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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 TUESDAY 11 DECEMBER, 2018

AT 2.00PM

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

MR ANDRONOS: Commissioner, before my friend restarts, just over the luncheon adjournment I raised a matter with my friend, who has invited me to make this application which I now make, which is this. For the duration of Mr Montague's evidence, which I understand will be another few days, my application is that the Commission sits between the hours of 10.00 and 4.00 and adheres to normal court hours rather than the extended hours which we have been dealing with.

THE COMMISSIONER: And is this to do with maybe some problems with Mr Montague's back or - - -

MR ANDRONOS: Not specifically. I haven't asked Mr Montague specifically about those problems. However, normal sitting hours are calibrated as they are for a reason and that's obviously to accommodate staff and the Commission and those of us at the bar table, and of course there is a lot of material to get through. Mr Buchanan is doing a fine job in getting through as much of it as quickly as he can and the Commission has adopted the extended sitting hours to get through more material. However, when there is a succession of witnesses who pass through the witness box and each of them is only there for a short time, it doesn't really impact on the witness, but when a witness is – as Mr Stavis was and we're all aware of the problems he had – where a single witness is in the box for a number of days, end on end, the cumulative effect of that extra sitting time does take its toll and I think any observer of Mr Montague's demeanour today and yesterday would have observed that it is taking a great toll on him, and he is after all a man with some health problems, man who is in his 70s, who is doing his best to give complete answers to searching questions going back some years, and in my submission it would be in the interests of everyone to adhere until at least the conclusion of Mr Montague's evidence to traditional court sitting hours of 10.00 till 4.00. Now, I raised that with my friend, who was happy for me to make the application. Obviously it may impact on the amount of material we can get through, but there may be some collateral benefits to the Commission and its staff in being able to perhaps spend more time in preparation and less time in the hearing, and that might shorten the time required for hearing in another way.

THE COMMISSIONER: All right. Mr Buchanan.

MR BUCHANAN: Commissioner, I don't have a submission to make to assist you. I apologise for that. That is to say one can see the arguments both ways. For my part I'm concerned that there not be any pressure to try to look for further hearing time, that is to say that we complete the public inquiry within the time that has already been advised that would be made available. On the other hand it's important that the Commission receive evidence which is reliable, and reliability can be affected obviously by

stress, and I'm not suggesting that is the case here, but exhaustion. And so there are arguments both ways. I don't wish to be heard to oppose the application and I only remind the Commission, as if it needed reminding, of the pressures that we are under to complete the public hearing.

THE COMMISSIONER: All right. Mr Drewett, you - - -

10 MR DREWETT: Yes, I did, and it's unusual for me to be supporting an application made in such a way, but I do say that it was an application that I was going to make in relation to Mr Hawatt, and I anticipate that Mr Hawatt will be the last significant witness to give evidence in this Commission hearing and that his evidence may exceed, in terms of time, all others that have gone prior to him. In my respectful submission sitting beyond the normal court hours of 9.30 to 4.00 in circumstances where a person has given evidence not for a day or two days but perhaps, in the case of my client, weeks, it's extraordinarily onerous and I think the word used by my learned friend was exhaustion, I would submit that it is not only reasonable to suppose that a witness might become exhausted following many days of such lengthy hours of giving evidence, but it's not only reasonable to  
20 suppose they might, it's almost certain that they will. And I would say that the Commission, of course being very mindful of time constraints of how long this Commission hearing has taken, needs also to be mindful of the fact that they want to hear the best possible evidence in relation to this particular matter, and the best possible evidence comes out of the lips and the minds of persons who are giving it in circumstances where they are not exhausted. I did anticipate making a very similar application to that of my learned friend. I support his application and I thought it would be useful for the Commission to know that that would be an application that I would be  
30 making at the appropriate stage.

MR BUCHANAN: Commissioner, could I interrupt. I apologise to rise to my feet again, but could I respectfully suggest that it would be appropriate to consider sitting hours witness by witness if the hours are to be adjusted on the criteria of how that witness is going?

THE COMMISSIONER: What I propose to do, Mr Andronos, in respect of your application with Mr Montague there are two factors which are playing in my mind. The first thing is, Mr Montague does suffer from a bad back and my observations of him is that at particular times during the day he  
40 seems to be in pain with his back, and that's one of the reasons where I'm going to be persuaded to grant your application. The other one is, we're in December, we've all had very long years and this public inquiry has been lengthy, and also we are going past the end of Supreme Court term et cetera, so for those reasons for Mr Montague's evidence I'm agreeable to sitting within reason the hours 10.00 to 4.00. For a particular reason, you know, if questions are being asked and they're going to be finished in five minutes or something like that, it might be extended, but with Mr Montague's evidence I'm agreeable to sit from 10.00 to 4.00. With other witnesses, I'm going to

take it on a case-by-case basis, but I hear your points, Mr Drewett, but if maybe we can revisit that next year when Mr Hawatt has been called to give evidence.

MR DREWETT: Yes, thank you.

MR ANDRONOS: Thank you, Commissioner. I'm indebted to the submissions of my friend as well.

10 THE COMMISSIONER: All right. Mr Buchanan.

MR BUCHANAN: Thank you, Commissioner. Mr Montague, if I could just remind you of the emails of the 13<sup>th</sup> and 14<sup>th</sup> of January, 2015, that we saw before lunch, volume 5, pages 256 and 257, between you and Mr Hawatt, concerning a meeting that is referred to as having taken place in the afternoon of 13 January, which seems to coincide with your memory of a meeting at his office in Haldon Street, Lakemba with Mr Demian present. Can I ask you to revisit Exhibit 126, please, sorry, 123, please, and if we could look at page 3. It's open in front of you in the screen and if I could  
20 take you to item 108. The email message from you to Mr Hawatt is recorded as having been sent at 1.51pm on 14 January and can you see that at 2.32, you sent a text to Mr Demian?---Yes.

The likelihood is that that would have been on the subject of your email.  
---More than likely.

Or the subject matter of your email.---More than likely.

30 And then at 3.01, item 109, Mr Demian called you. The line was open for 58 seconds and then Mr Demian is recorded as calling Mr Hawatt. The line is open for 4 minutes and 19 seconds and then he, Mr Demian, rings you back. This is at 5.45pm and the line is open for 2 minutes 39 seconds. You see all of that?---Yes.

You'd accept that that would appear to, in all likelihood, to have been discussions between you and Mr Demian, and Mr Demian and Mr Hawatt, about the outcomes, or whether matters could proceed further, of the meeting at Mr Hawatt's office on the afternoon of 13 January, 2015?

40 ---Yeah, I'd say in all probability that would be right.

You were using Mr Demian as a person to intervene on your behalf with Mr Hawatt, is that fair to say? I don't mean using him in a derogatory way.

---No, no, sure. No. I agree.

I don't mean you're exploiting him, I mean he was performing that function on your behalf, is that fair?---Yes. On his, on his, on his own volition, yes.

When you say on his own volition, that is to say he was doing it of his own accord, that no one was forcing him to do it?---No, that's right.

But your experience of Mr Demian's role at that time was that he was prepared to try to be of assistance to you in the war you were having with Mr Hawatt?---Yes.

10 Now, there are subsequent, just whilst we're still on this sheet of call charge records, there were subsequent contacts. Can you see on 20 January, starting at item 112 where Mr Hawatt rang Mr Demian, and then you on the same day at 5.28 rang Mr Demian and had two separate conversations with him and then sent him an SMS.---That's right.

Was that about the war that you were having with Hawatt?---Oh, given the time, given the time frame I'd have to conclude it was. It may have been something unrelated, I don't know, but I think that would be a reasonable assumption.

20 And then when we get to 29 January, item 115 and then 116, there's an exchange where you text Mr Demian and then he rings you at 9.24 in the morning and you speak for over eight minutes together.---That's right, yeah.

The likelihood is that that was about Mr Demian's contacts with Mr Hawatt about this matter?---Look, I think, as I said, given the amount of materials we've got here and the number of calls, that it would be likely, yes. I can't be certain but I would think it's likely.

30 Was there a particular line which as you recall it Mr Demian was taking, that is to say, for example, was he trying to get you to shift your position in any respect or was he trying to get you to accept Mr Hawatt's offer or revised offer? Did Mr Demian try to take a position of moving people from their positions as you recall it?---Well, to be perfectly honest I can't recall it.

Well, in that case that's your answer to the question.---I don't know.

40 Thank you. What was your understanding as to why Mr Demian was prepared to intercede to attempt a reconciliation with Mr Hawatt on your behalf?---Well, as I said earlier, I'd known Charlie for a few years at that stage, as well as other people, and I think, well, I'd like to think that he, he was showing me support because he valued my contribution to the community and what I'd done at the council over a very long period of time, and that maybe he took the position that it wasn't fair to conclude my career under these circumstances. I don't know. I never asked, but that's what I assumed.

But knowing what his business was and the fact that development business depended in some large measure upon decisions made by your council, he had an interest, didn't he, in both ensuring that council was not

dysfunctional and secondly in keeping you onside?---Well, I agree to the first one. I mean I think it might be a case of the devil you know is better than the devil you don't know, but I don't know what was going through his mind, but I have to emphasise that it wouldn't matter what I thought about a particular proposal, in the end it's the council or other higher authorities that make the decision. I never sought to influence anybody in terms of their recommendations to council on major proposals, or any proposal for that matter, and - - -

10 Well, that's not true, is it?---Well, it is true.

You did in fact from time to time provide memoranda to councillors with a view to recommending a particular approach be taken on a major proposal? ---No, only when I was asked to provide additional information.

By who?---By the councillors, and I would always go to the director of planning if it was a planning issue and I'd ask for his advice, and generally speaking he or one of the other directors would prepare that response to the councillor.

20

Do you think there's a possibility that Demian went with you to Mr Hawatt's office and had those contacts with Mr Hawatt in relation to the fight you were having with Mr Hawatt because he needed you, rather than somebody else, in the position of general manager?---I think that's, that's, he may have seen it that way but, as I said, he, if a proposal or the application didn't comply with the codes and it wasn't approvable, it wouldn't matter whether I supported it or not, it would not get approval, unless the council, as they did back in 2013 we recall, went against the officer's recommendation and the IHAP recommendation, and that's up to them.

30

You were to Mr Demian a known quantity as against anyone who might replace you?---Yes, of course.

But on the other hand if he were able to effect a resolution that was favourable to you of the dispute with Mr Hawatt, then you owed him one, Mr Demian, didn't you?---I don't think he saw it that way and, and, and, and it wouldn't matter to me anyway because there wouldn't be any debt as far as I was concerned, and I certainly wouldn't influence the outcome of proposals that he or anybody else has put in, in that respect.

40

Do you think that he might have seen it differently? That he thought that he could place you under obligation to him by making these interventions on your behalf?---Possibly, yeah. Possibly. But he would have - - -

And that he might have seen that he could get you to pull strings for him to facilitate his development plans?---He may have, but he would have been

sadly disappointed when, when the crunch, when it came to the crunch because I simply wouldn't do it.

And he didn't have an interest in placing you in a position where you would be more amenable to influencing planning and assessment staff who were processing his applications?---No. I had very little to do with the planning staff. I dealt almost exclusively with the director and his deputy in the absence of the director or the, or the appropriate manager.

10 THE COMMISSIONER: You gave an answer where you said something along the lines of the application would get through if it was not compliant with the relevant code and was not approvable.---Yes.

What did you mean by not approvable?---It's not capable of being approved in that it's deficient. It's a non-complying application. And I would expect the director of city planning and the manager of development assessment to report accordingly to council that the application did not comply and is not capable of being approved. Now, in the end, of course, the council could go against that recommendation.

20

And when you say a non-complying application, you're looking at the particular controls such as an LEP, DCP, et cetera?---Yes. Yes. Yes. Yes, that's right. I have to stress, Commissioner, I am not a planner and I avoided – I call it the imperfect science – I avoided it like the plague, getting involved in the minutiae of some of these applications. My involvement in those applications was extremely limited by design.

MR BUCHANAN: Can I take you now to your report to the ICAC of the 15 January, 2015 again, please.---Yes, certainly.

30

This is volume 5, page 253. Exhibit 52. As I summarised earlier, you delivered it to the ICAC the next day, 16 January.---Yes. Yes. Yes, I believe so.

Why did you make the complaint at that point?---I think we went over this earlier, that there was, there was some effluxion of time there, but that could have been explained by other circumstances. I might have been out of the office or I wasn't available or there were family issues, I don't know. But I made the complaint after thinking it through at the earliest opportunity I could. That, that, that's the only answer I can give you, I'm afraid. I didn't deliberately delay reporting it, but I think there was, what, a week or so.

40

A couple of weeks.---A couple of weeks. Well, when you consider the seriousness of the situation and what I was, what I was doing – and very few general managers would have been as courageous as that, I can assure you – I had to think it through and make sure that, that, that I was, you know, I was doing the right thing and that I wasn't exaggerating or overstating what was happening.

When did you start drafting the complaint?---Oh, I can't recall. I mean, it wouldn't have taken me very long.

10 When you say that very few general managers would have been sufficiently courageous to take this step, what do you mean?---Well, the general manager is on contract, and the general manager's on contract really, well, contract with the council. But that contract provides that the general manager's services could be terminated at any time without reason, subject to a certain payment, which is a maximum of 38 weeks. So I used to always say the mayor's got his contract in the top right-hand drawer, and if you get offside with the mayor or the council, a sufficient number of the councillors – and this is the reality, Mr Buchanan, in local government – if you get offside with enough of the councillors, the mayor opens that drawer, takes that contract out, you're gone. And that's happened to better people than me in local government over the years that stood up for a principle, which is fine, stood up for a principle and found they were out of work. Now, that would have worried me when I was in my 40s or 50s, perhaps, but not now, because I'm 70, over 70. So I wasn't as worried about that but I still wanted  
20 to go out with my head up, not with my tail between my legs. Local government general managers are, it's a very precarious position to be in if you don't have the elected body onside.

30 What can you tell us about the extent to which general managers had been terminated without reasons?---Oh, look, there's, there's a litany of them if you go back in history. I can't think of any examples but there are numerous ones who were, who were close friends of mine, who finished up on the chopping block because they went against the council. They, they stood up – I, I can think of, oh, well, one that springs to mind is the former general manager at Wollongong. There, there, there were other examples where general managers stood on a principle and said, no, that's not correct, it's ultra vires, it's beyond power, we're not going to do that. You look at the paper next week and there's his job advertised and that's all it takes, the mayor and the council have that enormous power. There's no appeal, there's no tribunal, there's no one that says, yes, we think Mr Montague should be dismissed. You're gone.

40 So should that potential for disposal of a general manager in that way be changed?---Absolutely, and I've, I've been advocating that - - -

What change should be made?---Well, I think the council should not be able to move on a general manager unless there's some external body that reviews the circumstances and makes a decision. Ideally, somebody like the Office of Local Government or maybe, I don't know who, it could be anybody, but there needs to be external involvement because you're subjected to the whims of councillors, and some of these people come onto a council, they've got no idea why they're there, they've got no idea what their responsibilities are.

THE COMMISSIONER: Would you anticipate the external body would ascertain whether there was some cause or reason?---Yes, yes. I'm, I'm suggesting a body, not unlike this, would investigate the circumstances surrounding the falling out, if you like, between the general manager and the council and, and find out what's going on and, and make some recommendations. Now, even if that happened, I have to say, the situation for the GM would be untenable after that and I guess that's why people don't raise it as an issue. They just put their head down, arse up and carry on. Now, I'm the only one in the whole organisation that is subjected to that. All the directors answer to me, not the council, and I can dismiss them subject to consultation with the council, but the general manager is very much out there on his own, subject to those whims and, and vagaries of, of the councils from every four years.

MR BUCHANAN: Are you aware of whether this issue and the solution that you've just suggested has been raised before?---Yes, I'm sure it has.

What can you tell us as to the extent to which it's been raised before or by whom or when or in what circumstances?---Well, I can only tell you that it's an issue that's been confronting the professional peak body of GMs, which – or administrators in local government and that the Local Government Managers Association, as well as other unions and industrial organisations, have always been concerned about the vulnerability of general managers who stand up for something, who don't accept the status quo, who don't knuckle under, who don't give in to councillors if, if, if they put pressure on.

Are you aware of whether a submission was ever made to the government or a previous government?---I remember one occasion many years ago, where a former general manager of Rockdale did exactly this, complain to ICAC about pressure being applied by certain councillors. I'm talking over 20, 20 odd years ago, and it didn't end well for him.

Yes, but I'm asking you, has the policy issue been raised with government before, to your knowledge?---I don't know. I, I, I, I'd be very surprised if the Office of Local Government or the, oh well, you don't call them the director general now, but whoever it is running the thing, if he wasn't aware of this problem, and I think it's one of those issues they just don't want to get involved in because it's very sensitive and it's difficult.

Why is it sensitive?---Well, because it involves interfering or usurping the power of the elected council as they see it now and they can dispense with a general manager at whim.

They, being the council?---The council, that's right.

Thank you. In making your report to the ICAC, was a relevant factor that the context in which you were making it was that there was a call for an

EGM to consider a motion to terminate you in your office which was alive and on foot?---Mmm, of course. I'd be lying if I said that wasn't the case.

Well, did you in making your report consider that making it might provide some protection against the motion for your termination on the ground that such action taken against you might be seen as a reprisal because of your complaint - - -?---Of course.

10 - - - and for that reason unlawful?---Of course. And in the second meeting, the one I think on 13 February, didn't proceed because I was, I was labelled a whistle-blower and they couldn't make a move on me if I was a whistle-blower. Now, I didn't know that at the time, but that's how it panned out.

This is the point I'm trying to explore, and I'll just ask you to be careful about the evidence you give, if you wouldn't mind.---Yeah, of course.

20 Did you consider when you made the complaint to the ICAC at the time that you're making it, handing it in, this might help me in beating the motion to terminate me in my position?---No.

In heading it off?---No.

When did it occur to you that it might perform that function?---When the 13 February meeting, I think it was 13 February meeting, did not achieve its objectives because, as I said, and I think we had legal advice, I can't recall, that because of my status as a whistle-blower, having reported to ICAC, they couldn't make a move on me. Now, I didn't know that at the time.

30 THE COMMISSIONER: Sorry, who obtained the legal advice?---I think the council did, I think the mayor may have. I don't recall, but it will be on that - - -

MR BUCHANAN: 27 January?---No, 13 February I think was the other meeting. The 27 January collapsed because of, well, and I've got to pay credit to the man - - -

When it collapsed – sorry to interrupt, but when it collapsed it was after the mayor had made a statement, wasn't it?---Yes.

40 And the subject matter of that statement was that complaint had been made to the ICAC?---Look, again, you had to be there to see what happened.

No, please.---No, no, I - - -

It's your memory we're after.---Yeah, my - - -

If you can tell us what you recall occurring.---The meeting collapsed because it was complete chaos and the mayor, I think to his credit, avoided

them making a decision that night about my tenure and other things because he wasn't satisfied, and nor was I, that there had been a proper process undertaken in terms of the, of the meeting itself.

Can I just ask you to have a look, please, volume 4, page 244, please, and we'll throw it up on the screen for you.---Ah hmm.

Do you recognise the minutes of the meeting of 27 January, 2014?---Yes. I mean that's, that's standard.

10

MR ANDRONOS: 2015.

MR BUCHANAN: Sorry?

MR ANDRONOS: 2015, not 2014.

MR BUCHANAN: Well, I'm sorry - - -

20

MR ANDRONOS: I'm sorry, sorry, it's my mistake.

MR BUCHANAN: That's all right. It's obviously a typo, as my friend and I have been discussing, but it says, "Date prepared 28 January, 2015," plainly the day after. And so it's a typo for 2015, you'd accept that? ---Sorry, I don't understand. Is this, is this the meeting on 27 January we're talking about?

Yes.---Yes.

30

And so when it says 27 January, 2014, in fact it was - - -?---It's 15, of course, of course.

And if you could just read to yourself what's attributed there to the mayor. You knew that Mr Robson was going to say that, didn't you?---Well, actually, I didn't, because the, no, I didn't. The meeting - - -

Mr Robson didn't tell you what he was going to say?---He didn't, didn't tell me, when we sat down, I didn't know what to expect. The gallery was absolutely chock-a-block. It was a riot, the whole thing.

40

Please, please, please, please, please, please - - -?---No, I didn't, I mean, the answer is no.

I don't need a colour picture painted.---No.

What I am asking you is, did you have no idea before the meeting started as to the course the mayor proposed to take?---Not really, no.

You had no discussion with him?---I could have but I can't recall the discussion.

You appreciate that the effect of what is attributed to Mr Robson there was to close the meeting down?---Yes.

And that was to your advantage, wasn't it?---Of course. Not denying that.

10 And you don't have any memory of having discussed with Mr Robson beforehand what could be done to close the meeting down?---No, not, no clear memory, no.

Well - - -?---And, and, and - - -

What is the memory you have of discussions with Mr Robson before the meeting as to what would occur at the meeting?---Well, I expected that the meeting would proceed. I didn't know how it was going to proceed because it was an extremely unusual meeting.

20 And so it came as a surprise to you, is that your evidence, that he would rely upon what he referred to there as the unlawfulness and inappropriateness of acts of reprisal for making, for conducting a meeting in respect of matters under review by the ICAC by submission of the general manager?---Well, if you're suggesting that I scripted that for him, that's not correct.

No. Was there any contact between the two of you - - -?---Quite possibly. Our offices were contiguous. Of course there was contact.

30 And he supported you politically?---Yes. As he should.

And this act of his supported you in getting rid of that EGM?---Well - - -

Closing it down.---That was, that was the outcome, yes.

You didn't strategise this with him in advance?---Not to the extent that you're implying, no.

40 Well, to what extent, then, did it occur?---That we sat down and natted this, this scheme out, no, didn't do it.

Well, was any suggestion made by either you or Mr Robson that this position should be taken by Mr Robson at the beginning of the meeting? ---Look, the answer to that is, and I know, I know it can't happen, but I, and I'm wondering this, so shut me down if you like, but I'm wondering if that question was asked of Mr Robson, because I don't know. I don't know what went on in Mr Robson's head in his office the day this meeting took place.

So you have no memory of sitting down with him and discussing what would occur at the meeting?---No, I don't.

Can I take you then to volume 4, page 218. And this is a two-page memo to councillors headed Referral to the ICAC.---Yes.

You commenced this memo by saying, "I am writing to you regarding the circumstances leading to the call for an extraordinary council meeting scheduled for Tuesday, 27 January, 2015."---Yes.

10

And then you go on to talk about the extraordinary meeting.---Yes.

And then you say halfway down, "Councillors should be further aware that," and then you set out events, including a description of what occurred on 27 December, 2014 at the leagues club meeting between you and Mr Hawatt and Mr Azzi.---Yes. Yes.

20

And then over the page you went on to explain that the matter's created an obligation on you, under section 11 of the ICAC Act, to report this behaviour to the Commission.---Yes.

And that "Councillors should be further aware that as part of that responsibility, I have discharged my obligations under section 11 of the ICAC Act and made a detailed disclosure concerning the appointment of the director of city planning, and I've done this in writing and in person."---Yes.

30

And then you went on to say, "Any action arising from the consideration of matters in the notice of motion whilst under review by the ICAC would not only be premature but also an act of reprisal in these circumstances."

---Yeah, I don't retreat from any of that.

Is there any revision you want to give - - -?---No, no.

- - - of the evidence that you've given about whether you and Mr Robson sat down before the meeting of 27 January and discussed - - -?---No.

- - - what the mayor would say?---No, I don't, because I didn't put words in the mayor's mouth. He's quite able to speak for himself.

40

It seems most unlikely that this is a pure coincidence, that you set this out in your memo to councillors of 22 January, 2015, and then the mayor took that approach at the meeting of 27 January.---Mr Buchanan, I can't explain that, I wouldn't attempt to, but maybe the mayor obtained independent advice, legal advice, I don't know, he may have, somebody in the organisation, the legal team may have provided him with advice. That's not my, the wording, the wording in the mayor's, in that motion at the beginning of that meeting were not mine.

And you had no notice that he was going to take that position?---Look, I suspected it was going to be a difficult meeting and that it could be very unusual in the way it was conducted because we were concerned about the fact, and I did discuss this with him, that I was somebody who lodged a complaint with the ICAC, or the ICAC I should say, and that that was still on foot.

10 Can I ask you to respond to this proposition, that on the evidence that we've reviewed so far it would seem that at some stage prior to 22 January, 2015, if not prior to 15 January, 2015 when you wrote the report to the ICAC, you decided that you could use to your political advantage in the dispute with Mr Hawatt and Mr Azzi and thus the majority of council which the commanded, the report that you had made to the ICAC.---No, no, I reject that.

20 Did you make the report of 15 January, 2015 to the ICAC with at least partly in mind the idea that you might be able to use it to your political advantage in heading off the attempt to get rid of you?---No. I brought it to the ICAC's attention because I felt it was unlawful and it was something I should have reported under section 11, which I have an obligation to do under the, under the Act.

30 Why then on 22 January did you decide that you would appraise councillors of the view that taking action against you as a consequence or after having made the complaint would be an act of reprisal and unlawful?---Because I wanted the councillors to understand the seriousness of this. They weren't all on board with Councillor Hawatt and Azzi. There were three of them, including the mayor, who weren't part of this group. Now, I thought it was appropriate that the councillors understand the perilous or potentially perilous consequences of what they were doing.

Surely you wrote that memo to councillors to protect your own political interests, to head off the attempt to terminate you in your position. Surely that's the case.---Well, when we get to that later, there were other reasons, there were other reasons why, why I did what I did at the time, and as I said repeatedly in this place, I did what I thought was the right thing to do at the time, and I don't, you know, I'm not going to change that.

40 No one is at the moment questioning whether it was the right thing to do. The question I'm asking you is, what was it that motivated you to write that memo if it wasn't to protect your own interests?---Partly, but also to inform the councillors. They'd been kept in the dark, particularly the three who weren't part of the junta.

But at the end of the day, if people followed the position that you laid out in that memo, then it would have had the outcome which would have been favourable to you of at least putting off or heading off the motion to terminate you in your position. That's the case, isn't it?---It could have

worked out that way but the council still could have proceeded to terminate my employment. I've already explained - - -

But you wrote it in order to achieve the outcome that the memo is plainly designed to achieve, didn't you?---But, Mr Buchanan, if they wanted to go on with it later, even a week or a month or, or three months later, they could have, under the provisions of the Act, they can dismiss, dismiss me, terminate my employment without any reason at all, subject to payment of a termination payment of 38 weeks maximum.

10

Can I take you then to page 247 of volume 4. This is an extract from a Herald article published on 29 January, two days later.---Yeah.

It's by Ms McClymont. It starts out, "Council is in chaos after a majority of councillors voted to sack the general manager, Jim Montague." And just to fill in the gap, you know that after you and the mayor and the council officers left the council chamber on 27 January, that the remaining councillors, with the exception of Councillor Eisler, purported to continue the meeting and pass motions, including terminating your position.---Yes.

20

Well, I, I, I wasn't there, so I don't know exactly what happened but, yes, they, they, they tried to continue the meeting.

For how much of the purported continuation of the meeting were you there?---I wasn't there. I walked out of the meeting and went into my office and I was holed up in my office for a couple of hours.

I understand.

30

THE COMMISSIONER: And you walked out with the mayor and other council staff?

MR BUCHANAN: Directors?---The, the senior staff, yes.

THE COMMISSIONER: And that wasn't discussed beforehand?---No.

MR BUCHANAN: Now, what were the circumstances in which Ms McClymont published this article in the paper? That sounds a very general question. What I'm going to ask is, did you have any input into the fact that this article was published?---No. The last thing I'd do is - - -

40

Did you contact Ms McClymont?---No. Absolutely not.

The article at, can you see as the screen appears in front of you now, it's a bit over halfway down, there's the hand, it commences, "Meanwhile Mr Montague was back at his desk on Wednesday. He sent off an email to staff about the 'melodramatic events' of the previous night." Where did Ms McClymont get that from?---I've got no idea where she gets information from.

Did she interview you?---No. I wouldn't, I wouldn't take an interview with her.

Now, the email that she reported that you sent was, and she quoted from it, "To proceed with the meeting could be seen as an act of reprisal, which is prohibited by the ICAC Act, given that I recently referred certain behaviour of two councillors to the ICAC,' he said." Is that an email that is connected to the memo to councillors?---I'm sorry, I don't understand that, that  
10 connection. Is there a connection?

Yes, because there's an identity of subject matter.---Well, I can't answer that question. I don't know and I take very little – I mean what Ms McClymont writes, writes in the Herald and what - - -

No, no. I'm not asking you to make commentary on the media or relations with the media. I'm asking you, is it correct that you sent an email to staff about the "melodramatic events" of the previous night, so this makes it  
20 sound like it's 28 January. And then you said in your email, "To proceed with the meeting could be seen as an act of reprisal," et cetera.--- I doubt that and I, I'd like to see the, I'd like to see the memo. I, I, I can't recall that memo and I haven't seen it. It's not here, it's not on evidence as far as I can see.

Are you talking about the email to staff?---To staff, yes. If we can have a look at that, I could enlighten you further.

Now, have you read a statement by a Ms Gamble, an assessment officer at the Commission, about the meeting that you had with her on 16 January,  
30 2015? I'm not saying there weren't others present but you and she in particular?---No, I don't recall reading it. I probably did. I don't know. I'd have to see it again to job my memory.

Well, it's in Exhibit 53 I'm told, Commissioner. Thank you. So this is the first page of it. Do you see the set-out of it there saying who she is?---Yes.

And then the next page, "On 16 January, 2015, I had a meeting with a person now known to me as James Montague. This is the first time I met  
40 Montague," et cetera. Do you see that?---Yes.

Can we go to the fourth page, please. This is the note that Ms Gamble made, and in it she says that you told her that if the meeting goes ahead on 27 January, you will be out of a job.---Well, that, that was my expectation at the time because they had the numbers.

You can see where the cursor is in that admittedly fairly dense text.---Yes. Yes.

You said that if you received something from the ICAC then you would be able to show it to the other councillors and they wouldn't go ahead with the meeting.---Mmm. Well, that's consistent.

That is inconsistent with the evidence you've given here about whether a purpose you had of making the report to the ICAC was to endeavour to head off the attempt to terminate you in your position.---No, look, I don't know how Ms Gamble prepared this. Her memory may have failed her. I don't know.

10

That's not an answer to my question.---No, but she - - -

My question is, this is inconsistent with what you told us about what motivated you to file that report, isn't it?---No, what, the reason I filed the report was because I thought there was a breach of, of the Act, the ICAC Act, and I had to make a report pursuant to part 11.

20

Are you saying that Ms Gamble is not correct when she reported, she recorded that you told her that if you received something from the ICAC then you would be able to show it to the other councillors and they wouldn't go ahead with the meeting?---I'm not certain I put it in those terms. She, she may have interpolated that. I don't know.

There's nothing that you are giving us, if I can just give you the opportunity of responding, Mr Montague, to suggest that anything that Ms Gamble has recorded there is in any way wrong.---Look, I'm sorry. I, I don't know how she came up with that, that conclusion. I don't, and I can't remember it. I'm not even sure I read this before, to be honest with you?

30

THE COMMISSIONER: Can you see there's a reference to "We discussed whether the matter was a section 11 or a PID."---Sorry?

Yes, thank you. Can you see that reference?

MR BUCHANAN: PID?

THE COMMISSIONER: Yes.

40

THE WITNESS: Protected, protected disclosure? Yeah.

THE COMMISSIONER: And you know that a PID is given protection under the Public Interests Disclosure Act?---Oh, I couldn't say I'm au fait with all that, but I, I know there is a distinction and that does afford, as I understand it, some sort of protection.

But what you're raising there or what the discussion is going to is either under section 11 or a PID, sorry, a disclosure under the PID Act, some

protection is given from reprisal for making the complaint.---I believe I made a complaint to the ICAC under part 11 or section 11.

But what I'm saying is that reflects that there's a discussion during the meeting about protection for reprisals because you made the disclosure. ---Yeah, there possibly was but I don't recall that. I mean, we could have been interrupted. Who knows? I, I don't know. It's, when was that? Back in whenever.

10 January 2015.---Yeah.

Can I just ask, Janelle McIntosh, strategic adviser, who's she?---She was a person connected with my office who was, who was a strategic adviser to my office.

So she was a council employee?---Yes.

MR BUCHANAN: What strategies did she advise on?---Oh, all sorts of things. Just a fancy term. All sorts of things. She was very good at  
20 preparing reports, putting things together, very, very good, and I used her for that purpose. She could, she had very good research skills. She had council experience, she was a councillor at Hornsby and is now, and she - - -

Had she had any input into the preparation of any of the documents that you'd produced or had been produced under your name that related to the fight you were having with Hawatt?---No, no.

THE COMMISSIONER: And was she a consultant or an employee?---An  
30 employee.

MR BUCHANAN: Mr Montague, the evidence really, you would have to admit, fairly clearly shows that you were hoping by making this report to the ICAC to be able to intimidate councillors into not moving for your termination and that you could deploy it perhaps to head off the EGM that had been called for to consider that motion, doesn't it?---I reject that. I reject that entirely and I don't like the use of the word intimidate. I wasn't attempting to intimidate anyone. If anyone was being intimidated, I was by the councillors that I complained about. That's the guts of this.

40 Was the report you were making at least in part motivated by a desire to fashion a shield that you could use against the motion to terminate your position?---I wasn't interested in having my, my, my career destroyed by these people so close to my retirement.

So is the answer to my question yes?---No, it's not. I've said why.

Why did you give that answer then?---Because I just wanted you to understand the context of this. I, I was close to retirement. I didn't want to

go out as I said with the tail between my legs. All this happened, it just, it just blew up from nowhere and I was extremely distressed about it all.

It sounds as if you are agreeing you had a motive to try to prevent this motion to terminate you in your position from being considered let alone voted upon.---Well, anyone in similar circumstances I submit would do exactly the same thing. They'd defend themselves, but they wouldn't do anything that was illegal or unconscionable and I didn't.

10 You made a report to the ICAC believing it to be under section 11 of the ICAC Act - - -?---Yes.

- - - at least in part to serve your own personal interests, didn't you?---No. Well, you, the way you say that it puts a, it puts a very unfortunate connotation on that. I was, I was fighting for my career against people who had, who had really very little to contribute to the council.

THE COMMISSIONER: And the people who had little to contribute to the council were Mr Hawatt and Mr Azzi?---I, I, I agree with that.

20

Sorry, I'm just clarifying when you said - - -?---And other councillors who took no part in day-to-day activities at all. It wasn't a very good council from 2012 on.

MR BUCHANAN: Can I take you back to Ms Gamble's note. About six lines from the bottom she says, "I said we would send out an acknowledgement letter. We discussed whether the matter was a section 11 or a PID. He said he was reporting it under section 11 and had received legal advice to that effect." Just pausing there. Had you taken legal advice as to your position?---I, I don't believe I did. Maybe I said that but I don't think I did and I can't recall it anyway. Who I would have asked for that legal advice probably would have been Gates or maybe one of our panellist legal advisers. I don't know.

30

Did you consult a private lawyer, that is to say, someone other than a lawyer retained by council?---No.

You might have discussed it with Mr Belling?---Yes. Bryan and I were close. We went back a long way together. He'd been doing work for the council for many years. I trusted him.

40

The words "He", referring to you, "said he was reporting it under section 11 and had received legal advice to that effect" make it sound as if some forethought had gone into what you hoped would be the outcome of making the complaint namely, to provide you with protection against reprisal for making the complaint.---I can only repeat what I said earlier, Mr Buchanan. I reported the councillors because I believed I had an obligation to do so.

Thank you. That's all in relation to that document.

THE COMMISSIONER: Before it goes - - -

MR BUCHANAN: Sorry, Commissioner. I do apologise.

10 THE COMMISSIONER: Sorry, I wasn't quick enough. Just towards the end it's recorded, "He referred to Ryde Council and GM John Nash and said that it was similar." What's that a reference to?---Well, it's actually John Neish, and John Neish was the general manager at – so she didn't get that right either, but never mind – Mr John Neish was the former general manager of the City of Ryde. He fell out with the mayor, a fellow who was very powerful in the area, and they destroyed him. In fact, one of the people involved, I think, fronted this organisation over his behaviour and that was the mayor. So getting back to the earlier comment about how can general managers be treated, that was the greatest travesty, in John Neish's case, I've ever seen and - - -

20 MR BUCHANAN: How do you spell Neish?---N-e-i-s-h.

Thank you.---And as, as it turns out now, the person involved in the persecution - - -

No, no, no, no, no, no, no. You're not going to make a speech. Thank you very much, Mr Montague.---Okay. Just trying to contextualise it all for you.

30 THE COMMISSIONER: Just answer this question. When did the incident between Ryde Council and John Neish occur?---Oh, a few years back now. It's some years back.

1990s?---Oh, no, no. I think it was later than that. I think it was in the, in the 2000s. It's not that long ago.

40 MR BUCHANAN: Now, I've been trying to go through events with some effort to maintain a chronology, and I appreciate we've been going back and forward a bit and I apologise for that. Can I just ask you to pause a moment, please. So I just want to go back to your resignation letter, the handwritten document that was never put into effect, volume 5, page 101. I just want to touch upon it to ascertain whether it would seem to you still that the likelihood is you wrote it between 27 January and 13 February and the lowest point you felt you were at was after that meeting?---Yes.

And just to – you said you were holed up in your office afterwards.---Yes.

Why were you holed up in your office, very briefly?---Because - - -

What holed you up in your office, I mean?---The lunatics out in the, in the, in the hallway.

What was happening?---All sorts of people, press, residents, nutters, all baying for my blood in the hallway. It was an absolute outrage, the whole thing.

Thank you. Can I take you to volume 5, please.

THE COMMISSIONER: Mr Buchanan, I would still like a five-minute back-stretching break.

10

MR BUCHANAN: Certainly, Commissioner. That would assist me. I need to improve my note taking.

THE COMMISSIONER: If we can just have a very short break for about five minutes.---Thank you. Commissioner, thank you for allowing me to change the hours. I appreciate that.

#### SHORT ADJOURNMENT

[3.10pm]

20

MR BUCHANAN: So can I take you to some subsequent developments. In the first instance can I show you volume 5, page 9. Some messages extracted from Mr Hawatt's telephone, being communications to and from Joe Alha, A-l-h-a, commencing on 30 January, 2015. As at January 2015, you knew Joe Alha to be a proponent of development in the local government area?---Yes.

30

And what was his relationship with you as at that time?---Well, it was a business relationship. He come into the office on a number of occasions to meet with people in the organisation about his developments. He had a couple in Campsie, if I remember correctly, and a couple on Canterbury Road. He also had developments in Strathfield and elsewhere.

Just thinking of January 2015, that's your recollection of the spread of his interests at that time?---Yes.

And when you say he came into the office, do you mean your office or - - - ?---The office, into the council.

40

Into council?---Yes.

Had he had meetings with you?---He did have a meeting with me at least once because again it was a case of he was on, I have to sort of background this quickly for you, he was doing a development in Canterbury Road way down the other end, closest to the Canterbury town centre, and it had been, it had been in the office for a long time and he was absolutely frustrated with it, so he arranged to meet me to talk it through, which occurred. I

believe the director of planning – it was probably Occhiuzzi then – was present, and I asked for Marcelo to see what was holding it up, as I did with a lot of people, and, and see what can be done to, to get it moving. And ultimately it was approved and it's been built. Yeah, but that's how I met Joe. He came into the office.

Thank you. There's no suggestion that you were party to any of these communications with Mr Alha, and between him and Mr Hawatt, but the first one, top of the page, 30 January, 2015, 7.20pm, from Mr Alha to Mr  
10 Hawatt, reads, "Would you be willing to leave Jim alone and he will review Spiro's employment till his term finishes and get the heat off? If you are willing, we can have a private meeting." You see that?---Yes.

Had, as you understand it, Mr Alha had contact with you before he sent that text to Mr Hawatt?---Oh, he could have done, I don't recall, but he was another one of those good Samaritans that valued my service to him and to the community and went in to bat for me. And I didn't ask him to. Again, it was spontaneous.

20 What were the circumstances in which he went in to bat for you?---Well, just to talk to Hawatt.

Yes, but what were the circumstances that brought about his contact with Mr Hawatt?---Well, when he learnt that there was a move to terminate my employment, and as I said, the whole community knew by this time, he took it on himself to try and help me.

How did you know that before this hearing?---Because he told me, because he told me later.  
30

He told you?---Yes.

And was he telling you at the time he was communicating with Mr Hawatt or before or after?---I think at the time.

And did you respond to him with any discussion about what he could say to Mr Hawatt?---No, no, I didn't try and put words in his mouth either.

Where did Mr Alha get the proposal, the details of the proposal, the terms of  
40 the proposal - - -?---I've got no idea.

- - - that he put in that text?---I've got no idea. He didn't get it from me.

How certain are you of that?---Very certain.

Why are you certain of that?---Because I know I didn't give it to him.

Give these terms to him?---Yes.

Or any terms?---Or any terms. He's an outsider. He's not part of the council operation.

It's - - -?---He might have got it from Michael as far as I know.

Well, that doesn't seem likely, given the tone and the exchanges and the subject matter of these text messages.---No, but there was a connection.

10 He got it from some source other than Mr Hawatt.---Possibly, I don't know, but he and Michael Hawatt again through political channels were, I wouldn't say close, but they certainly knew each other. Again, Joe Alha, if he isn't, he could be a member of the Liberal Party, I don't know.

This is now the second developer who has by 30 January intervened with Mr Hawatt on your behalf.---Yes.

20 Did Mr Alha have any dealings with Mr Hawatt before that date as far as you know?---I've got no idea.

Had Mr Hawatt taken an interest in Mr Alha's developments or proposed developments?---There was one proposal which never proceeded in Campsie, and I think Michael knew about that, but it was only in very embryo stages, but there could have been discussions between them, I don't know. Joe had his office in Canterbury at one stage, near the railway station, and he lived in Canterbury at that point too.

30 It sounds, though, as if Mr Alha had some intelligence as to what the gravamen of the dispute was about?---Yeah, possibly, I can't, can't say that's not so.

And certainly the way Mr Alha has made the proposal that is there in that text at 7.20pm on 30 January indicates that, as far as he is concerned, there are just two issues. One is whether you're going to be harassed into retirement or Spiro Stavis is going to be given his job.---Well, you can see Michael's saying there, I think it's Michael saying that it's beyond the point of return, it'd gone too far, so - - -

40 Where did Mr Alha get the idea from, however, that those are the two pivotal issues, as he seems to describe them or appreciate them?---I may have told Joe Alha if he contacted me that, about the motion, the motion on notice for the special meeting in January, but I don't recall doing that, but as I said, he's a local, he takes an interest in local politics, party politics, and as far as I know he took up the cudgels on my behalf on his own initiative, and I was grateful for his support.

At the end of the day, although there had been a number of issues identified in for example the email of 13 January which Mr Hawatt sent you after the

meeting at his office, the pivotal issues were either you go and Stavis is employed, or you stay and Stavis is employed. Is that a fair appreciation of the issues as you understood them at that time?---I don't know that - - -

In January, 2015?---I don't know that it is. That may have been how Michael Hawatt saw it.

10 But if you're trying to get Michael Hawatt to back off, then you've got to have an insight into his mind, don't you?---Well, it's a pretty dark place to be.

That's not the point. The point is that's in your best interest, is to understand what will motivate your opponent to change his behaviour, isn't it?---Yeah, but by that, and what date are we talking about, Mr Buchanan, now?

We're talking January 2015 and it culminates with this text message on 30 January, 2015.---After the extraordinary meeting that didn't happen?

20 Correct.---Oh, dear me.

And all I'm asking you to appreciate is that to an outside observer, on the material that's before the Commission it seems that it's simply a dispute of either you go and Stavis gets employed eventually anyway, or you stay and you honour the agreement to employ Stavis. It's all about, as far as your thinking about Hawatt's thinking is concerned, the employment of Stavis. That is to say, if Hawatt is satisfied that Stavis will be employed, then it should be possible to get him to back off in his attack on you?---I believe it, I believe it was too late for that but it could have been the scenario.

30 Well, something had to be done, didn't it? Because as at 30 January there was no sign that Mr Hawatt or Mr Azzi were going to back off and they had a majority of council with them.---Yeah, but they'd cut off, virtually cut off communications with me.

But that's not the point.---Well - - -

The point is you knew what they were doing, you knew that they had dug in. You did, didn't you?---Of course.

40 So if you were going to save your job you had to do something.---If I was going to save my job I had to do something. Well, something had to be done because - - -

Yes. And getting Mr Hawatt and hopefully Mr Azzi as well to understand that Spiro's employment was not under threat would be a good start in getting them to wind down the aggression against you.---Probably like lancing a boil. It'd certainly help.

Yes. Now, is it possible that Mr Alha made this approach to Mr Hawatt after talking to you, and whoever made the first approach – and I’m not making any suggestion – but the proposal was made by Mr Alha after agreement with you that you would review Spiro’s employment till his term finishes, to use an extract from that text.---Whose term, mine or his?

Until his term. Your term I would suggest.---Okay. Well, that's not how I recall it but, and I can't, I can't shed any more light on it, Mr Buchanan.

10 THE COMMISSIONER: One reading of that or one possible reading is leave you alone until your term finishes, but during that period you, Mr Montague, will review Spiro’s employment. For example, put him on a limited contract to see how he performs.---Yes. That would have happened anyway because like every other director he would have been expected to undertake a performance review. So maybe that’s what I was thinking, that further down the track we’d look at it and, look, I’ve got to say that in the short time that he was on the staff Spiro did a good job. I was quite happy with him.

20 But we’re concentrating on what this - - -?---No, but it’s important because it’s - - -

MR BUCHANAN: No, it isn’t, it isn’t.---Well, it is to me.

It’s not your investigation, it’s the Commission’s investigation. We’re trying to find out what happened and why, and what we’re trying to find out is, what were the circumstances of this approach made on 30 January, 2015, to Mr Hawatt by Mr Alha, what your involvement in that approach was and what it signified about your thinking as to what the real issues were. Do  
30 you understand that’s what we’re asking about?---Yeah. I understand perfectly. I don't know that I can answer the question though because I don't know.

Can I just take you down to the fourth entry. Can you see that Mr Alha is, on 30 January at 8.15pm, saying, “Please, I called you.” Fifth entry at 8.15pm, “Call me.” Sixth entry at 8.24pm, again from Mr Alha, “Send me a number.” Seventh entry at 8.25pm, Hawatt sends Alha a phone number and then there’s a break between 30 January, 2015 and 31 January, 2015 at  
40 12.17am and you can see that the text that’s sent at that time is sent to Alha by Hawatt and it’s the word, “Done”.---I don't know what he meant by that.

Well, the inference in the circumstances is that he was conveying that Alha had agreement to whatever it was they had discussed over the telephone after Alha had used the number that he’d been given to ring Hawatt and discuss with him the approach he was making, which commenced at 7.20pm on 30 January.---Possibly.

When you read the next text at item 9 on the 31<sup>st</sup> at 12.22am, Alha says to Hawatt, "There are people that protect their friends. Thanks." The inference that's available from that text is that Mr Alha was referring to you as being his friend and that he was intervening to protect or try to protect you.---Yep. I don't have a problem with that.

Then at item 10, at 9.35am on 31 January, Hawatt says, "I hope he doesn't renege again," which is a suggestion that Mr Hawatt thinks that there is an agreement that has been made, at least between him and Alha.---Possibly.

10

And if you go then to item 11, Alha says at 9.39am, "Don't worry." This is the response to, "I hope he does not renege again." So, Mr Alha is assuring Mr Hawatt that in respect of whatever it is they have agreed, he, Mr Alha, is saying, you, Mr Hawatt, don't have to worry that he will renege again. Do you know why Mr Alha would have had confidence that you would not renege?---No, I don't.

Did Mr Alha tell you anything about any contact he had with Mr Hawatt?  
---He could have. I don't recall that, though. I mean, we're talking over three years ago, remember. I don't remember.

20

Well, you might have reason to recall if it were the case – and I do emphasise the word, if it were the case – that it was the actions of Mr Alha that brought about some sort of reconciliation or initiated a process of reconciliation. So all I'm doing is pointing out to you that there could be circumstances where you would have a reason to remember whether Mr Alha had contacted you to say, "Look, this is what Hawatt has agreed to. What do you say?"---Well, a lot of this communication was between the two of them. I, I, I don't, I can't recall. I don't know what, what they were talking about. Everyone knew that - - -

30

Well, you would know if Mr Alha told you.---Yes, but I don't believe he did.

It doesn't seem likely that he didn't talk to you about it, given that he describes himself as being your friend and that you were a friend of him, that he had a desire to protect you, and that he initiated this attempt to effect a reconciliation in the first instance. All of that would tend to suggest that it is highly unlikely that Mr Alha did not talk to you at the very least after he'd had these contacts with Mr Hawatt to see whether you were agreeable, given that Mr Hawatt seems to think that there's at least the possibility of a reconciliation and agreement, which would be satisfactory to him, on the table. So - - -?---Yes, you could, you - - -

40

You don't have any recollection?---No, I don't, no.

Was there something that initiated a reconciliation?---Well - - -

Was there anything that - - -?---No.

You became firm friends again, didn't you?---Who?

You and Hawatt and Azzi.---We were never firm friends.

You were able to work together again.---Yes, which was in the interests of the council.

10 How did that process start? How did it come to pass that you were able to work together again?---Well, it was a bit of a time warp there. I mean, when the meeting on 27 January didn't work, and then the 13<sup>th</sup> again wasn't successful, 13 February, '15 – of '15? Yeah, it didn't work either. So maybe it, it was just, maybe he just resigned himself to the fact that they couldn't achieve what they wanted to achieve or they lost interest in it, for all I know.

So this is your best – is it a recollection?---Yeah, no, it's not - - -

20 Or are you speculating?---I'm speculating.

So you say, do you, sitting there in the witness box, you have no idea as to what initiated the change in the relationship?---The only thing I can think of is that there was, there was a possibility, if not a probability, that Stavits would get the job and that that was enough to shut them up. But the other issues were still there. I mean, the, what they tried to do to terminate my employment and all that, in the end it just became a matter of pride. They didn't want to back down. Now, I, it just did, to me it was weird because it just went away. It just faded into, in, in, into the, morphed into the, into the  
30 ether and we carried on. Meetings were rescheduled in March and April and the council continued.

Excuse me a moment. I'd like to take you to Exhibit 233. This is the first page of it. It is a set of a call charge records for Mr Khouri, Mr Vasil, yourself, Mr Hawatt, Mr Azzi and Mr Stavits between 1 February, 2015 and 28 February, 2015. You understand what the document is?---Yes.

And just looking at 1 February, which goes down to the item 31, there's at that stage on 1 February, it has to be said, a large number of contacts  
40 between you and Mr Khouri.---Sorry, what page are we on, page 2?

No, no, page 1.---Oh, I'm sorry. We can go back to page 2, can we?

I'm sorry, it's not your fault. We'll get Exhibit 233. And if you could just cast your eye down the page down to item 31, can you see that they're all entries for 1 February, 2015?---Yes.

And starting with item 2 we have a contact between Mr Khouri and you at 10.39am and it's an SMS, and then there's a series of SMSs although there are also some telephone contacts involving Hawatt and Vasil, but there's a series of SMSs between you and Mr Khouri. Do you see that?---Yes, yes.

10 What role was Mr Khouri playing in the developments we've been discussing?---Not much of a role at all really. He, he wasn't, I mean he talked to me about it, but he didn't, as far as I know he didn't go and lobby people or do anything like that. No, I don't think he did. And those conversations might have been something completely unrelated to the, to the war and what was happening with Spiro.

But Mr Khouri was your friend?---Yes.

You socialised with him?---Yes, occasionally.

This is the most traumatic experience of your life?---Yes.

20 You weren't confiding in him?---No, not to, not to that extent. I mean he wasn't a friend that I'd, that I'd go round and cry on his shoulder, I mean I had other - - -

Why not?---Well, why should I?

Because we all need friends, Mr Montague.---Yeah, and I've got a family and they, they provide that role very adequately.

30 I see. You knew, however, Mr Khouri had a relationship with Mr Azzi and a relationship with Mr Hawatt, didn't you?---Yes, but that, that relationship only flourished towards the end of 2015, as far as I knew, and 2016. Whether he had a relationship with them in years gone by, I don't know, 'cause it all happened after the amalgamations became live.

You've seen however that Mr Khouri was involved in lots of communications with Mr Stavis in the period - - -?---Yes.

40 - - - between the time that Mr Stavis had his first contact with Mr Vasil and 17 November?---More than, more than I realised, and that was disturbing to me that they'd had those sort of discussions and meetings without my knowledge.

That doesn't suggest to you that perhaps that Mr Khouri had more of a relationship with Mr Hawatt and Mr Azzi at that time than you - - -?  
---That's possible, Mr Buchanan.

- - - have told us about?---That's possible, but I mean he didn't check with me, I didn't prepare his diary and we didn't see much of each other socially

at all really, except on the way home if I'd have a coffee if he was there in Concord.

10 So what are these contacts about on 1 February, 2015 between you and Mr Khouri?---Well, it could have been anything. Could, could have been something totally unrelated to the, to the Stavis issue. I've got no idea. I mean, we did contact each other a lot but sometimes he'd ring up and he'd say, "Are you going, are you going through Concord tonight, mate? I'll see you there," or so-and-so. You wouldn't know with him. He's all over the place.

THE COMMISSIONER: You had Mr Demian and Mr Alha intervening on your behalf.---Yes.

Mr Khouri you knew was involved with the ALP?---Course, yeah.

Mr Azzi was a - - -?---ALP.

20 He represented ALP.---Yeah.

Did you ask Mr Khouri to intervene on your behalf with Mr Azzi during the war?---No, no, I didn't, because I knew that Councillor, sorry, I knew that Mr Khouri visited Pierre's home from time to time and more, more regularly towards the end, and that he would have been getting all he needed to know from Pierre.

But that's different from intervening or lobbying or pressing your case to them.---I don't think he did.

30 No, no, no. What I'm asking is why didn't you ask him to if you've got somebody like Mr Demian doing it?---Well, because I offered to. I, I didn't go out canvassing people to lobby on my behalf. I, I thought I can manage this. I thought I could then naively but I didn't understand, you know, the, the animosity that had been generated and that, that was fine. That's their entitlement. They could have terminated my employment if they wanted to, but with Khouri he, he, he put Stavis in the picture in the first place by telling, asking him to put an application in through Judith Carpenter so he had, he had a bit of an interest in, in, more of an interest I think in Stavis.

40 Which you realised at the time because he - - -?---Yeah, because he said to me I've got this guy and I said, well, you tell him to contact Judith Carpenter and submit an application if he's interested in the role.

MR BUCHANAN: And given his interest, as you understood it, in Mr Stavis and given that the war was revolving around Mr Stavis, it doesn't seem right that you had next to no contact with Mr Khouri.---I wouldn't say next to no, but it wasn't as frequent as it might have been with other people,

and I think he was away for a little while. Look, I don't know, but he, he's a bit of a, he gets around and he's got interests all over the place. Now - - -

10 But what we can see is that on 1 February, 2015 there were intensive exchanges between you and Mr Khouri, and this is four days after the lowest period of your life. It doesn't seem right that this wasn't about the, what it was that was happening and whether it was possible to achieve an outcome that was favourable to you?---Look, as they say, a friend in need is a friend indeed. I, I treated Bechara Khouri as a genuine friend. He never asked me to provide him with anything that I couldn't provide legally and he never interfered in individual applications. Very seldom came into my office but he did ring me. He's a single man. He's got a lot of time on his hands and we used to catch up socially, yes.

Would you just excuse me a moment. Can I just draw your attention to item 32. It stands out straight away because, this is still in Exhibit 233.---Yeah.

Because it's Michael Hawatt ringing your office.---Yeah.

20 Do you know what that was about?---No. And the 4-4-7 number is the outer office. That's not my office. So that would have gone through to my assistant.

But I assume your assistant had the ability to forward the call to you?  
---Or she'd screen it.

Yes.---Or, or leave me a note to contact him if I was busy or who knows.

30 The line was open for 31 seconds. Are you able to tell us what happened on that occasion?---Of course not. I'd say he probably got on to Cristina and Cristina said he's in a meeting or he's somewhere else in the building. I'll tell him you called. That's probably what happened because it's on 4-4-7.

Did you get a message from Mr Hawatt on 2 February, 2015 which had any sort of impact or played any sort of role in the dispute between you and him?---Not that I recall, Mr Buchanan. No.

40 Can I take you to volume 5, page 12, please. At 12.19pm, this is about the middle of the page of emails on page 12 in volume 5, you sent an email to Bryan Belling.---Yes.

Saying, "Bryan, as discussed would you please advise the legal status of this matter and in particular my actions in withdrawing the offer of employment to Mr Stavis. Based on your advice I am seriously considering honouring the original offer of employment. Your urgent advice would be appreciated."---Yes.

That reads as if you and he had had a discussion on the phone on that day, possibly, before 12.19pm.---Yeah, yeah, it could have. I, I don't recall that conversation but he may have been alluding to the earlier conversations we had. I don't know.

10 When you say, "Based on your advice, I am seriously considering honouring the original offer of employment," I am asking you, was what occurred that Mr Belling gave you oral advice over the phone that there was an enforceable contract of employment, that's to say enforceable in the instance of Mr Stavis, and you were saying in this email, look, I need something in writing?---Yes. My understanding was that there was a contract of employment, a verbal one, and that Mr Stavis was on very safe ground if he went after the council for some sort of compensation.

Yes, I understand that, but what I'm trying to establish is whether that was your understanding at 12.19pm on 2 February, 2015?---Yes, it would have been. That's why I considered honouring the original offer because of other things that'll come up later in this examination.

20 Well, going back then to Exhibit 233, item 35 of the first page is a text from Bechara Khouri to you.---Sorry, what item was that, Mr Buchanan?

I'm sorry, 35.---Oh, sorry. Okay.

Do you see that?---Yes.

30 And it's at 1.52 and then item 38, you responded with a text at 1.51. Did you tell Bechara Khouri, having regard to the proximity of, in timing, that text to your email to Mr Belling at 12.19, that you were seriously considering honouring the offer of employment to Mr Stavis?---I can't recall doing it but I may have. I mean, no reason to conceal that information.

Or could you have conveyed the information to Mr Khouri, knowing or asking that he convey it to Mr Azzi and/or Mr Hawatt?---I don't believe so. I can tell them myself. I'd tell them myself. I mean that would be helpful to me if I rang them and said, look, all bets are off, he's got the job after all because of legal advice I've obtained. I mean, of course I, I'd do that myself.

40 Well, that's not necessarily the case, is it?---I don't know what you mean by it's not necessarily the case.

Well, I appreciate that I have asked you questions as to whether you thought that, as far as Mr Hawatt was concerned, the employment of Mr Stavis was pivotal. The last time you had received anything in writing from Mr Hawatt, there had been a series of terms, if that is how they could be described, or conditions, that would not be favourable to you were the matter to be resolved. In other words, what I am asking is whether you

couldn't have used Mr Khouri as an intermediary, given that you were having to come around to a position of climbing down, as it were?---No, no. Look, I wouldn't have, I, I, wouldn't use him for that reason. He wasn't my secretary or any member of my staff.

Yes, but he was friends - - -?---Yes, but that doesn't matter. I've got a lot of friends, a heck of a lot of friends.

10 And he was friends with your opponents.---Yeah, that's fine. Look, I, I would, look, I wouldn't be shy about ringing Hawatt and Azzi and telling them that things have changed. It wouldn't bother me in the slightest. I wasn't afraid of either of them.

20 Why didn't you send Mr Hawatt or Mr Azzi a communication then, on 2 February, 2015, to the effect that you were seriously considering honouring the original offer of employment?---Well, I might have been seriously considering it, but I'd send them a communication when I decided to do it, not get their hopes up that he's going to get the job and then say, look, I've changed my mind again. They were already accusing me of being very indecisive. You know, why would I do that?

Well, if you believed, as you have told us you did, that you understood it. As you understood it, the offer of employment was enforceable by Mr Stavis.---Yes, yes, I believed that at the time.

30 If you believed that, then you didn't have much alternative.---No, but, I mean, look, I was running a business with 600 people. I didn't have time to be, this wasn't the only issue I was dealing with. At this point, when things had simmered down a bit after the January disaster, I just slipped back into GM mode doing the things that I normally did every day, so this was just another, another task that was before me, so I didn't consciously think, oh, actually, I'd better let Michael know about that. He'll get angry if I don't ring him. No, I didn't think like that at all.

40 THE COMMISSIONER: Sorry, what was the only task now, sorry - - -?  
---Well, this one, dealing with the fallout from the Stavis thing, wasn't the only thing that I was working on. I mean, it's a big council. I had a lot of things to do, and I was trying to do those things to the best of my ability and put this disaster, as I call it, behind us.

MR BUCHANAN: But it was an ongoing disaster.---No, only until, only until some time in February or whenever, when we agreed, I guess, that there be no further, there be no further moves on me.

That's right. And so as at 2 February it was still an ongoing disaster. Your job was at risk as far as you knew.---Well, maybe I was a bit more sanguine about it then. I thought, well, I'd already written that letter of resignation out. Mr Buchanan, if it had come to that, I would have submitted that letter

of resignation to the mayor. I didn't, look, it's not the end of the world for me.

You, surely, were doing your best as at 2 February, 2015, to protect your position.---To protect the council and protect the staff from what I knew was coming, i.e., amalgamations.

That's not an honest answer.---Of course it is.

- 10 You were trying to protect yourself. You knew that there was an outstanding attempt to dispose of you. It hadn't been resolved. You knew all of that was the case as at 2 February, didn't you?---Look, I knew that they, they weren't as virulent as they were earlier, and I assumed that things were cooling down. I didn't want to poke the bear again. I just let it go, carried on with what I was normally doing at the council.

Can I then take you to pages 13-17 in volume 5, please. And this is an email with an attachment by Mr Belling, attached to his email of 2 February, 2015. That's at page 13.---Yes.

20

And then there's a legal advice that goes through to page 17.---Yes.

And it's to the effect that the offer of employment was enforceable by Mr Stavis.---Yes.

There was an enforceable contract of employment.---Yes, well, that's what I believed at the time, yes.

- 30 THE COMMISSIONER: But didn't he give that advice to you previously on 15 January?---Oh, look, the dates are all, you know, I, I, I, I believe he advised me verbally that there, that he felt that there was a contact and then I wanted that confirmed in writing and this is that confirmation. That's the only conclusion I can draw.

MR BUCHANAN: But it's something you asked him to provide earlier that day?---Yes, yes. Or at some time I asked him to provide it, I'm not sure it was earlier that day or some other time, but certainly things were moving very quickly and I wanted to get it resolved.

- 40 Can I take you then to page 11 in volume 5. This is a memo addressed to the mayor dated 2 February, 2015, same day, and in it you say, "Following our discussion today I confirm the following receipt of legal advice, copy attached. It is my intention to proceed with the appointment of Mr Spiro Stavis to the role of director of city planning pursuant to my letter of offer dated 8 December, 2014."---Yes.

And then you proceeded to give three reasons. Do you see that?---Yes.

And you then gave some, if not reasons, additional consequences that you hoped would flow.---Yes.

“Stem any further unhelpful publicity surrounding this appointment, consequent negative impact on staff morale and overall efficacy of, efficiency, sorry, of council.”---Yeah. Yes.

You did indeed tell Mr Robson that.---Yes.

10 And so you would have told him that on the evening of 2 February, 2015?  
---Or some stage during that time, yes. I don’t know exactly when. He was  
in the office most of the time so I probably just went in there and told him  
what I was proposing to do.

Well, I just, I need to explore a bit of this and it’s, I note the time,  
Commissioner, so it might be appropriate if I pull up stumps.

20 THE WITNESS: Can I just make one final comment if I may,  
Commissioner. That last piece of evidence on the screen clearly  
demonstrates that by 2 February I’d made, I’d made a decision to rehire  
him.

MR BUCHANAN: That’s volume 5, page 11.

THE WITNESS: That’s right. So that - - -

MR BUCHANAN: That’s the very question I want to ask you some more  
questions about.---That’s exactly what I’ve done.

30 But we need to go into that tomorrow.---Okay, fine, that’s fine, but it’s good  
for me to know that because it’s, it dates it for me now.

Thank you.

THE COMMISSIONER: All right. We’ll adjourn and commence again  
tomorrow morning at 10 o’clock.

40 **THE WITNESS STOOD DOWN** **[4.01pm]**

**AT 4.01PM THE MATTER WAS ADJOURNED ACCORDINGLY**  
**[4.01pm]**