORTON: Did you understand that to be the day upon which the QIRC was going to determine something in relation to Ms Kelsey?

Mr MacSporran: I think I understood that at the time. I cannot tell you how I knew, but I think I did know that that was the stage that the QIRC proceedings had reached. The evidence had been heard. It had been completed. I think even written submissions had been exchanged.

Dr HORTON: Yes.

Mr MacSporran: And all that remained were some oral submissions to be made in the commission, a date for which had not then been set, I do not think.

Dr HORTON: I think it had been set for 2 and 3 May, Mr MacSporran. In fact, I think parties turn up on the day but that is not the day upon which they ultimately proceed. That was then scheduled as the day. When DI Preston says 'for determination', let us just take for a minute that was to be the subject of oral submissions on 2 May. The urgency is something that I want to turn to now and the reasons for it.

Mr MacSporran: I can probably, if it is convenient, shortcut it to this extent: I do not know what the urgency was. I had that meeting on 24 April. I had been told by Mr Alsbury, I think, before the meeting—I am not sure how long before that date but it was reasonably close to that day—that the investigation team were concerned about timing. They did not say why. They were concerned about charging before the QIRC proceedings had concluded. I thought about that. I came into the meeting on 24 April and expressed my view, as I think I did last time here—and indeed I think I did to the committee in, I think, a public meeting before or after concerns were raised about the Logan seven being charged and so forth—when I said that my view was that if the evidence was the investigation had gathered evidence that in our view was sufficient to lay the charges, there was no basis upon which we should not go ahead and do that, irrespective of what was happening in the commission or elsewhere, frankly. I have not expressed that very well. I think I expressed it better last time. You will have a reference in the transcript.

Dr HORTON: I understand the point, and I want to discuss it with you now so you might get the chance to improve it, if that is what you want, as you go. Your evidence earlier today was that you had these two streams running: the QIRC assistance and you had, in effect, what becomes the criminal investigation; correct?

Mr MacSporran: Correct.

Dr HORTON: Largely, there were different personnel working on that: Mr Alsbury heading up the criminal and Mr Hutchings, I guess, on the QIRC.

Mr MacSporran: That is so, yes.

Dr HORTON: What I want to suggest to you from here is that at this point we see the two converge to some extent. You have seen DI Preston referring to the QIRC on page 326, I think it was.

Mr MacSporran: I do not know quite what you mean by 'converge'. There was not in my mind any convergence of those two streams at all.

Dr HORTON: Understood. I am suggesting to you that what, in fact, occurs here is that. I understand you might say not in your mind. I will take you to a few references. One is that DI Preston has referred to it in his memo. The second is that Mr Alsbury has impressed upon you the urgency of acting.

Mr MacSporran: Well, just bear with me for one moment. Just looking at Mr Preston's memo at 323—this is the memo dated 26 March 2019—he refers to the state of the QIRC determination on 2 May, as you said before. I do not know that I have picked up here that he says anything about that being related to any urgency for the—

Dr HORTON: I will take you to a few things about that.

Mr MacSporran: It is not in this memo.

Dr HORTON: Well, that is the beginning, but I will take you back a bit. Just so you know what your evidence was earlier in the inquiry, 17 August, *Hansard*, page 55 I think is where you put it—

... we should just forget about what was happening in the commission—that was not a relevant consideration for us—and go ahead and do what our investigation had indicated we should do, and had always been the focus of our activity, and just get on with it, which is what happened.

Mr MacSporran: Yes.

Dr HORTON: Just go back a bit, to page 93 of volume 2.

Mr MacSporran: Yes.

Dr HORTON: You can see there—I think I might have taken it to you earlier—between these email exchanges to which you are not a party—

Mr MacSporran: That is so.

Dr HORTON:—there is a view expressed of the need 'to pinch Smithy & a decent portion of The Fab7 prior to 2 May'?

Mr MacSporran: This is on 26 March 2019?

Dr HORTON: It is.

Mr MacSporran: I was not copied in and I do not know, frankly, what that means.

Dr HORTON: Yes. It does not take much to work out what it means.

Mr MacSporran: Well, it was never conveyed to me in those terms and, in fact, my decision to refer it to Detective Sergeant Francis to exercise his police powers was not on this basis or anything like it, from me or Mr Alsbury.

Dr HORTON: Understood, but I am going to go back to it because this is the day upon which Detective Inspector Preston prepares his memo to Mr Alsbury, 26 March.

Mr MacSporran: Yes, 26 March.

Dr HORTON: And you will see that the charging officer, Andrew Francis, who is the case officer, agrees that it is 'yup time critical', that it comes after a letter from MinterEllison referred to in the middle of the page on 93.

Mr MacSporran: I see that.

Dr HORTON: And that letter from MinterEllison was about Ms Kelsey's written submissions that had been prepared for that closing hearing on 2 May?

Mr MacSporran: Those closing submissions were part of a bundle of material that came to me and is referred to in Mr Alsbury's memo of, I think, 24 April.

Dr HORTON: Yes. You and I discussed this on an earlier occasion about those submissions and we have been through that. That timing there on page 93—only comment to the extent which you can—can only be referable to charging the mayor and a decent portion of the seven councillors before the day upon which the matter is to return to QIRC for final submissions?

Mr MacSporran: That is an interpretation between investigators.

Dr HORTON: Well, can you think for a moment of another explanation that is not the one that I have suggested is the one?

Mr MacSporran: Well, I cannot recall reading whether any of these people—Andrew Francis, Mark Andrews, David Beattie and David Preston, all of whom, I think, have given evidence—I cannot recall what they said about this topic, but I would be speculating as to what they are saying here. I simply do not know.

Dr HORTON: Well, do not speculate about what they think, but I am just asking, knowing whatever you knew at the time that this is occurring, whether there is some other explanation than the one I put that could explain why that is not what I have suggested to you?

Mr MacSporran: Well, I would just be speculating as much as you would be, Mr Horton. All I can tell you is that I know for a fact what my assessment of the matter was, and the motivations behind it—and that was consistent with what Mr Alsbury had delivered up the line to me, and the basis upon which I sent it back down the line to Sergeant Andrew Francis to exercise his discretion—had no regard to any question of urgency and the QIRC proceedings at all.

Dr HORTON: Except that Mr Alsbury had told you in the memo that it was something that was urgent?

Mr MacSporran: That to me is in the context of this investigation having gone for close on 18 months and more, I think. It had at various points along the way, not the last of which was January 2019, not stalled completely but had appeared to have run out of steam to some extent, and there is always, in our assessment, a need to bring these things to finality in one form or another, and this was just another example of it. I do not know what urgency in that context means, but it certainly had nothing in my mind to do with the QIRC proceedings.

Dr HORTON: Did you ask Mr Alsbury what he meant by 'urgent' and why?

Mr MacSporran: I do not think I did, no.

Dr HORTON: His evidence was given on this topic on 18 August in *Hansard*, page 43. My last question on page 42 sets the scene—

And you said in that cover sheet that this matter was urgent.

At about point 2 of the page on 43—

I cannot remember the reason for it being urgent.

Mr MacSporran: Okay, yes.

Dr HORTON: I put to him the similar sort of things I am putting to you now. Then, just for completeness, I want to take you to 25 August, at page 62 of *Hansard*, which is Senior Sergeant Andrews—

Mr MacSporran: Sorry, page?

Dr HORTON: Page 62, Mr MacSporran, of 25 August. I am just offering you to see this at about point 4, as an explanation that he offered—

I wanted to move the investigation along and I needed to have it done before then to give us the best opportunity to get the people we were investigating to cooperate.

Mr MacSporran: Yes, I see that.

Dr HORTON: You may not be able to comment, but I am giving you the chance to comment. Is that an explanation, first of all, that you would advance as another possible explanation for what is occurring in the email at page 93 of volume 2?

Mr MacSporran: I do not think so. It certainly was not something that was brought to my attention at the time.

Dr HORTON: And then Detective Sergeant Beattie, who in fact wrote the email on 26 March 2019, at page 93 of volume 2, on 26 August in *Hansard*, bottom of page 9, top of page 10—said at the top of page 10—

Mr MacSporran: Are you saying they are not connected time-wise and so forth?

Dr HORTON: Correct.

Mr MacSporran: That is the effect of what he is saying, yes.

Dr HORTON: What I want to show you is those explanations, none of which, I want to suggest to you—and only answer if you can, because these are not your answers—but they are not an alternative explanation for the significance of the 2 May date and there being a real need to pinch—that is, charge—the mayor and 'a decent portion of the Fab7 prior to 2 May'?

Mr MacSporran: Well, I would only be speculating to even attempt to answer that.

Dr HORTON: Do not speculate; I just wanted to give you a chance, if you would, because what I am trying to do for the committee is explore explanations of the email given on page 93 of volume 2 which would explain what I am otherwise going to suggest is an inescapable inference you draw from that that those involved in the charging itself, as distinct from the authority to charge or the referral to charge, were motivated by a desire to have before the QIRC for the closing submissions the fact that (a) these people had been charged and disqualified and (b) that would have an effect in terms of the constitution of the council under the Local Government Act.

Mr MacSporran: I am astounded that that is the interpretation being put on that sequence, but I cannot comment personally. I would only be speculating. I just do not see how, sensibly, such a Machiavellian proposition could be advanced.

Mr SULLIVAN: Mr Horton, could I ask a favour? There were about three elements to the question you put to Mr MacSporran. Could you perhaps ask them separately?

Dr HORTON: Yes, if I can recall what they are.

Mr SULLIVAN: The timing was related to 2 May, what the consequences would be and if that was a motivation, if that is a fair summary.

Dr HORTON: Yes. Can I break those down and then I am going to go through some of these from the ground up a bit because you are saying you want to know the elements of the alleged Machiavellian scheme.

Mr MacSporran: I would very much like to see how it is put together.

Dr HORTON: Page 93 of volume 2—

Mr MacSporran: I am sorry, I missed that reference.

Dr HORTON: Page 93 of volume 2—

Mr MacSporran: I have that, thank you.

Dr HORTON: The suggestion is this: one reads that email and the 2 May date can only be a reference to the closing submissions that are to occur in the QIRC on that date.

Mr MacSporran: I have given what I can say about that already, thank you.

Dr HORTON: And second that the email is referring to this consequence: in charging the mayor and seven others, each will be disqualified by 2 May?

Mr MacSporran: By operation of law, yes.

Dr HORTON: Yes. Particularly focus on the words 'a decent portion of the Fab7'. That can be referable only to the need to get sufficient numbers charged as would result in an inability of the council to continue to operate by reason of constituting a quorum going forward?

Mr MacSporran: There were seven being investigated in addition to the mayor as part of the entire investigation from close to its start until its completion, when they were charged.

Dr HORTON: The 'decent portion' reference is what I am suggesting to you can only be a reference to needing to charge so many of those as would cause the council to be unable to continue to function by being unable to constitute a quorum such as would result in the council being disbanded.

Mr MacSporran: I see what you are saying. I think I have said all I can about that being a correct proposition.

Dr HORTON: We know all those things did in fact occur; yes?

Mr MacSporran: They were charged. Ultimately the brief—

Dr HORTON: They were charged before 2 May.

Mr MacSporran: Yes.

Dr HORTON: They were disqualified upon charging; correct?

Mr MacSporran: I am not sure of the timing of that. I assume it happened reasonably quickly after the charging.

Dr HORTON: The administrator is appointed on 2 May, assume for the moment. On 2 May the administrator is appointed. Before 2 May the councillors had been disqualified by operation of law; correct?

Mr MacSporran: Yes, that is the timing.

Dr HORTON: That is the provision under the Local Government Act?

Mr MacSporran: Yes.

Dr HORTON: The circumstances have been such that the local government has been suspended or dissolved because of the council's inability to function going forward because so many of the councillors have been charged as render it incapable of continuing to constitute a quorum.

Mr MacSporran: Yes, I have said before I think it is simply a mathematical exercise.

Dr HORTON: Yes. I think we are agreeing that from the point the charge was laid the next consequences were inevitable, albeit they were by operation of other legal mechanisms?

Mr MacSporran: Yes.

Dr HORTON: Ultimately the administrator is appointed on the 2nd. That is unpacking, I hope, some of those elements. I want to take you back through some of them. It goes back really to this again: it is this inference that counsel assisting may ask the committee to draw on. It is: you had resolved, as we have discussed this morning and on the first occasion you were here, that the CCC would assist Ms Kelsey in connection with a QIRC proceeding?

Mr MacSporran: I think the words that have been quoted of mine, which are accurate, are any way we could legitimately do that, yes.

Dr HORTON: Which included in her QIRC proceedings?

Mr MacSporran: Yes, in the way we have discussed in the previous evidence today and on the earlier occasions.

Dr HORTON: Yes. Ms Kelsey sought in that proceeding, after her termination on 7 February 2018, that she be reinstated?

Mr MacSporran: That is so, yes.

Dr HORTON: She had told you in the meeting on 6 August 2018, which we went to before, that her reinstatement would make it 'feasible'?

Mr MacSporran: Yes. I think she was saying that, as I understood at least, in a sense of financially feasible pending the final outcome or final determination of the QIRC proceedings.

Dr HORTON: Yes. That cannot be the full answer, can it, because we know that she declined an offer to continue to be paid her salary later?

Mr MacSporran: What do you refer to as not the complete answer? I am sorry, I am misunderstanding.

Dr HORTON: That you took her reference to reinstatement to, in effect, be about salary?

Mr MacSporran: Financial capability; financial circumstances.

Dr HORTON: So the only thing that reinstatement would give her that she did not have presently was her salary as CEO; is that correct?

Mr MacSporran: I think so.

Dr HORTON: And whatever the entitlements of CEO were? I know it is later she declines at least one offer of being paid the salary, albeit on conditions. I accept that.

Mr MacSporran: I am sorry, I am not getting your point.

Dr HORTON: The reinstatement must be about more than just salary. Is that right or not? Do you not have a view on that?

Mr MacSporran: I do not know what her intention was in expressing it to me the way she did. I took it to be it was about her financial difficulties. She may have meant it was something more. I do not know.

Dr HORTON: You knew that she had sought and obtained for a time interim reinstatement?

Mr MacSporran: I think I did know that. That was subject to an appeal and overturned, I think, afterwards.

Dr HORTON: Yes, and that interim reinstatement does not last long because the Industrial Court overturns the interim ruling?

Mr MacSporran: I think that is right. I do not know how long, but it was certainly not a lengthy period that she was reinstated before it was overturned.

Dr HORTON: Before we reached this stage in the chronology of events you had sought funding for her from the minister?

Mr MacSporran: Yes, in a letter that we all know.

Dr HORTON: The CCC had voluntarily responded to a notice of attendance to produce; correct?

Mr MacSporran: Yes. We have been through all of this, yes.

Dr HORTON: We have. I am setting out what I say are the facts which underlie the inference which the committee might be invited to draw. Next what had happened on 3 October, but if not on 3 October certainly on 19 November 2018, was delivery of documents to the council which had as a purpose, and a weighty and substantial purpose, that those documents would then be made available in the QIRC in a way which the CCC considered was to Ms Kelsey's benefit?

Mr MacSporran: I take your summary. I think I have said whatever I can say about that in the previous answers earlier today.

Dr HORTON: One basis of the inference is that the CCC has resolved to assist and did assist Ms Kelsey in other ways and that it knew Ms Kelsey wanted reinstatement, had sought it and had not been successful in getting it?

Mr MacSporran: Yes, I take on board what you are saying.

Dr HORTON: The next element is this—please correct me if I am wrong in what I am about to say to you: nowhere in the January memo from Detective Sergeant Francis or in the memos that follow from page 97 to 310 is reference made to the inevitable consequences that I just put to you in terms of disqualification and—I forget the term—suspension or—

Mr MacSporran: I will take your assessment of that as being correct. It is probably right, although at some point I would like to check it. I am not saying you are wrong about that, but that would not surprise me.

Dr HORTON: Do check, if you would—you might have another night to check. What is missing from these documents is this oddity: the charges that are about to be laid, whether they be under a 92A offence or a 408C offence, are not revealed in the documents, yet that is a nuclear, for the moment, inevitable consequence of what is about to occur.

Mr MacSporran: Yes.

Dr HORTON: Nuclear in this sense: not only is the person to be charged as an ordinary person would be and to suffer whatever ignominy the mere charging creates—and of course it creates disruption for many people—but here by operation of law the person is to be fired—that is, there is no possibility they will not be not fired—and, second, because so many have been charged an entire body, including people who have not been charged, will be dismissed from their function of running a council, and those people are all elected officials.

Mr MacSporran: Yes.

Dr HORTON: They are all, I want to submit to you, very weighty considerations in the decisions about charging.

Mr MacSporran: I do not agree. I am referring when I say that to the DPP guidelines in respect of these matters.

Dr HORTON: What part of the guidelines are you referring to?

Mr MacSporran: Firstly, I cannot refer you to where it is in the bundle—I have my separate copy.

Dr HORTON: I have the guidelines in front of me.

Mr MacSporran: Are they the ones as at June 2016?

Dr HORTON: They are.

Mr MacSporran: We are on the same bundle then.

Dr HORTON: Which say they are currently under review, and I think they are still under review.

Mr MacSporran: Yes, that is right. If you go to page 2, which has the heading in section 4 'The decision to prosecute'—

Dr HORTON: Yes.

Mr MacSporran: I think that is non-controversial—the rest of 4 there. You will see the considerations, which are what we have been talking about here—the two-tier test, sufficiency of evidence and public interest.

Dr HORTON: Yes, and impartiality at No. 3.

Mr MacSporran: Yes. Impartiality makes the point—

A decision to prosecute or not to prosecute must be based upon the evidence, the law and these guidelines. It must never be influenced by:-

- (a) race, religion, sex, national origin or political views;
- (b) personal feelings of the prosecutor concerning the offender or the victim;
- (c) possible political advantage or disadvantage to the government or any political group or party;

Dr HORTON: Yes, or—

- (d) the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution.

Mr MacSporran: Yes.

Dr HORTON: That is about the prosecutor—ignore (d). Are you—

Mr MacSporran: If I can finish—the fact that you are an elected official should not, it seems to me under these guidelines, be a relevant factor as to whether you are prosecuted or not providing the two-tier test of sufficiency of evidence and public interest is satisfied.

Dr HORTON: Yes, I see, and not the fact that you are going to affect an elected body independently of those people, including four people who have not been charged with anything.

Mr MacSporran: That is just a product of the law, which is passed by parliament and in respect of which the CCC has no part to play.

Dr HORTON: Yes, but an effect of an act of parliament which is still an effect. Not all effects prescribed by parliament, by the law, are irrelevant to the exercise of the discretion to charge; correct?

Mr MacSporran: Yes, but I am just looking at the director's guidelines, which are the bible, if you like, for us and the DPP and the police.

Dr HORTON: Yes. What I am going to now is not political advantage or disadvantage to the government or any political group or party. That is not what I am suggesting. Your charges had the effect, first, of affecting four people who were not charged with anything; correct?

Mr MacSporran: Yes. That is so.

Dr HORTON: Your charges had the effect that a body, let alone the individuals for a moment, was no longer to function as it previously had been if the charges were laid; correct?

Mr MacSporran: Yes.

Dr HORTON: Your decision had the effect of removing people from their position by operation of law independently of questions of political advantage to the government or political groups or parties; correct?

Mr MacSporran: Yes.

Dr HORTON: These are the effects I am talking about—that the charging meant people would lose their jobs immediately.

Mr MacSporran: Yes.

Dr HORTON: You do not see any of these things—and I can see by the look on your face—as matters which were material to the decision whether or not to charge?

Mr MacSporran: Whether or not to charge the seven and the mayor with the charge of fraud we laid? No, I do not, because the evidence was sufficient and the public interest test was satisfied for reasons I have advanced and I can talk more about if you wish.

Dr HORTON: None of the considerations I have just mentioned are ones that you think are relevant to the public interest criteria on pages 3 and 4 of the director's guidelines?

Mr MacSporran: No. The subset of the public interest criteria on pages 3 and 4 set out a number of categories which need to be taken into account. But, at the end of the day, as the end of that section says—

The more serious the offence, the more likely, that the public interest will require a prosecution.

Indeed, the proper decision in most cases will be to proceed with the prosecution if there is sufficient evidence. Mitigating factors can then be put to the Court at sentence.

Dr HORTON: I see. So you think that the more serious the offence the less one has to be concerned with the public interest criteria?

Mr MacSporran: No, no. The more serious the offence, as it says here, the more likely the public interest will require a prosecution in the public interest.

Dr HORTON: Yes. So do you offer that as a reason why we do not see here the weighing of the considerations to which I have just referred—namely, the disqualification of the accused by operation of law; second, the inevitable consequence the council be disbanded; third, the effect on four who were not charged; and, five, the disbandment of a body which was otherwise elected by the people of Logan?

Mr MacSporran: I do not see how that can come into play if the other tests are satisfied on the people that are the subject of the charging.

Dr HORTON: I can see that that is the evidence you want to give.

Mr MacSporran: Yes.

Dr HORTON: That is consistent, you say, with none of the memos that came to you revealing a consideration of those factors?

Mr MacSporran: They are matters that we were aware of. I say 'we'—certainly my memory of it is that Mr Alsbury and I were aware of the likely impact. You cannot ignore—you could not possibly ignore—that as an outcome, but it is not a relevant feature to counterbalance, if you like, or take away the strength of the other factors that related directly to the eight being charged and the test being applied under the director's own guidelines.

Dr HORTON: I think, with respect, you have hit on it. You could not ignore it. What I am putting to you is—correct me if I am wrong or draw my attention to ones that do this: the documents at the moment that I see ignore it.

Mr MacSporran: They do not. It is a fact that was in play but it did not have a bearing on the outcome of the charging for reasons I have expressed and that are apparent on the face of the director's guidelines themselves.

Dr HORTON: So it is clear, I am not suggesting to you that any of these factors would mean that one could never charge in those circumstances. I am not suggesting that, and I know you are not thinking I am for the moment. What my question directed to is this: these considerations are material ones and so material that they ought to be taken into consideration—that is, given active intellectual consideration—and for that reason be stated in the documentation as a record that they have been taken into account and properly considered.

Mr MacSporran: I do not accept that as you have put it.

Dr HORTON: When we come, for example, to the public interest test as stated by DS Francis at page 309 and 310 in volume 2, what we see there, I want to suggest to you, is a public interest test which is completely weighed down by factors in favour of charging and in favour of Ms Kelsey; correct?

Mr MacSporran: Just bear with me for a moment. Is it 309 and 310?

Dr HORTON: 309 and 310.

Mr MacSporran: The first paragraph under the heading 'Public interest test' on 309 refers more generally to whistleblower protection and so forth—which was a very, very important consideration in this process in the public interest test—indirectly favoured Ms Kelsey's side of things because she is the whistleblower and a material witness but—

Dr HORTON: Well, everything at 309 and 310 under the heading 'Public interest' favours Ms Kelsey.

Mr MacSporran: Yes, but only because she is a whistleblower or a PID, which is the underlying principle that governs the fact that she is the beneficiary, if you like.

Dr HORTON: And that, in your mind, from the beginning to the end of this matter, swamped your consideration that you gave to these questions?

Mr MacSporran: Not at all. Not at all. It was a factor—an important factor—but the sufficiency of the evidence against the eight, including the mayor, and the public interest test about the seriousness of the offence, the appropriateness of the charge chosen, being fraud, and all of the other matters we have talked about and are consistent with the director's guidelines themselves—they are the factors that were considered and ultimately resulted in Francis having the ability to assess for himself and charge.

Dr HORTON: This decision you had made to assist Ms Kelsey, which we have already seen in the end becomes outrage, I think, to use your words about her treatment—

Mr MacSporran: Where are my words 'outrage' you are referring to? Is that the presentation to a conference?

Dr HORTON: No. I have taken you to it earlier when you were here.

Mr MacSporran: I am sorry. I must have forgotten.

Dr HORTON: That is all right. The reference to that is at volume 1, page 649. It is in response to the Beattie email.

Mr MacSporran: This is the cost email, is it?

Dr HORTON: Yes.

Mr MacSporran: I think I know the one you mean. I replied back to his fired-up assertions about the exposure that the CCC has to a huge cost order of over \$2 million and I say something like, 'Dave, I understand but remember we gave due consideration to this at the start' and so on. I—

Dr HORTON: The bit I am asking about is—

... particularly in light of the Kelsey matter which I talk about as an outrage whenever I present publicly in this area.

What I am putting to you is this: you start with the common interest of assisting Ms Kelsey. By 23 October 2019, you are expressing outrage but your commitment to Ms Kelsey's cause is unceasing through the course of the documents we see. Do you want to comment on that?

Mr MacSporran: I think my attitude to protecting her in the way I have described was consistent throughout, yes.

Dr HORTON: You were determined to assist her and to put the weight of your organisation behind that?

Mr MacSporran: In the way that I have described, exercising our powers and jurisdiction and with due regard to section 57 of our act to act independently, fairly et cetera.

Dr HORTON: And that meant that, with rulings such as that made by Mr Black on 24 August 2018, you were content to find ways to work around that ruling?

Mr MacSporran: Is that a suggestion by you, Mr Horton, that I have been dishonest? If you are, I would appreciate you putting it directly to me.

Dr HORTON: If I am going to put something, you can assume I will be direct.

Mr MacSporran: Very well.

Dr HORTON: I have been accused of many things in my life, but one of them is not that I am not direct. For the minute, just answer it in the way that I have put it, please, because I will be bound by *Hansard* to what I said, and what I have said is what I have said.

Mr MacSporran: Well, what I interpret what you have said—and you are asking for my comment—is that I have somehow, as chair of the CCC, set out to find ways to get around the order of Commissioner Black in the Industrial Relations Commission.

Dr HORTON: Let me be more specific. Your commitment to Ms Kelsey's cause was in the nature of confirmation bias. Does that wording make sense to you?

Mr MacSporran: It does not, no. You will have to explain it to me, Mr Horton.

Dr HORTON: Your commitment to Ms Kelsey having been made meant that decisions afterwards by you all tended to be only able to see things in favour of Ms Kelsey and completing the course to which you had committed.

Mr MacSporran: I reject that absolutely.

Dr HORTON: In other contexts it is called confirmation bias. It is known in science. An example: if we start with a proposition, the tendency of humans—human tendency, without dishonesty—tends to be, we know from studies, to confirm the proposition first thought of. So we need to guard against it, is the idea. What I am suggesting to you here is that your commitment to Ms Kelsey's cause, very early on, as we see, in a personal sense and in an institutional sense, meant that you were not able any longer clearly to see, with the requisite degree of detachment, when you were exceeding the proper boundaries of your institution's powers and proper conduct.

Mr MacSporran: Mr Horton, I reject that absolutely.

Dr HORTON: An example, and the reason it has come up, is 309 and 310. They are not your words but these come to you. And even today I want to suggest to you that you are unable to accept that the words we see on 309 and 310 under the heading 'Public interest' are ones that necessarily only favour Ms Kelsey but do not consider any possibility that there are factors which might lean the other way.

Mr MacSporran: I think whatever you make of Sergeant Francis' memo, what you are forgetting is that above Sergeant Francis, even in the investigation team and then ultimately and importantly Mr Alsbury and myself, considered a much wider view of this evidence and the case to be mounted, and on that basis, after proper, extensive consideration, gave the go-ahead for Francis to consider and, if he was satisfied, to charge. We acted as relevant, appropriate gatekeepers in the scheme of things. That is how the charges came to be laid. Indeed, that is how in my assessment of it the DPP took them on board and prosecuted them—

Dr HORTON: We will come to the DPP. For the minute, the difficulty is this, Mr MacSporran: we do not see anyone above Detective Sergeant Francis bringing to bear the very thing that you have spoken about—which is the views, maybe understandably, that someone who is very close to the investigation has got himself enmeshed in, that might operate as contrary reasons not to do what is being proposed.

Mr MacSporran: I do not see the distinction being relevant in the way this proceeded—or the outcome, indeed.

Dr HORTON: Well, that is the difficulty. If one states all the factors which weigh in favour of one particular decision, then one reviews the documentary record of course as inevitably leading to that consequence. But the point I am trying to make is: good public decision-making, good prosecution decision-making, is one which weighs in writing as well as intellectually not only the factors that weigh in favour of charging but the factors which weigh—and I emphasise the word 'weigh'—in favour of not doing so in a particular circumstance. But here we just do not see that occurring on the documents.

Mr MacSporran: Well, what about Mr Alsbury's memo to me and earlier statements that he had concerns about—and I am using my words—a viability of any prosecution against the Logan seven, which concerns he came to accommodate and came to a contrary view after due consideration?

Dr HORTON: And he does that at page 321 of volume 2 in part. So he found a factor here going to public interest considerations weighing against charging. He says—

Accordingly, even considering the availability of disciplinary proceedings and the significant ramifications of charging the councillors ...

Do you see that there at paragraph 14 on page 321?

Mr MacSporran: Just bear with me for one moment.

Dr HORTON: It is a memo to you from Paul Alsbury.

Mr MacSporran: Yes, I was just on the wrong page. I see it now, yes.

Dr HORTON: That is an example of the contrary proposition being weighed—the second sentence.

Mr MacSporran: Yes.

Dr HORTON: It says—

... even considering the availability of disciplinary proceedings and the significant ramifications of charging the councillors on their future employment as local government politicians, I am of the view—

Mr MacSporran: That is in this memo, as you correctly point out. That is the final memo to me but, before that, I was aware from speaking with him—I do not know if I saw the email of 9 January; I cannot remember whether it was copied to me. But I certainly became aware of his views in that respect—about the 'noise' around the case, that he was not convinced that we had enough to exclude the reasons given and so forth. He had agonised over this and come to a view, contrary to his initial impression, that there was sufficient evidence and reasonable prospects—with which I agreed, ultimately.

Dr HORTON: I understand all that but, apart from that proposition I have taken to you—and in fact Detective Sergeant Francis has reference to there being reputational harm to the councillors—it is just difficult on the documentary record, I am suggesting to you—and I am giving you an opportunity to correct me if I am wrong—to find a weighing of the factors which were against prosecution and which were material?

Mr MacSporran: Well, I think, in fairness to everyone, we would have to concede that there is not the best record of all of the factors that were considered. That would be one matter which I think has been addressed since this case, about the documentary trail as such. But that is a very different thing to a proposition that there was a deliberate attempt to have an ulterior, improper motive to lay charges, as your theory advances.

Dr HORTON: If I can just break up these propositions so they are clear. You accept that the proposition I put to you about the disqualification of the accused, the inevitable consequence of the suspension of the councillors and the effect upon them is a material consideration to the decision whether or not to charge?

Mr MacSporran: No, it is a fact that is known but it cannot override the plain fact of what the evidence is and the prospects of success.

Dr HORTON: I am not saying 'override'; I am not going there.

Mr MacSporran: It is not a balancing exercise of those factors.

Dr HORTON: Hold on. I know it is late, and I will finish soon. I am not giving a value to them for the moment. I am just saying: are the considerations of which I have spoken ones which you would regard as material to the decision whether or not—

Mr MacSporran: No, for the reasons I have said. No. They are not considerations that are set out in the director's guidelines.

Dr HORTON: I see. And, therefore, not considerations which needed to have been considered?

Mr MacSporran: No.

Dr HORTON: And therefore, you say, I understand on your evidence, they are not considerations which you think needed to be recorded or discussed in the memoranda about these matters?

Mr MacSporran: Not those matters as such.

Dr HORTON: Well, any matters, you are saying, I think. If they are not material, they need not be considered?

Mr MacSporran: Well, I have already conceded, I think, that the record keeping about the actual factors that were considered, consistent with the requirements of the director's guidelines, were not enumerated fully, and that is a matter that can be addressed.

Dr HORTON: I am just trying to work out what your evidence is—not what I am saying, for the minute. Your evidence is that the factors I have drawn to your attention about the effect of the charges on the individuals, on the four other councillors who were not charged, on the council as a body and its disbandment were not material considerations?

Mr MacSporran: The effect on the councillors themselves who were charged is, as the director's guidelines reveal clearly, to be considered not in the decision to prosecute but can be taken into account in mitigation of sentence or sanction if it comes to that. That is where they are considered, under the director's own guidelines on page 3 or 4.

Dr HORTON: I have them. Therefore, you are saying, the documents do not need to reveal those considerations or discuss them because they are not material and not within the director's guidelines?

Mr MacSporran: Some of them, but not all of them as you put them together.

Dr HORTON: Which ones do you say are material and should have been recorded in the documentation?

Mr MacSporran: Perhaps, given the hour, it might be easier if I reflect on this overnight and come back to you with ones, I think, but I am referring back to the director's guidelines as being the guideline—the bible, if you like—for which factors need to be considered, and if they are the ones that need to be considered they should be documented, ideally. We did not. I concede that. The record keeping about that consideration could have been better.

Dr HORTON: We are reading the same guidelines. We are at one on that?

Mr MacSporran: Yes.

Dr HORTON: You do not have to do it now, of course—you might wish to consider it overnight—but what are the considerations which they throw up which you say should have been reflected in the memo and which are material and those which were not?

Mr MacSporran: Yes, they are set out on pages 3 and 4.

Dr HORTON: Yes, I have read them many, many times, Mr MacSporran, and I have them in front of me now.

Mr MacSporran: Very good.

Dr HORTON: Bear in mind when you do that that they are predicated by these words: 'discretionary factors may include'. They are not attempting to be exhaustive.

Mr MacSporran: I understand that.

Dr HORTON: Is that a convenient time, Chair?

CHAIR: Absolutely. It is, yes, unless any members have a very quick question. I am not even going to turn to my right, because I know the answer to that! Mr Horton, given the time is 4.55, we can pick this up in the morning. Thank you very much, everybody, for your assistance today. We will adjourn the committee until 9.30 tomorrow morning.

The committee adjourned at 4.55 pm.