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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION DASHA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 19 APRIL, 2018

AT 2.00PM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Now we're ready for Mr Robson to come back to the witness box?

MR BUCHANAN: We are, Commissioner.

MR BUCHANAN: Mr Robson, can I ask you to turn to volume 4, page 35, please? You'll see it better on the screen there, and you can see, on the screen you can see the first three of the copies of an email that appears to have been sent by Mr Hawatt to councillors including yourself. Can you just, you can see that it says, 'Hi, Councillors. It seems that Brian left out in consultation with council and legal liability for breaking a contract. Please
10 note that we have a responsibility to protect council from legal action. We can't just accept a legal comment without understanding the facts. The GM has an obligation to consult us before he makes such legally liable decisions. Brian, more than anyone, should be concerned by this. Councillor Michael Hawatt.'?---Yes.

Did you have a concern about legal liability on the part of council flowing from a withdrawal of an offer of employment to Mr Stavis?---No.

Why not?---Well I certainly just didn't think about it at that stage.
20

Having had it drawn to your attention in that SMS, did you think that there was a concern or should be a concern? Did you agree with Councillor Hawatt?---I thought that if such legal action would occur then the general manager would have considered it in his decision making process.

If I can ask you to go to page 37 of the same volume, and can you see, it will come up on the screen in a moment, and the top one is to you but it's a copy of the same SMS sent by Councillor Hawatt to every councillor on 19
30 December at 1.32pm. 'Hi all, this is a response that I received from the mayor of Strathfield re Spiro. I was doing my own checks during the interview process. This response contradicts what I am told by the GM from someone in the same council. Michael Hawatt.' And then underneath that, 'He was with us for about 12 months until about six months ago. I think he was popular and seen as a can-do sort of guy. The property owners I meet with speak well of him.' Do you recall receiving that?---Yes, I do.

And did you have any thoughts about receiving from Councillor Hawatt something that had been either provided to him or solicited by him on the subject of an appointment to be made, if it's to be made, by the general
40 manager?---My first reaction on receiving this was that I considered the whole thing to be totally inappropriate, that he was seeking his own references in conjunction with Spiro's appointment.

And leaving that aside, did the contents of those three lines and that SMS at the bottom of the copy to you give you any concern in the light of the copy of the referees report that you'd been shown by Mr Montague from the general manager of planning at Strathfield?---Well it seemed to be a response, or quote, from a response he received from the mayor of

Strathfield which he says in this SMS, but it was not what I would consider any sort of valid reference.

Because?---Because of the nature of he was with us for about 12 months and seems like a good guy.

You didn't think there was enough content there to make it something worth acting on?---No.

10 Page 46 of that volume, Mr Robson, is the memo that you spoke of having been circulated by the general manager dated 23 December, 2104, giving a report to councillors about the whole matter at that stage. Can I just take you to two passages on page 47, almost halfway down. "Following extensive discussions amongst the panel members it was resolved that Mr Spiro Stavis be offered appointment for a period of 12 months." Have you got any comment on that statement by the general manager in the memo?
---Sorry, where are we?

20 It's just before you get halfway down. It's before the paragraph - - -?---Oh, "Following extensive discussions - - -

Yes.--- - - - amongst the panel members it was resolved," I do remember or recall I think having a discussion about limiting Spiro's appointment to a 12 month which was the minimum that we could appoint.

Discussion with whom?---With the general manager.

30 And apart from that you don't have a recollection of anything that would support the statement, "Following extensive discussions amongst panel members?"---No, not specifically in detail discussions.

40 And then going down if you wouldn't mind, please, to the last paragraph. "Following my investigations of these concerns and in consultation with the mayor I took the decision that the contract offer to Mr Stavis should be withdrawn." Have you got any - - -?---I think that's a fair statement because the general manager came in and said, we looked at the Judith Carpenter letter, I perused the information that had been supplied by Botany and also by Strathfield and Jim indicated that he was going to be withdrawing his contract and I said, "Well, I can understand that, and that is your call."

Page 48 of the same memo. "It is my judgement based on long experience that any financial penalty we may face at this stage will be more than balanced against the organisational difficulties we would certainly have faced had he commenced in a role."---Yes.

Did you hold a view as to whether you accepted that or - - -?---Yeah, I understood that there had been some concerns raised by the people who would be working under Spiro, also considering the fact that I think some of

them may have been involved in the abortive attempt by Spiro to be employed back in 2013, and they had formed a view as I understood that there could be some difficulties working with Spiro and hence I think that paragraph.

Christmas Eve 2014, at your home, two people attended. Is that right?
---That's right.

10 What happened, who were they?---Well, well, I got a phone call, I was asleep actually, I got a phone call from Azzi saying he wanted to meet and they were outside. I walked outside, they said we want a meeting to fire the general manager. I said to do that you need an official call notice in writing signed by two councillors. And they said, here you are, here it is, and I said, thank you very much, and told them to go away, but in pretty expensive terms I used.

What emotion were you feeling at the time?---Angry, disgusted.

20 And what was the language you in fact used?---Sorry?

What was the language you in fact used?---Well, with due respect to the ladies present I just told them to fuck off.

Could you go to page 63, please? Is that a copy of the notice?---That's a copy of the notice.

Why were you angry?---Because it was such an obvious attempt to get rid of the general manager and get their applicant employed.

30 And what was wrong with that?---I felt that they had plenty of opportunity to look at and understand the situation and that they had formed a view that they were going to get Spiro hired by hook or by crook.

In your third statement, the longer one commenced on 9 May 2017 on page 14, paragraph 46, you rang Mr Montague to tell him what had happened?---Yes, I did.

And you say that he said he was not surprised?---Yes.

40 And you arranged to meet at council the following Monday morning, 29 December?---Yes.

And you did meet, in paragraph 47 you tell us that Mr Montague told you that he had received a call to attend a meeting with Councillors Azzi and Hawatt on 27 December, the Saturday before, and that at that meeting, Montague claimed that Azzi and Hawatt had made him an offer?---Yes.

What was that offer, without referring to your statement, just your best recollection of what you were told?---Best recollection, the offer was that they would cancel the meeting if the general manager offered his resignation to finish in, I think, August so that he would have completed his fifth year service in the public service and council and local government. They also offered some financial incentives to sweeten the deal and he would have to hire Spiro.

10 The language you something else about the financial incentive in paragraph 47 of your statement is, 'a significant payout'?---Yes, that would probably be the incentive he was being offered, above and beyond what was contractual.

So under the standard contract of employment for a general manager, you understood that there was an entitlement to a payout?---Yes, there was.

20 But your understanding of what Mr Montague was telling you was that the financial incentive to leave sooner than the end of his contract was that he would be given a payout larger than that entitlement?---That was my understanding.

In paragraph 47, the last sentence, you say, 'They had no authority to do this.' Is that your comment or is that something Mr Montague said?---No. That was my comment.

30 Is that your comment when you make this statement or is that a comment you say you made when speaking with Mr Montague?---When I was making the statement I tried to make it clear that they would have no authority to negotiate anything with the general manager.

Why is that?---Because that is the position of the mayor at the time as representative of the council to do that sort of discussion, not the councillors. If the councillors wish to renegotiate any deals like that, they should have the mayor in that information circle.

40 Would it have to be more than two out of the total number of councillors on council?---It would be a unique situation in my understanding of councillors wanting to fire a mayor, so there would be no set procedure to do that but with regard to negotiation of anything regarding the contract, because I ultimately would be the signatory to the contract, it would have to involve me.

But for a payout to be made, could that be authorised by anyone other than the whole of council?---It would have to be approved by council. How long, as you understood it, had Mr Montague been holding the office of town clerk and then general manager?---At that point I think it was 30 odd years, almost 30 years at Canterbury. He did quite a few years prior to that at different levels of local government in different councils.

And Mr Montague had received a Public Service Medal for his service in those capacities to local government in New South Wales?

---I understand that's the case.

10 Did you have any understanding from any dealings with Mr Montague that he had thoughts or retiring early or that he wanted to complete a particular period of time of service in local government?---We had discussed the idea of retirement because we were both heading in that general direction and we discussed the timing of it being roughly, if Jim was to retire that a good time would be after the elections which were proposed in 2016 which would have meant a termination of his, a finishing of his contract in 2017. That would give him time to set the groundwork with a new council to employ a new general manager because there would have been a new council involved, there could have been a new mayor as well. And that time frame let him sort of settle in the new councillors and also organise for a succession.

20 And was that your understanding of Mr Montague's wishes at the time he reported this offer that had been made to him the Saturday before you met him on Monday, 29 December?---It was something we had discussed well prior to that I recollect.

30 Now, paragraph 48 of your third statement, sir. You say this matter was referred to the Independent Commission Against Corruption and the Office of Local Government. By whom?---Both the general manager, well, it would have been by the general manager because at 11 o'clock that morning, on the 29th, we had a discussion prior to that and I had come to the conclusion and I think Jim had also that these offers under the terms of the ICAC Act were corrupt or potentially corrupt and I remember the time pretty closely, it was around about 11 o'clock, we phoned both the Office of Local Government and the ICAC, but as it was between Christmas and New Year it was left to a recording.

And so this is on Monday, 29 December, 2014?---Yes.

40 You've made it sound as if it was a joint decision. Can I ask you to just tease out the conversation as to who made the suggestion that it should be reported or who initiated the discussion as to whether it should be reported?
---(No Audible Reply)

And if you don't know, you tell us.---I, I, can't, I can't recollect because we were talking about, I think it came under the section 11 of the ICAC Act and we were just discussing that in general terms and I think Ryde Council had come up as part of the discussion and at that stage seeing the offer was actually made to the general manager he would report it to the ICAC, and I'm not sure whether it was during that week I also made a phone call separately.

To ICAC?---ICAC.

And the Office of Local Government?---But not the OLG, no, not the OLG.

As you understood though Mr Montague indicated that he intended to report it to the OLG?---I was present when he made the phone calls.

10 Thank you. Now, how long was that discussion with Mr Montague on Monday the 29th?---Well, as I said, we would have probably met around about 10.00-ish and the phone calls were made, my recollection 11 o'clock.

Was there any discussion of tactics?---Not really at that stage, that I can recollect anyway.

20 Was there any discussion about the call for the notice with the call for the extraordinary meeting of council?---Oh, yes, there could possibly, yeah, I think there was a discussion regarding the timing of being able to physically hold the meeting because the meeting would have fallen in the first week of January when most if not all of council staff were on leave and I felt that I also, I recollect that there was going to be difficulties trying to get all of the councillors involved and there to the meeting and it was such a meeting of such gravity that I felt that all of the councillors really needed to have an opportunity to be there.

30 Was there any discussion about what the legal consequences for an attempt to sack Mr Montague might be if a complaint was made to ICAC?---I had information then, I think, regarding the status of protected witnesses but I, I'm not sure of the timing of the, getting that information on the, on the ICAC - - -

I'll ask it this way, at the meeting on 29 December was there any discussion between you and Mr Montague that there might be some tactical advantage in heading off the attempt to sack Mr Montague, by lodging a complaint with ICAC?---No. The, the discussions that you allude to did occur but they were just prior to the meeting on, the week prior to the meeting of 27 January.

40 So there was no discussion about the question of whether an attempt to sack him would be unlawful because it might be regarded as a reprisal for having lodged a complaint?---At that stage, no.

Now, there were discussions, generally, amongst those with an interest in Canterbury Council during this time, the Commission knows, about what was happening. The words have been used, "All hell broke loose." Were you having discussions with people when you became aware of the notice calling for an extraordinary meeting and particularly after you heard of the meeting that Mr Montague told you about on the Saturday before your

meeting with him on 29 December?---In the week preceding that meeting there were discussions, but prior to that it was my concern about the fact that I would not be able to hold, or I felt that I couldn't call that meeting within the 14-day period specified by the Local Government Act. I did check the Act and there didn't seem to be, I mean, the statement was that you should hold a meeting and I felt, given the circumstances, that I might be able to, I could delay that meeting until all of the staff and councillors were available.

- 10 You weren't trying to delay the meeting in order to improve the general manager's prospects of heading off the attempt to sack him?---I didn't know which way the numbers would fall at that stage, so there was no conscious effort to delay it until the numbers were satisfactory.

Can I ask you to turn to your full statement, the one dated 24 May, 2017, and just referring to paragraph six and following, you say, "During the period, 29 December to 30 December, 2014, I visited," speaking of Morris Iemma, "at his home to discuss the previous few days' events, including the meeting between Montague, Azzi and Hawatt at," and you've got here,
20 "Canterbury Bankstown Leagues Club, as had been explained to me by Montague at council on 29 December, 2014. Iemma's advice was to report the matter to the ICAC. I informed him that Montague and I had already attempted to do so," that's a reference to getting voicemail at that time of year, "as well as attempting to report the matter to the Office of Local Government. Iemma rang me on the evening of 6 January, 2015. He said words to the effect, 'I just received a phone call from Azzi.' He went on to say," that's he went on, Morris Iemma, "He went on to say, 'Azzi has told me about the meeting with Montague and Hawatt.' He," again, he is a reference to Iemma, "seemed amazed that Azzi would phone him to discuss
30 such a matter. Iemma continued to say, 'Azzi admitted to me that he and Hawatt had made an offer to Montague to go early and to hire Spiro Stavis as director of planning.' I clearly recollect that Iemma said, 'Azzi is a fuckwit' during our conversation, and he said, 'I told Azzi that this was corrupt behaviour.'"?---Yes.

Do you still have a clear recollection of that?---I still have a clear recollection of that.

- 40 And you go on to say, "I told Iemma that I agreed with his description of Azzi."?---There was little else that could be said, actually.

Were you in discussions with other people in the Labor Party or associated with the Labor Party about what was happening at Canterbury Council at this time?---On the evening of the 23rd, when I'd received the notice, my first call was to Jim Montague. Second call was to, I recollect, was to Morris Iemma who was - - -

Why? Why Morris Iemma?---Well, he's a close friend, he's a neighbour, I've known Morris for many, many years and I value his judgment and advice, and the third call was to Robert Furolo who was the member of parliament at that stage, member of the Labor Party and also a former mayor.

Can I take you, please, to volume 4 page 160 of the documents? Do you recognise those two pages, 160 to 161 as being a memo that you sent to all councillors dated 5 January 2015?---I do.

10

And you sent that? Is that right?---Yes.

And you reproduced the call notice?---Yep.

And then if I can ask you to go to page 162, that's a memo from Mr Montague looking at page 164 of his signature, to yourself and all councillors dated 23 December. We've referred to that already I think? ---Yes.

20 Is that right?---Ah hmm.

Then 12 January 2015 on page 165 is a noted signed by you of the fact that an extraordinary meeting at council would be held on 27 January?---Yes.

After the meeting had been called, if you can go back to your third statement, please, paragraph 52. You state that on 14 January 2015, 'Montague told me he had a meeting with Councillor Hawatt the previous afternoon in the presence of another person who I don't know.' I'll just pause there. Is it still the case that you don't know who that was?---No, I'm just thinking because I did have a look at the SMSs on the website and there was a name alluded to in that but I've got, I can't recollect the name.

30

Otherwise it's pure speculation, okay. Thank you?---Yeah.

Continuing in your statement paragraph 52, 'Where further offers and inducements were made including a demand that Stavis be appointed director of city planning and that he was to commence the following Monday, 19 January 2015.' And then you go on to say, 'The details of the offer were sent in an email by Councillor Hawatt.' If you could just excuse me a moment. If you could turn to volume 5 of the documents, page 257. ---Sorry, what, what was the reference?

40

Page 257.---257. Yes, found it.

It's on the screen now. And my question first, if you can just skim it, is do you recognise that email or the contents of it?---Yes, I do.

I do apologise, thank you, page 256, my mistake.

THE COMMISSIONER: Sorry, of volume 5?

MR BUCHANAN: Volume 5, yes, Commissioner, page 256 of the documents.

THE COMMISSIONER: Thank you.

THE WITNESS: Yeah.

10

MR BUCHANAN: You do recognise that?---Yes.

And when did you first see it, whether it was in that format when you first saw it or not?---It was in this format and I cannot remember whether Jim forwarded it to me or whether he showed it to me as a paper copy.

How long after the date it bears, 13 January, 2015, was it that you saw it? ---It would have been the next day, on the 14th I'd say, given that it came through at 6.39pm, but there is a possibility that I was shown late that night if I'd been at council.

20

Do you remember having a discussion with Mr Montague about it, the email I mean or the contents of it?---My first reaction was that it was a totally crazy move for Hawatt to make, given that we felt that the actions that he and Azzi had taken up to that point of time were simply verbal offers without confirmation of the events and it was, I mean you could only describe it as a gotcha moment where he was stupid enough to put possibly corrupt offers in, in paper.

30

Well, you and Mr Montague had formed the view that it should be reported because it was corrupt and Morris Iemma had expressed to you the opinion that he said he's expressed to Mr Azzi that it was corrupt?---Yes.

And here Mr Montague is showing you an email he had received in which Michael Hawatt is putting his name to an email which sets out the offer in detail.---Yeah, I think a comment was how stupid is he to do it.

The next page, the one I showed you earlier, page 257, an email from Mr Montague to Mr Hawatt dated 14 January. Did you see that?---Yes.

40

When did you first see it?---It would have been on, on the 14th, the afternoon of the 14th.

Was there any discussion with Mr Montague after he showed you the email of the previous date from Councillor Hawatt about what should be done in respect of it?---Yeah. I recollect that we discussed it and I told him that he should categorically – I advised him, I didn't tell, I advised, because the ultimate decision was his, but I advised him to categorically reject it and

that he should have no other meeting on his own with Hawatt and Azzi and that I should be present.

And did you indicate to him that he should reject it in writing?---I think the terms I used were roughly categorically reject and he chose to put it in writing.

10 Thank you. Excuse me. Now, I wonder if we can just flick between the 13 January email from Mr Hawatt to Mr Montague and looking down at the bottom of the email do you see that it purports to be signed off as it were by Councillor Michael Hawatt on behalf of a number of councillors?---Yes.

Did you read that at the time it was shown to you?---Yes.

20 Did you have any view as to who those other councillors were or would have been?---I had a view that Azzi would have been at least one of them but the inference there is that he had the support of a number of other councillors apart from Azzi, so under the circumstances, I would've known that, in my heart, that it was Azzi but also knowing the way Hawatt operated, he would have had the support of both Nam and Vasiliades.

You didn't have any other information, though, that suggested that other councillors had in fact expressed to Mr Hawatt that he had their support in sending that offer?---No.

30 And then if you can turn then to Mr Montague's email on page 257 on 14 January to Councillor Hawatt, he refers to, in the second line, quote, 'Your offer made on behalf of other unnamed councillors.' Again, does the same answer apply, you would read that as being at least Councillor Azzi, possibly one or two more that Councillor Azzi and Councillor Hawatt could rely upon for support if push came to shove, but otherwise you had nothing to go on as to who they could have been?---No. It was just simply knowing the ways that Hawatt operated. Azzi would've been up to his eyeballs in it and the other two were just followers and would've been doing what they were told.

40 Were you party to the complaint that was sent in writing to ICAC by Mr Montague, by which I mean, did you help him construct it in any way? ---The verbal complaint?

No I'm talking about a written complaint, sir?---No, I hadn't seen the written complaint.

Sometimes also referred to as a disclosure under Section 11. You weren't involved in constructing such a document with Mr Montague?---I was aware Mr Montague came in to see the ICAC at some stage. I was not privy to the actual information contained in any documents he presented.

If I could just ask you to have a look at page 253 on volume 5, 253, 254, 255?---Yes.

Do you recall seeing this document?---No.

10 It refers to you a couple of times although it's probably reasonable to say that there's nothing about those references that's anything different from what he said in his memo of 23 December, for example, last line of the first page, 'My preference of the mayors was for Ms Karen Jones' and then giving reasons?---Ah hmm.

20 Then over the page, first four paragraph on page 254, 'Following protracted and extensive discussions amongst panel members, the mayor and I relented and it was resolved that Mr Stavis be offered appointment for a limited period of 12 months.' That was the question I asked you earlier about whether it be an accurate description of your involvement in that decision to say you relented, and you gave us your answer there?---I think I, I think I expressed that basically it was the terms of I said it was his decision and I'll support that.

A bit over halfway down that page there's another reference to you under the heading 'Withdrawal of the offer.' 'Following my investigation of these concerns and in consultation with our mayor Councillor Brian Robson I took the decision that the contract offer to Mr Stavis should be withdrawn.'?---It's the same basis, that - - -

THE COMMISSIONER: Sorry, are we on page 254?

30 MR BUCHANAN: Yes. I apologise.

THE COMMISSIONER: Thank you. No, that's all right.

MR BUCHANAN: You compiled your submission bearing the date 20 January?---Yes.

When did you start compiling that?---To be honest I can't recall, but obviously it would've been several days prior to 20 considering the amount of information that I was trying to collate.

40 And why did you include – I'm not saying you shouldn't have, I'm just simply asking – why did you include material other than a description of your understanding of what had occurred with the offer to Mr Montague from Councillors Azzi and Hawatt? You went beyond the subject of the recruitment of Mr Stavis in your submission to the ICAC.---I'd actually been collating information for a considerable amount of time around decisions which I felt were not appropriate or had not followed correct procedures or could be seen to be benefitting any individuals rather than following council processes. I did not feel I had sufficient information to actually send to the

ICAC piecemeal. But the fact that this had been a critical turning point where I truly believe that they had engaged in corrupt behaviour, that it was an opportunity to effectively have a, what I call a brain dump and just send everything at the same time as well as the initial suspicions about their behaviour over Christmas.

Could I ask you to go to page 239, I'm sorry, no, it's, yes, page 229 of the volume five of the documents and that's the first page. It was your choice to use the word, "Submission" after the word, "ICAC"?---Yes.

10

I'm not having a go at you, Mr Robson, I'm simply trying to elicit what were the thoughts in your mind as to what you were doing and why you were doing it? That's all we're after.--I was, I was effectively submitting to ICAC all of my concerns and my complaints and suspicions.

Why?---Well, first of all the, actions of the, the two concerned over the Christmas period in offering what I'd termed to be a, or I concluded to be a corrupt behaviour and it was just that it was really the tipping point and I thought that I should actually put on paper all my concerns, not just this.

20

This was a critical one but everything else, I thought, may be in interest to the ICAC.

Was there any discussion between you and Mr Montague about you providing the Commission with a document like this?---I had told Jim Montague that I was putting a submission in but I didn't detail the nature of the submission.

30

And when did you tell him that? In relation to when you sent it, say.---Oh, just prior, just prior to it, "I'm putting a submission in." He may have found out from the girls in the office who were helping me prepare it and staple it and do all the rest of it. So I thought, you know, the proper thing to do, let him know that I am also putting a submission in but no one else knew apart from the girls in the office.

40

Was there any part of your thinking in compiling the documents and submitting it to the Commission that you wanted to provide support to the general manager for his complaint or disclosure?---I treated that, or I felt that was a completely separate issue, knowing that he'd put a complaint in. I understood that I have an obligation under the Act to do so and I took the opportunity to basically unload and send everything in that I felt was suspicious. It wasn't my job to, I felt, to actually determine what was suspicious and what not, but if I provided the ICAC with sufficient information, they could make up their own mind.

Excuse me a minute. Can I ask you to go to volume 4, page 218 of the documents, 218. Just quickly glancing at that, do you recognise that as a, a memo from Mr Montague to councillors, dated 22 January, 2015?---Sorry.

I was looking in the wrong folder. Can I have a look at page one of that?
Yes. I was aware that went out.

Was there any consultation between you and Mr Montague before it was sent out or while it was being drafted?---Not that I recall.

So did it come to you as a surprise that it was sent out?---Um - - -

10 I withdraw the question. Do you recall the circumstances in which you first saw it?---Oh, it just would have been handed to me I'd imagine, on or about the 22nd of January.

You don't have a recollection, you don't have a recollection?---No, I don't have, specifically have a recollection of it.

But you do have a recollection of seeing it?---To be honest, not specifically, no.

20 Can I just ask you just to pursue that a little bit further. Can you see in the middle of that page, which is page 218 in volume 4, on the right-hand side in the middle, "Councillors Hawatt and Azzi made it clear that they want to proceed with Mr Stavis's appointment despite the information we had received from external sources regarding his suitability for the director's role." Quote, "Fix this or you can go," was stated in front of witnesses."
---Ah hmm.

30 Do you have a recollection at any stage of learning that it was being alleged that councillors Azzi and Hawatt or either of them had said that to the director? I'm sorry, to the general manager?---No, but looking here I think that's in reference to the meeting that was held on the 27th.

Right. Thank you for that. And which meeting you're talking about now?
---That was the one where Azzi and Hawatt met with the general manager at the Bulldogs just after Christmas.

40 Right. And that's the one that Mr Montague told you about on 29 December?---I suspect that is the case, I can't confirm that because as far as I was aware there was only the meeting on 29 December and a meeting on 13 January.

Between Montague on the one hand and Hawatt and Azzi on the other?
---And Hawatt and/or Azzi or both.

Can I just then just test your memory a little bit further. The words, "Fix this or you can go," in the context of an exchange or a statement being made to Mr Montague, do you have a recollection of ever having heard those words before or read those words before today?---If, if I had read them it would have been with this email which I, sorry, this memo which I

presumably did get, but I just can't recollect it. But those words and that phrasing, it would be typical of Azzi.

Right. But otherwise the burden of your evidence is that you don't have a recollection of Mr Montague conveying those words as having been used to him?---Only in the form of this memo.

10 Which in fairness you don't actually recall getting although you accept that you would have?---If, if it had been addressed to all councillors prior, and distributed prior to the meeting on the 27th I would have got it.

Now, before the 27th, if you could go to volume 4 of the documents, page 174?---Yep, I've found that.

Commissioner, can I pass up a document which I propose to tender. Commissioner, what I am tendering is another copy of the text of the newspaper article headed The King of Canterbury and His Princely \$50,000 Lunch Bills by Kate McClymont in the Sydney Morning Herald. It's not that another copy is strictly necessary, it's that if you compare the date of
20 the document the subject of the tender, the copy of the subject of the tender, you'll see that it's 12 January 2015 whereas on the copy that is in the documents in volume 7 page 174 that says published 23 January 2015. And the Commission believes that the correct date is the date which appears on this copy which I tender.

THE COMMISSIONER: All right. That being 12 January?

MR BUCHANAN: That being 12 January, yes. And we're taking steps to have copies made for the parties, it's not currently registered.
30

THE COMMISSIONER: And the difference other than the date is that the soon to be - - -

MR BUCHANAN: There's some photographs.

THE COMMISSIONER: - - - exhibit contains some photographs.

MR BUCHANAN: There's some photographs, yes, correct.

40 THE COMMISSIONER: All right. The extract from The Sydney Morning Herald of an article published on 12 January 2015 entitled The King of Canterbury and His Princely 50K Lunch Bills, will be Exhibit 59.

**#EXH-059 – SYDNEY MORNING HERALD ARTICLE TITLED
“THE KING OF CANTERBURY AND HIS PRINCELY \$50K
LUNCH BILLS” DATED 12 JANUARY 2015**

MR BUCHANAN: If the witness could be shown a copy, or shown a copy of that, have you got it in front of you? Do you recall that being published?
---Yes.

And did you have a view as to what was happening at the time and by reason of that being published?---This was the first of three articles that were printed on 12, 13 and 14 that I recall. The timing was certainly not advantageous to, to be seen as advantageous to Jim nor I.

10

And obviously Ms McClymont had a source or sources. Do you know or did you know who they were?---No, I had no idea of who they were. I was aware that McClymont had requested an FOI some time previously and had been provided with probably 900 to 1000 pages of documentation, and that was prior to Christmas, but the timing of this was bad.

Commissioner, what is on the screen now is what is in the documents. It is word for word, word for word the same as Exhibit 58 bar the publication date.

20

THE COMMISSIONER: 59.

MR BUCHANAN: Thank you, 59. So, parties can assume that what's on the screen apart from the publication date is what the witness is being asked about. Did you believe that material was being supplied by somebody in council to Ms McClymont as part of a campaign against Mr Montague?
---Yes, I did.

30

And on one view the contents of the article didn't reflect terribly well on you, either?---I understand that, yes.

And you weren't exactly on side with Councillors Hawatt and Azzi yourself?---No.

40

Why not? I withdraw that question. My question is can you just explain briefly how relations were between you and Councillors Hawatt and Azzi generally speaking, even leaving aside the call for the sacking of Mr Montague, politically on council around December, January 14/15?---So, earlier, prior to, from about October onwards the atmosphere was at least frosty, didn't discuss anything with them unless it was absolutely necessary and vice versa.

Now as I indicated in my opening address to the Commissioner at the beginning of this hearing, Mr Robson, the Commission is not investigating any question of corruption arising from the contents of the article and its publication other than whether it was being used to play a role in the wider events that were occurring on council that I've been asking questions about this morning and this afternoon. Do you understand that?---Yes.

So it's in that context that I'm asking you this. You had been having lunches at a restaurant called Il Buco in Enfield from time to time or regularly?---Yes.

With the general manager?---Yes.

For how long?---Well basically from the time that I became mayor in 2011.

- 10 And did others attend the lunches from time to time?---Occasionally Bechara Khouri would be there, there might be other directors, sometimes the girls in our office, my PA, Jim's PA.

Are you able to answer this question, just say if you can't, how well known in council or council circles was it that the general manager regularly lunched on Fridays at Il Buco and frequently that that was with you if not also others?---I'd say the general knowledge would be that the general manager and I went out to lunch on a Friday. The only people who would have had any knowledge of where we were at apart from our PAs would have been the people in the accounting department and who we were 20 lunching with would not have been of interest, it was just the fact that Jim and I left at a certain time and came back at a certain time.

Thank you. Now can I then take you please to page 223 of volume 4? This you can see is some typewriting and someone has annotated it, 'voicemail', so I'd ask you to assume that it is a transcript of a voicemail?---Yes.

Have you had an opportunity to read that?---Yes.

- 30 Its introduction is, 'Con, it's Brian Robson, it's 12.15 on 23', and then it follows on with a message?---Yes.

Did you leave a message like that for Con Vasiliades?---Yes.

So you were trying to have a chat to him with a view to seeing what his position was in relation to the attempt to sack Mr Robson and enforce the offer of employment to Mr Stavis?---Yes. I recall my feelings at that time. I felt that Con and Ken as well were just simply following Hawatt and Azzi's leave without due thought to the consequences of what they were actually doing and what they were supporting. I remember sending a 40 voicemail to Con but I also phoned George Vasil because I thought he would be able to talk to Con and express exactly that, I thought Con was in too deep over his head, he was basically a nice guy and he was just heading for problems.

You mention Ken, Ken Nam?---Yes. I can't remember whether I placed a similar call to Ken but I certainly remember leaving a message for Con and talking to George.

Now, in the fourth line of that transcript, it says, "Please, don't necessarily talk over the phone. However, we can organise a cup of coffee in my office which is a safe place, if necessary." What did you mean by that? Why did you say that?---I think everybody was paranoid about discussing things over the phone and including, well, basically everybody I think. And it was a situation where I thought if he just wanted a place to talk where he felt that nobody was listening in, then we could do so in my office.

10 In your case were you feeling a bit paranoid?---No, because I had nothing to hide so if, I mean, I work under the assumption that if you've got something to hide, then you get, get paranoid, but if you've got nothing to hide, don't worry it.

But that's not consistent with what appears there in that transcript.---It was an attempt to satisfy him that I was concerned about him and the possibility of other people eavesdropping.

20 On page 229 of volume 4, there's what purports to be a transcript of text message to Con, one assumes Con Vasiliades from Brian. Have you had an opportunity of seeing that?---I've seen that before, yes.

And did you see that text, sorry, did you send such a text to Mr Vasiliades? ---Yes. Again, it was an attempt to reach out to Con to at least have him think about what he was getting himself involved in.

30 You spoke earlier of talking to George Vasil. Did you ask Mr Gorge Vasil, at any stage, to intervene with those who were attempting to get rid of Mr Montague?---No. It would have been, to my recollection, the conversation could have been in relation to Con.

Why did you think that George Vasil might have had some suasion or ability to persuade Con Vasiliades to come to his senses, as it were? ---Because I understood that George vetted and looked at basically anything that Con did on, on council.

Where did you get that understanding from?---Oh, I think it was just over a matter of time and conversations with a number of people. But - - -

40 Which sort of people, who?---Family members.

Who?--- Vasiliades

When you say family members, your family?---No.

Or the Vasiliades family?--- Vasiliades family.

Do you know whether George Vasil did attempt to intervene, as it were, to make peace?---No.

Do you know whether anyone else from outside council attempted to intervene, as it were, to make peace?---Not to my knowledge.

The extraordinary meeting of council did take place on 27 January and it was a peculiar meeting. Is that right?---That would be an apt description of the events that night.

10

Can you very shortly, tell us what happened so far as your involvement was concerned? Very briefly.---Very briefly, I'd prepared a statement that I was considering using and at the last minute, I did actually use. I walked into the meeting. It was pure chaos from the perspective of the audience.

20

Who was chairing?---I would have been chairing. So I walked in to chair the meeting. I opened the meeting. I made a statement to the effect of the general manager had made a complaint to the ICAC, which he'd made public in his memos, and that it could be seen to be an act of retribution and as such, I, I think, I can't remember the, the term I used regarding a motion, effectively deferring a motion, and I closed the meeting and I walked out. It took three minutes.

Now, again I'll just inform you that as I told the Commissioner, it's no part of this hearing to go into the legalities of meeting procedure or of what occurred at that particular meeting so far as this hearing is concerned. You appreciate that?---Ah hmm.

30

Did you by that stage have a view that a resolution to the effect of that moved by Councillors Azzi and Hawatt would be an act of retribution or reprisal to Mr Montague?---I considered the motion they had to fire the general manager and their subsequent motions could be seen to be an act of retribution.

Retribution for what?---Taking the actions in firing Spiro or not hiring Spiro, and reporting it to the ICAC of course.

40

Okay. I'll just draw your attention to the fact that as you appreciate, the complaint by Mr Montague was made after you had received the call for the extraordinary meeting to consider a resolution to sack, the motion to sack Mr Montague and you had conveyed that call to Mr Montague before the complaint was made by Mr Montague to ICAC. You appreciate that? ---Yes.

Nevertheless you considered that it would be an act of reprisal for the complaint?---Given that it was public knowledge that a complaint had been made to the ICAC and I think I used the words it could be seen to be an act of retribution, and that is why I deferred the motion and closed the meeting.

Now, page 232 of volume 4 is the business paper for the extraordinary meeting, on page 235 is a record of a statement made by you.---Yes.

You would have seen these minutes - - -?---Yes.

- - - shortly afterwards. Can I ask you to go to – excuse me a moment. Can I ask you to go to paragraph 60 of your third statement, the longer of them. ---Yes.

10

And you say there that you received a copy of minutes of the meeting held after you had closed the extraordinary meeting of 27 January from Councillors Nam and Vasiliades personally - - -?---Yes.

- - - on 30 January, 2015.---Yes.

Is that right?---Yes.

20

And this mess, as it were, and that's a fairly apt description isn't it of - - -? ---Yes.

- - - once you saw those alternative minutes?---Yes.

Then became a matter of interest to the Office of Local Government? ---It was referred to the Office of Local Government, previously I think the general manager had been in contact with the Office of Local Government, they had been in possession of the voice recording of the meeting after the meeting, if I'd like to call it that, and also a transcript of that meeting, to my understanding anyway.

30

You received a letter, looking at page 243 in volume 4, from Steve Orr, O-r-r, the acting chief executive of the Office of Local Government, dated 28 January, 2015?---Yes.

Did you have conversations with Mr Orr?---Not that I recall.

40

And you replied to Councillor Orr? I'm sorry, I do apologise, Mr Orr? Just excuse me a moment. Before I go to that can I just ask you to turn to page 245 of volume 4? Had Mr Orr's letters been circulated to councillors or to your understanding had Mr Orr written in like terms to the councillors? ---My recollection is that other councillors knew about the letter from Orr before I did. I'd been out during the day and I think it had been sent to the council email account but I understood from conversations afterwards that other councillors may have seen it before I did.

And this at page 245 is a copy of a letter from Councillor Hawatt dated 29 January 2015 to Mr Orr in responding to what's described as your letter to Canterbury City Councillors dated 28 January 2015?---Yes. Yeah.

When did you first see that?---Today.

And going over the page, that seems to have been a part of the letter?---I don't recollect seeing that at all.

And it says at the beginning of the letter and this is on page 245, 'on behalf of the six councillors who supported the motion to remove the general manager'?---Yes.

10

What's your recollection of who those councillors were?---Well I have to work on the basis of I know who they weren't, and they weren't Linda Eisler, Councillor Paschalidis or Saleh, so it had to be Hawatt, Azzi, Hawatt, Azzi, Vasiliades, Nam, who else have I left out? Adler and Kebbe. They were also the people who, well, most of them had signed this letter that I got on 30 January calling for a special meeting. But, sorry, they were all of the people who had signed these fanciful minutes and they were the six councillors who attended the false meeting.

20 If you could turn to volume 5, please?---Yes.

Page 2?---Yes.

And going over to three and four?---Yes.

Are they the, what I've described, as alternative minutes?---Yes.

30 And when you say fanciful, in fairness, you told us you walked out and this records that the meeting purported to continue in the absence of those who walked out or didn't participate, so far as Councillor Eisler is concerned? ---Yeah. Councillor Eisler was there throughout, I believe, but the reason I said fanciful is because I listened to the recording of the minutes and also read the transcript and about halfway through they realised that no one was keeping the minutes and Councillor Adler nominated himself and also whilst this is nice and ordered, the transcript shows that the unlawful meeting, if I could call it that, was complete and utter chaos.

40 You attended a meeting according to your statement number 3, paragraph 61, in the offices of the office of local government with Mr Orr, a Richard Murphy and Fadwa Kebbe?---Yes.

And this paragraph records something that might not have been mentioned before, Fadwa Kebbe was in fact the deputy mayor - - -?---Yes.

- - - of Canterbury City Council?---Yes.

And what was the purpose of that?---This was the meeting that Richard Orr had requested that we attend and also had advised I think from that first

letter that we get a legal opinion regarding the legality of my actions at the meeting. There was an attempt to hold the meeting earlier but Kebbe was not available but was available if the meeting had been held over the phone and I refused to do that because I didn't know who was on the other end of the phone with Kebbe, and so it was organised for 2 February and I attended with Kebbe and I had a, staff had prepared an information pack which included I think the alternative minutes as well as the transcript of the unlawful meeting that was held. I'm not sure what other information was in the pack but that was some of the critical information.

10

And - - -?---Oh, of course a legal opinion was also in the pack.

What was the outcome of the meeting as far as when the meeting was wrapped up, were you meant to do something, was Mr Orr going to do something?---No, I went back to, back to the office and waited basically for a decision or information from the Office of Local Government which again I got via email but I believe had also been copied to every other councillor.

20

The email that is from Councillor Hawatt to Mr Montague?---No, no, no, this is the letter of 2 February from Steve Orr as a result of our meeting on 2 February. So Steve Orr had prepared this letter on, well, I would have hoped he prepared the letter after our meeting of the 2nd, but it was dated the 2nd, I received it on the 3rd.

Could you, if you could turn to page 10, please.---Of?

Volume 5.---Yes.

30

And that is a letter from Mr Orr to you dated 2 February, 2015?---Yes.

And you recall that letter?---Yes.

40

Could you turn to page 11. Dated the same day is a memo to you by Mr Montague advising that following receipt of legal advice, copy attached, it was Mr Montague's intention to proceed with the appointment of Mr Spiro Stavis to the role of director of city planning, and then he set out three reasons why. Was there a conversation with Mr Montague that this memo formalised or did you just receive it?---I recollect that there was a discussion where the GM had stated that it was going to be pretty expensive and a long fight with Spiro's legal representatives and that council was liable because I think one of the things he'd done prior to the, prior to this discussion, this memo was to seek legal opinion on the validity of the verbal contract that he had effectively entered into with Spiro.

Can I ask you to go to page 14 of volume 5, and 14 though to 17 is a legal opinion by a firm called K&L Gates from a solicitor called Bryan, B-r-y-a-n, Belling, B-e-l-l-i-n-g, which on the first page, page 14 of volume 5, says that, "The improbabilities are that an employment contract sufficiently

certain in its terms to bind Canterbury City Council was formed when Mr Stavis accepted council's offers of employment in writing on 9 December, 2014. The probabilities are, therefore, that an employment relationship subsists between Mr Stavis as from the agreed date of commencement, namely 19 January, 2015." It referred to a letter that that firm had sent Mr Stavis, dated 18 December, 2014 which I haven't got to show you at this stage but nevertheless, he continues, "Did not in its terms terminate the contract of employment and consequently both the contract of employment and the employment subsists." I take it you've perused that opinion at the
10 time and understood, from its terms, that it did appear that a contract of employment existed and therefore, to break it would have legal consequences?---I don't specifically remember looking at this, but I would not be surprised if I hadn't because the general manager would most likely have shown it to me. And I would have understood that the liability was with council for the, the verbal contract.

And going back to the memo to you from Mr Montague of 2 February, he did say, "Following receipt of legal advice, copy attached, it is my intention to proceed with the appointment." That's on page 11 of volume 5.---Yep. I
20 remember signing off on this memo.

What do you mean by signing off on it?---I, I countersigned it, which my, my signature is there so must have seen the, the legal opinion, either then or earlier. But I think the feeling was that, considering all the problems that had arisen with regard to this employment, it would be better if we'd both confirmed the fact that the employment offer was going to be offered or continued.

Honoured?---Or honoured, that's a better word.
30

Yes, no longer withdrawn. Now, can I just ask you to go to your third statement, the longer of the two, dated 9 May, 2017 and in particular to paragraph 68. There you say, sometime following the 13 February meeting, "Montague and I had a conversation regarding the current position of the offer of a position to Mr Stavis and its legal standing. As a result of that conversation, Montague informed me that he was seeking a legal opinion. As a result of that opinion, Stavis was appointed." Given the documents I've just shown you, it would appear that that part of the paragraph that says, "Sometime following the 13 February meeting," must be incorrect.---Yes.
40 Obviously my recollection is faulty at that point.

You'd accept that, when I, at this stage, I won't put words in your mouth, so far as the balance of the paragraph is concerned, describing a conversation and Montague informing you that he was seeking a legal opinion, that all did occur, it's just that they seem to have occurred a lot earlier or at least, roughly a fortnight earlier that you've thought at the time you made the statement?---Yes.

Is that fair?---I, honestly, the, the, the, the discussion certainly occurred. I was aware of the fact that he was going to withdraw it and I did recollect that it was after the 13th but obviously it's not.

10 There's other documentation that I just would like to take you to briefly. Page 21 of volume 5, going over to page 22. This is an email conversation that Mr Montague was having with Mr Stavis' union, as it were, and in particular a person there called Ian Robinson with the Development and Environment Professionals Association. It starts down the bottom of page 21 and it talks about the fact that Mr Robinson may be acting for Mr Stavis, and then there's further conversation between Mr Robinson and Mr Montague. There's further conversation on 6 February between Montague and Robinson going up the page, and do you see that he says, 'Ian, unfortunately Spiro is a pawn in a very messy political power play. I have nothing against him personally and will ensure our obligations to him are upheld. I will take steps to pay him since his notion or commencement date of 19 January.' Were you aware of exchanges with Mr Stavis' union?---No. Not, no.

20 Now if I could ask you to have a look at page 10 of volume 5, I think we've done that. Can I ask you to go to page 19 of volume 5? You'll see this is a letter from the Minister for Local Government dated 6 February. This is pages 19 and 20 of volume 5, to you. You received that letter?---Sorry, yes, sorry, I received that.

And do you remember whether you responded to it? If I could ask you to go to page 23 in this volume? It goes over to page 26 and from page 26 the date of 9 February 2015 can be given to your letter. Is that your response to the Minister?---Yes.

30 But this is all about the status of Mr Montague and the meeting of 27 January, the extraordinary meeting of council rather than the appointment of Mr Stavis?---I'm sorry, I'm just getting a little bit confused. These, they were still going after Jim on 13 as well as me, on 13 February, but I can't quite understand how the issue with Spiro had been resolved prior to that, but my recollection could be faulty, but this is a response that I gave to (not transcribable) because I felt that he should be well aware of what the councillors were up to and also, yeah, that says he should be personally aware of what the councillors were up to.

40 Well could I take you then to the papers for the meeting of council on 13 February 2015 commencing at page 88 in volume 5? And there was a minute which you'd written, pages 91 to 92?---Yes.

Review of council hospitality policies?---Yes.

And was this the Il Buco meals paid for by council reached somewhat larger, that is to say it extended to hospitality generally on the part of the

executive and yourself?---Yes. One of the statements that I did make to a press conference on the night of 27 January was that I was open to a complete review of all of council's hospitality policies because if there was some doubt, or in my opinion if there was some doubt in relation to just the way our policy or the policy reflecting our responsibilities as mayor and general manager, we should also have a close look at provisions for hospitality for sister city trips, for trips to conferences, the use - - -

10 It should be a more systemic review of the whole subject?---They were, they wanted a forensic audit on just my accounts and the general manager's account and I felt that if we were going to go to that extent we really should be looking at the whole picture rather than just an isolated area.

So can I take you to page 93. This is motions on notice, and there's a 10-point motion on notice from councillors Kebbe, Adler and Azzi. Motion 2 – I withdraw that. Motion 1, a selection panel be formed for the purpose of interviewing and recommending to council a person to fill the position of general manager. I'll just pause there. That was on the assumption that the position of general manager was vacant pursuant to the resolutions of the
20 purported continuation of the extraordinary meeting of council on 27 January. Is that fair to say?---Yes, it would.

Motion 2, a forensic audit by a suitably-qualified independent accounting firm be conducted of council's current income, assets and expenditure, including lunches at Il Buco restaurant and other expenditure as reported in the Sydney Morning Herald on 12, 13, 14, 20 and 24 January.---Yes.

30 So there's been a stream of articles in the Sydney Morning Herald about hospitality that was paid for by Canterbury City Council. Is that right?
---My recollection of, is that there were three articles. The first article on the 13th was regarding the hospitality at Il Buco.

Yes.---One of the subsequent articles related to inferences that there had been favours done to enable Bechara Khouri to purchase the general manager's car which had been, done its 40,000 kilometres and had gone through to public auction, and there was an inference that - - -

Did Mr Khouri buy it?---Sorry?

40 Did Mr Khouri buy it?---I believe he did ultimately.

Yes.--- I mean it's through the same process I bought a council car that had gone to auction but - - -

Not an issue on my part.---No, no, I'm just making the fact that it was not an unusual circumstance, however McClymont had got hold of it.

But what I'm asking you about is multiple reports in the Sydney Morning Herald. You say you can remember three.---I can remember three. One was about Il Buco, the second one was about the purchase of the car and I can't remember what the third one was.

Right.---But it was a slam dunk on three days, the 13th, 14th, I think it was 13, 14 and 15th of - - -

10 And again, what was your understanding as to where Ms McClymont was getting this material from?---I think by that stage, and again the timing of it could be, could be out, but I had received an email from Hawatt which was addressed to Kate McClymont with regard to information that Councillor Adler was trying to get out of the general manager and which we had limited to visual only and I think it related to the, not recommendations but the, I'm having seniors' moment, the information that had been provided about Spiro that was from Botany and from, from Strathfield.

Strathfield.---The ah, oh - - -

20 Referees?---The referees, the references. Adler's trying to get hold of the references, he wanted them distributed, I told the general manager it should be available only for councillors who could come in and have a look at it, Hawatt forwarded the email that Adler had sent to the general manager to Kate McClymont but I think he'd hit the return all button or send all button on the device and as a result I certainly got a copy of it, but I don't know whether all the other councillors got it, but it was confirmation to me that Hawatt was in contact with McClymont.

30 And do you know whether any councillor took up the offer to be shown the content of those two references if they approached the general manager?---I'm aware that Linda Eisler took up the opportunity but not any other councillor.

And then point 5 in this 10 point motion on page 93, the minibar facilities be removed from the office of the general manager and the mayor?---Yeah. I'm not - - -

40 I'm not interested in the minibar facilities, I'm interested in where this is coming from, what was this part of?---When I saw that, it was to get even, it was to get square, to get Brian.

Going over the page commencing at page 94 is a set of minutes at that meeting and there appears to be a number of motions and their fate is recorded. Your motion for an independent expert forensic audit into expenditure for all hospitality was lost and that's recorded at page 94. Do you see that?---That's right. That was also after Adler in particular had spoken about the fact that my mayoral minute did not contain the word forensic audit and I offered to amend that minute to include the word

forensic. I was quite happy to but then it effectively went down on party lines.

Page 96, top of the page, motion Kebbe, Adler, Azzi that a selection panel be formed for the person of interviewing and recommending to Councillor a person to fill the position of general manager. It was ruled out of order as the general manager's position was not currently vacant based upon correspondence from the office of local government based on two legal advices?---By that time we'd received a letter from the ALG which said the general manager is the general manager, so that motion have no standing.

In the middle of that page, motion that the general manager's contract be terminated immediately was ruled out of order on the basis that it was without notice?---Yes.

And didn't satisfy the requirements for a motion without notice to be considered straight away?---My understanding is they had arranged it from before.

20 And then page 97, the motion Kebbe, Adler, Azzi for a forensic audit of income assets and expenditure including lunches at Il Buco and other expenditure as reported in The Sydney Morning Herald was withdrawn? ---Yes.

Do you remember the circumstances of it being withdrawn?---I - - -

How come it was withdrawn is the question I'm basically asking you?---I think it could be explained in the context of what was occurring in the meeting, yes. I've taken the opportunity to have a very close look at the code of meeting practice before we started the meeting and they kept on moving motions of dissent but I referred to accept the motion of dissent because according to the code of meeting practice, you could only have a dissent motion if there was a motion before the floor and there were no motions so they couldn't have dissent.

Well I'm actually not asking you to justify- - -?---No, I'm not justifying, I'm just explaining the facts that this went on for a considerable amount of time.

40 Could you understand though why these three movers and seconders withdrew the motion?---Because I think they'd finally been worn down because my understanding or recollection of it was that they went outside, had a meeting and then came back and decided to probably have another go another day.

Excuse me a moment. I know it's out of order, out of sequence, but I can ask you to go back to page 27 - - -

THE COMMISSIONER: Sorry, before you do that, can I just ask a question about page 94?---Yes. Page 94.

Mr Buchanan took you to your motion about the Independent Expert Report and which was defeated. And the words you used was, "It went down on party lines." When I look at the division, against is a combination of Liberal and Labor.---Sorry, I, I - - -

10 I'm just, I was interested in your views of party lines.---No, no. I was just being, I was just being a bit facetious because it reflected the split within council at that time and it was us and them and - - -

Which didn't reflect party lines?---Not, not physical - - -

MR BUCHANAN: Not political lines.---Not political allegiances but the way that the two parties split on that day, so. I should not be so loose in my terminology.

20 THE COMMISSIONER: No, no, no, no. But you just said how they split on that day but also constantly or consistently?---It was, it was that, that was pretty reflective of the nature of the council at that stage, and whether Saleh shifted camps and it ultimately ended up for the rest of the council, Robson, Paschalidis-Chilas, Eisler against the rest.

MR BUCHANAN: So, just what you can see on the screen there, at about point 7 or 8 on the page, this is page 94. That table sets out a standard way the numbers went in council in terms of, on your side, us, and their side, them?---From that point onwards, it was, it was that way.

30 I overlooked a letter of I think 9 February to the Minister from various councillors, this is on page 27 of volume 5. And it goes through to page 31, if you include the legal opinion attached. And it's a letter from Councillors Kebbe, Nam, Azzi, Adler, Vasiliades and Hawatt to the Minister. Were you aware of that letter?---No.

When did you become aware of it?---I think I became aware of it when I was looking at the information on your website.

40 On the Commissions website?---Yes.

THE COMMISSIONER: Sorry, leading up to this hearing?---Leading up to the hearing, sorry. It was on the confidential section of it there.

Restricted.---The restricted access, yeah.

MR BUCHANAN: Now, you, if I can just - - -

THE COMMISSIONER: Sorry, I should just clarify that. That, that sounds possibly sinister. The restricted website is leading up to the hearing. Legal representatives and other interested parties can apply and are given access.

MR BUCHANAN: Thank you, Commissioner. I apologise.

THE COMMISSIONER: No, no, no. it was my fault, I think.

10 MR BUCHANAN: No, not at all. Can I ask you to go on volume 5 to page 39 through to 68. This is a contract of employment for James Montague between 26 April, 2015 and 25 April, 2017 for reference purposes, at page 55 is the clause in relation to termination payments, entitlements on termination, can I ask you to go to page 68 of the volume. And you'll see your signature and Mr Montague's signature and the date 11 February, 2015.---Ah hmm.

Do you recall the signing of this contract?---Yes, on that date, yeah.

20 Is it a coincidence that it was signed in the middle of all of this happening where there was question about the continuation of the employment of Mr Montague?---I think it was more to, well, yes. We had council resolution in August of 2014 which renewed or advised the council would renew the general manager's contract through from 2015 to 2017, given that his contract finished in 2015. The documents were prepared and apparently sat on the general manager's desk for some time, we got ourselves a bit preoccupied and I remember asking, oh, we should sign the contract soon and the contract popped out and I signed it. So there was nothing really sinister about it, but because he had a firm contract up until April 2015, so really it had to be signed before April.

30 You weren't having the contract signed in order to give some sort of support to Mr Montague, to make him feel as if he had backing?---No, given the council resolution occurred in August of the previous year which everybody voted for, it was really just a matter of physically signing the document and make sure we did it before April.

40 And a question might be asked as to whether you considered that it was proper to have it signed when there was this question mark, as you understood it, hanging over the head of Mr Montague and his continued employment, as to whether you might in fact be not in principle entitled to execute it on behalf of the council where you understood the numbers to be against Mr Montague's continued employment.---I could only go on the fact that the resolution had been a unanimous resolution in August and nothing changes that resolution.

Then if I can ask you to go to page 108 in this volume. This is a report by the general manager to a closed meeting of council held on 26 February, 2015.---Correct.

And you were there?---Yes.

Have you had a chance to read these two pages, 108 and 109?---I would have had the opportunity to read it at the time but I haven't read it since.

10 On the top of page 109 it says, "In light of this advice," and it's referring back to the legal advice from K&L Gates, the firm of solicitors, "I advised the mayor in early February that it was my intention to proceed with Mr Stavis's appointment pursuant to the original letter of offer." That refers to the memo that he sent you, I take it, that you've already told us about of 2 February attaching the legal advice and advising that as far as Mr Montague was concerned he saw that there wouldn't be any way of proceeding other than complying with the legal advice that a contract existed?---I agree that's the case.

20 Then there was a recommendation to council that the appointment of Mr Spiro Stavis as director of city planning for a period of 12 months from 19 January, 2015 be confirmed. In light of the fact that the power rested with the general manager to appoint Mr Stavis as the director of city planning, did you see this as necessary or was this a political device to have ownership of the decision that Mr Stavis be appointed shared by council? ---No. My understanding is that this is another aspect of the general manager's requirement to consult and my understanding is that previously the contracts of previous appointments had gone to the closed council for approval. So it was not unusual for this to occur.

30 Can I turn now to some questions about your relationship with Mr Montague and his position in 2014/2015 as general manager? He'd been there for a long time. You've already told us that you had a reasonably high opinion of his ability, his proficiency as general manager. Is that fair to say?---Yes.

You trusted him and his advice?---Implicitly.

40 Before December of 2014, how do you think other councillors thought of Mr Montague as general manager? I mean, for a start was there any question of him not continuing before December of 2014?---Well, as I was saying, the resolution in August of 2014 was a unanimous decision to renew his contract. Councillors would grumble from time to time but there was never, to my knowledge, any concerted move to get rid of him until December.

Mr Montague could be considered to have been a fairly powerful figure as general manager of Canterbury City Council, perhaps wielding more power by virtue of his longevity in position and his history at the council than other general managers who hadn't been in their positions in other councils for as long. Would that be fair to say?---Yeah, it would be fair to say that Jim had

established relationships and procedures within council which kept him informed, and I don't know how other general managers behaved or set up their systems but I know they all had a – well, to appearances they all had a high regard for Jim.

10 And councillors – as you've told us about the resolution in August and having regard to your understanding of Mr Montague's wishes – intended to allow him to choose his time of departure up until December 2014?---Which was going to be April 2017, after the council elections, which were proposed to occur in 2016.

20 Can I ask you about the power of appointment of senior staff by the general manager? Taking into account what had occurred in this case in 2014/15 with the appointment of Mr Stavis, what – if you had your choice – should be the role of council? I'll withdraw that. By whom should the appointment of senior staff be made?---Well, the appointment of senior staff, as I was saying, resides with the general manager and he should decide on the mechanism for appointing senior staff with the proviso that in some way or form he consults with council.

And in your personal opinion – I'm asking you for your opinion now – do you think that the power to appoint should be shared with council or in fact shifted to council senior staff? I'm not suggesting it to you.---No. No, no, no.

I'm just trying to tease out your thoughts.---No, no, it was - - -

30 Particularly after this experience.---After this experience I would have said that the general manager, it's his ultimate decision, the mayor to basically represent the council, because the officer or the director will be working in closely with the councillors because they would have to have access to information but it's limited to the directors and the general manager.

But in fairness - - -?---So I would understand or I would say that it would be mayor – the GM, the mayor and possibly someone with HR with experiences to the technical aspects of the person who was going to be employed.

40 But what about situations where the mayor doesn't have the political support of council?---Well, the mayor still represents council when council's not sitting and whether or not he has the personal support of the council is really irrelevant because the mayor has to make a decision - - -

In your case was elected as such.---That's right. I'm responsible to the ratepayers of the entire council area, not to a political party, and I felt that under those circumstances that, well, at that stage there was no overt method or attempt to get rid of me anyway, so I did not feel that I did not have the support of the councillors, that only became evident later. But my

suggestion would be obviously that general manager, ultimate decision-maker, the mayor, because there are political aspects to senior appointments like that, and HR or someone like that to look at the technical aspects and the qualifications of the person involved. I certainly wouldn't recommend anyone in this case for example working with the Planning Department because that person, even though they might be quite honest and up front, would actually be responsible to the person that they're appointing.

10 So just one more question on this topic and then I'll seek Your Honour's leave. The Local Government Act provision at this stage says that the power of appointment rests with the general manager in consultation with council. Are you of the view that the nature of the consultation would be better spelt out somewhat in somewhat more detail to make it clearer as to what the content of the consultation should be, if not also who should exercise that power of being consulted, if I can call that a power?
---Personally I would advise that any chance of any discretion be removed in the appointment process.

20 THE COMMISSIONER: What, discretion exercised by the actual council or councillors?---Well, in the, in the, in the method of actually doing the selection, because under, under the existing legislation I understand that the general manager can simply go to Judith Carpenter and say, right, send the applicants in, I'll have a meeting and I'll decide which one I want. Then he'll put a reference through to council and a formal application which council would go, okay, we'll approve it. Now, he's officially consulted with council but there's no input from the council on the political side because you're dealing and appointing a person that has to have a relationship with councillors and I mean you can have an absolute
30 bureaucrat who is perfectly aligned with the Act and knows everything, but is just totally freaked out by discussions with councillors, and that's not the sort of person you like. So it's a bit of a balancing act because the absolute discretion can be given to the GM and council is put in the way rubber stamping it and that is a method of consultation, but council has no say.

Ah hmm.---And then there's the other extreme which occurred in our place, the councillors had too much say.

40 MR BUCHANAN: Commissioner, I've got about 15 minutes more questions on corruption prevention issues, however it's been indicated to me, although things might have changed, that there will be at least an hour of cross-examination on the part of one party, on behalf of one party.

THE COMMISSIONER: Mr Buchanan, I was going to raise two matters now.

MR BUCHANAN: Yes.

THE COMMISSIONER: Mr Robson, I'll stand you down now but you'll have to come back tomorrow morning.---Ah hmm.

THE WITNESS STOOD DOWN

[4.04pm]

10 THE COMMISSIONER: Can I just inquire of the legal representatives who anticipates they will be cross-examining Mr Robson tomorrow and as a barrister I hate this question, but maybe an indication of how long you think you'll be, just to assist us to organise other witnesses.

MR MOSES: I think, Commissioner, for me between 30 minutes and 45 minutes.

THE COMMISSIONER: Sorry, 30?

MR MOSES: 30 minutes to 45 minutes.

20 THE COMMISSIONER: Thank you.

MR NEIL: Commissioner, about 10 or 15 minutes.

THE COMMISSIONER: Ah hmm.

MR ANDRONOS: Commissioner, probably 30 to 60 minutes.

THE COMMISSIONER: Ah hmm.

30 MR LLOYD: Your Honour, at this stage I'm instructed I'll have no questions.

THE COMMISSIONER: Okay.

MR LLOYD: I can't be here tomorrow but I'm sure somebody else will be.

40 THE COMMISSIONER: All right. All right, thank you. Anybody else? All right. Mr Lloyd, this may become academic but I wanted to raise with you, earlier this week I have emphasised to the legal representatives that we now have procedural guidelines and a new practice direction which emphasises, in part of it, that if there are any documents or other substantial evidence that you want to put to a witness, it must be shown to Counsel Assisting beforehand and that prima facie it will be tendered if Counsel Assisting makes a decision that that is relevant material that will assist ultimately my report and any recommendations, et cetera – will be tendered through Counsel Assisting. So I just wanted to emphasise that to you and also again to all legal representatives here today.

MR LLOYD: Commissioner, I totally understand and so do those who instruct me.

THE COMMISSIONER: Thank you.

MR BUCHANAN: With a bit of notice to assist in the process of evaluation.

10 THE COMMISSIONER: Oh, yes, I'm sorry. Yes, definitely, can I emphasise that as well.

MR BUCHANAN: Thank you, Commissioner.

THE COMMISSIONER: All right, then. We adjourn and we'll be back at 10.00.

MR MOSES: Commissioner, just (not transcribable)

20 THE COMMISSIONER: I'm sorry.

MR MOSES: So, we have Mr Stewart on the witness list tomorrow, and I'm just wondering through my learned friend as to whether they contemplate that they'll get to Mr Stewart, because there are two other witnesses after Mr Robson before we get to Mr Stewart, as I understand it. Just so we can see whether or not we need to tell him that he can turn up to work tomorrow.

30 MR BUCHANAN: Commissioner, I need to consult with my betters on this. Can we get back to my learned friend this afternoon?

MR MOSES: Of course, thank you.

MR BUCHANAN: It won't be long.

MR MOSES: Yes. Yes, Commissioner, thank you.

40 THE COMMISSIONER: Thank you. Any other issues anybody needs to raise? Right. We're adjourned until tomorrow morning.

AT 4.07PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.07pm]