

**UNDER THE INQUIRIES ACT 2013**

**A GOVERNMENT INQUIRY INTO:**

**Allegations regarding the Honourable Judith Collins and a**

**former Director of the Serious Fraud Office**

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**REPORT**

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**24 NOVEMBER 2014**

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## Summary

[1] Under the terms of reference the following matters are to be inquired into and reported upon:

- allegations that the Honourable Judith Collins was involved in efforts to undermine Adam Feeley during his tenure as director of the Serious Fraud Office (SFO);
- whether there is any evidence that Ms Collins undermined or attempted to undermine Mr Feeley's tenure as director;
- whether Ms Collins provided information about Mr Feeley to Cameron Slater or any other party who was not entitled to receive it;
- whether Ms Collins inappropriately sought or received information about Mr Feeley from Mr Slater or any other party.

[2] There were "efforts" to undermine Mr Feeley by two separate groups. The first group comprised current and/or former staff of the SFO. The second group comprised Mr Slater, Ms Odgers and Mr Graham, with Mr Slater taking the leading role in that group. Except for her association with Mr Slater, Ms Collins was not involved in the activities of these groups.

[3] Taken at face value the email of 5 October 2011 sent by Mr Slater, coupled with similar emails sent by him, is capable of constituting evidence that Ms Collins undermined or attempted to undermine Mr Feeley. However, such evidence is incompatible with the remaining evidence before the inquiry and is unreliable. There is no probative evidence that Ms Collins undermined or attempted to undermine Mr Feeley. The implication that she was so involved is untenable.

[4] On occasions Ms Collins discussed Mr Feeley with Mr Slater, and thereby provided information to Mr Slater. This was not, however, information which Mr Slater was not entitled to receive.

[5] There is no evidence that Ms Collins inappropriately sought or received information about Mr Feeley from Mr Slater or any other party.

### **Introduction**

[6] Between November 2009 and October 2012 Adam Feeley was the chief executive and director of the SFO, and for much of that time the Honourable Judith Collins was the minister responsible for that office. Ms Collins ceased to carry ministerial responsibility for the SFO when she became Minister of Justice in December 2011.

[7] On 30 August 2014 the Prime Minister, the Right Honourable John Key, announced that he had accepted Ms Collins' resignation as a minister. He explained that an email he had just released to the public suggested that in 2011 Ms Collins might have been involved in discussions with a blogger which were aimed at undermining the then director of the SFO (Mr Feeley). He indicated that Ms Collins strongly denied any suggestion of inappropriate conduct on her part.

[8] The Prime Minister also stated that Ms Collins had asked him to undertake an investigation into the matter and that he would be seeking advice as to the most appropriate form of inquiry. In due course the Prime Minister determined that a government inquiry under section 6(3) of the Inquiries Act 2013 should be held, and I was appointed to conduct the inquiry.

[9] In terms of the formal instrument of appointment published in the *Gazette* on 11 September 2014, I am to inquire into and report upon:

... allegations that The Honourable Judith Collins was involved in efforts to undermine Adam Feeley during his tenure as Director of the Serious Fraud Office, including whether:

- (1) there is any evidence Judith Collins acted inconsistently with the conduct expected of a Minister by undermining or attempting to undermine Adam Feeley's tenure as Director of the Serious Fraud Office; and
- (2) Judith Collins provided information about Adam Feeley during his tenure as Director of the Serious Fraud Office to Cameron Slater or any other party who did not have a proper entitlement to receive such information; and

- (3) Judith Collins inappropriately sought or received information about Adam Feeley from Cameron Slater or any other party; and will
- (4) identify and report on any other issues relevant to the above matters, to the extent necessary to provide a complete report on those matters.

Findings and opinions are to be reported in writing to the Prime Minister no later than 28 November 2014.

[10] Having investigated the issues raised by the terms of reference, I have reached the findings and formed the opinions contained in this report.

### **Background**

[11] Mr Feeley was appointed chief executive and director of the SFO for a five year term pursuant to section 35 of the State Sector Act 1988. He took up those responsibilities on 5 November 2009. Immediately prior to his appointment he had been chief executive of the Eden Park Redevelopment Board. Before that Mr Feeley held senior positions in the public service and within the private sector.

[12] Ms Collins, who had been Minister of Police, Corrections and Veterans' Affairs since 2008, assumed ministerial responsibility for the SFO on 1 April 2009. Although the State Services Commissioner, Iain Rennie, made decisions leading to Mr Feeley's appointment, Ms Collins told the inquiry that she was "pleased" with the appointment, and this is consistent with all the evidence before the inquiry.

### *The SFO*

[13] Having been established following the 1987 share market collapse, the SFO operates under the Serious Fraud Office Act 1990. It is a specialist law enforcement agency responsible for addressing serious and complex financial crimes in New Zealand. It has the dual role of investigating and prosecuting serious fraud. The director of the SFO has statutory independence. When Mr Feeley joined the SFO it had a staff of approximately 35 people.

[14] Prior to the 2008 general election steps had been taken by the then Labour-led administration to disestablish the SFO and transfer its functions to the

Police. In opposition the National Party had argued against closure. On 20 May 2008 the Serious Fraud Office (Abolition and Transitional Provisions) Bill received its first reading in Parliament and was sent to a select committee which reported back on 15 August 2008.

[15] When Parliament was dissolved prior to the general election on 8 November 2008 the Abolition Bill was carried over to the incoming Parliament. With the change of Government to a National-led administration, the proposed closure of the SFO was not pursued and ultimately the Bill was discharged.

[16] During an address to the Trans-Tasman Business Circle on 19 February 2010 Minister Collins said that since the SFO had been set up 20 years ago it had “fallen victim to years of political neglect”.<sup>1</sup> She believed that the SFO would have an important role to play in ensuring that conditions were in place for local businesses to grow and thrive and for overseas businesses to want to invest. The Minister also said that “rebuilding the SFO began with the appointment of Adam Feeley as the new chief executive officer.”

[17] Thus when Mr Feeley became director of the SFO it was inevitable that significant changes would be made, and this was recognised as a key component of the position he filled. During 2010 significant changes, including staff changes at a senior level, were commenced by Mr Feeley. Some staff members were resistant to the changes.

*The bottle of champagne and Mr Hubbard's biography*

[18] On Friday 30 September 2011 Mr Feeley became aware that *The New Zealand Herald* (the *Herald*) was seeking comment from him about a SFO staff function that had taken place about 16 months earlier after charges arising out of the Bridgecorp Finance Company investigation had been laid. He referred the matter, including the press statement he proposed to release, to Minister Collins' press secretary, Stefan Herrick. These media enquiries were later extended by the *Herald* to the office of the Minister.

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<sup>1</sup> Judith Collins “Address to Trans-Tasman Business Circle” (19 February 2010) Beehive <[www.beehive.govt.nz/speech/address-trans-tasman-business-circle](http://www.beehive.govt.nz/speech/address-trans-tasman-business-circle)>.

[19] This media interest had been triggered by a leaked email dated 19 May 2010 from Mr Feeley to the SFO staff:

It's been a fantastic week for the Office with charges laid on Bridgecorp ...

In light of the Bridgecorp charges being laid, there is a bottle of Gosset champagne needs to leave the confines of my fridge at home and be drunk by those involved with the case. (The relevance of which is that it previously resided in Rod Petricevic's office – and I'll decline to explain how it end up with me.)

And given that it will probably not make it around all of you, we will probably add some additional bubbles to the mix.

Hopefully you can all make it to celebrate the hard work of the past few weeks.

Jared Savage, then assistant chief reporter of the *Herald*, told the inquiry that this email had turned up in an anonymous envelope addressed to him.

[20] During the evening of 30 September 2011 Mr Herrick referred the matter to Mr Feeley's employer, the State Services Commissioner, and Minister Collins advised the Commissioner, Iain Rennie, by telephone that this action had been taken. Mr Feeley also contacted Helene Quilter, then Deputy State Services Commissioner, to tell her about the impending story. Later he replied to the *Herald's* enquiry by supplying a statement outlining the events surrounding the bottle of champagne.

[21] Ms Quilter, who undertook the investigation on behalf of the State Services Commissioner, described the investigation that was then commenced as "a preliminary employment investigation". She explained that the State Services Commission (SSC) was simply looking at the matter to see whether there was a case for Mr Feeley to answer.

[22] The following morning, 1 October 2011, the *Herald* ran a front page article about the email and Mr Feeley's explanation. A later online edition recorded that Ms Collins was unable to comment because the matter had been referred to the State Services Commissioner who employed Mr Feeley.



[23] Later in the day Mr Feeley emailed the following apology to Minister Collins:<sup>2</sup>

In light of this morning's article in the Herald, I would like to offer my sincere apologies for the embarrassment that this has caused.

The reported drinks were offered to staff with the intention of acknowledging their lengthy and substantial efforts with the Bridgecorp investigation. Having been left behind when the Eden Park Redevelopment team took over the former Bridgecorp premises, the remaining bottle of champagne was simply intended to be a symbolic recognition of the investigation efforts.

[Sentence redacted]. However I am more disappointed that a lapse in judgment on my part has undermined the efforts and successes of the Office, both in relation to Bridgecorp and other companies.

The focus of the past two years has been about delivering you and the public good results and a sense of confidence in the work of the Office. However well-intentioned my attempts to recognise staff performance may have been, they have inadvertently diminished the positive perception of those efforts.

Again, I offer my sincere apologies for this. However, I also offer my total commitment to ensuring that the Office continues to deliver results that you and the public can take renewed confidence from.

I will be providing the SSC a full report on the background to this matter. And I am available at your convenience to provide you with any further information you may want.

[24] Over the next few days there was extensive media coverage about the champagne bottle incident in the *Herald* and *The National Business Review*. A report in the *Herald* on 5 October 2011 said that the Minister was “understandably furious”. There was also comment on Stuff, and on the Whale Oil Beef Hooked (Whale Oil) blog site operated by Cameron Slater. While much of the comment was highly critical of Mr Feeley, and called for his resignation, the Deputy Prime Minister was reported as describing the controversy as a “a storm in a tea cup” and the Prime Minister as a “storm in a champagne flute.”

[25] On 8 October 2011 the *Herald* ran another story reporting that Mr Feeley had presented Allan Hubbard's biography to staff as “booby-prizes” at a staff function in December 2010 while the investigation by the SFO into the collapse of South Canterbury Finance (of which Mr Hubbard was a director) was still current.

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<sup>2</sup> Following a request under the Official Information Act 1982 this email was released to the media by Minister Collins on 19 October 2011.

Mr Savage told the inquiry that after the first article had been published on 1 October 2011 he had received “quite a bit of information”, including information about the Hubbard biography.

[26] As with the earlier story concerning the bottle of champagne, Mr Feeley had been informed by the *Herald* that it was intending to print this story about Mr Hubbard’s biography, so that he could comment before publication. Although no media comment was made by Mr Feeley at the time, he brought this development to the attention of the SSC, which then investigated it in conjunction with the champagne bottle incident.

[27] Following publication of the story about Mr Hubbard’s biography, intensive media and blogsite comment about Mr Feeley’s actions continued. Again much of it was critical of him.

*Mr Feeley’s explanation to the State Services Commissioner*

[28] With reference to the champagne incident, Mr Feeley explained that when he was chief executive of the Eden Park Redevelopment Board he had established offices in the former Bridgecorp premises. Mr Feeley and his team had rented the premises for six months.

[29] During this time the redevelopment project team found four bottles of champagne in a cupboard on the premises. The staff drank all except one bottle at staff drinks. Mr Feeley kept the remaining bottle with the intention of drinking it at the conclusion of the redevelopment project. When the team left the premises he took the bottle home, still in the expectation that it would be drunk by the redevelopment project team at the end of the project.

[30] Soon after this Mr Feeley was appointed director of the SFO. About eight months later he held a staff gathering to mark the work of the SFO’s investigation team, the laying of charges against Bridgecorp directors, and the completion of other high profile investigations. An email invitation was sent to the staff. The staff gathering was “a modest, quiet event with about 10-15 staff present”.

About four bottles of wine were drunk with a few beers. At the function he explained how he came to be in possession of the champagne.

[31] With regard to ownership of the bottle of champagne, Mr Feeley advised the Commissioner that when the bottles of wine were first found, no one on the project team, including himself, gave any serious consideration to the issue of ownership. He and the team thought it highly unlikely that any individual from Bridgecorp would return to claim the champagne. They did not think that the receivers would want to claim the bottles, given their trivial value in the context of the receivership as a whole.<sup>3</sup>

[32] In relation to the staff Christmas gathering in December 2010 Mr Feeley advised the Commissioner that the *Herald* article of 8 October 2011 was factually incorrect. The prize giving at the staff Christmas function was not a “joke prize giving” and there were no “booby-prizes”. It was a genuine and sincere staff recognition event.

[33] Mr Feeley advised the Commissioner that he had made Christmas staff awards a tradition in the places at which he had worked, and the SFO staff Christmas gathering was no exception. The prizegiving was “a serious event to recognise staff performance and attitudes that reflect the way in which he and others wanted to take the Office forward”.

*Outcome of State Services investigation*

[34] On 17 October 2011 the State Services Commissioner wrote to Minister Collins.

[35] Mr Rennie informed the Minister that in relation to the champagne bottle incident he had found:

... a lapse of judgement on the part of Mr Feeley. Giving recognition for achievement is reasonable but by making the association with Bridgecorp

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<sup>3</sup> During the course of the investigation by the State Services Commissioner it was confirmed that the Bridgecorp receivers had no interest in the bottle of champagne. When giving evidence to the inquiry Mr Feeley said that one of the receivers was present at the offices of the Eden Park Redevelopment Board when the first three bottles were drunk.

explicit in an email to staff and introducing a bottle of wine that had Bridgecorp origins was ill-advised and demonstrated a lapse of judgement.

The Commissioner added that in forming that view he had considered the question of ownership of the bottle of champagne. He was satisfied that Mr Feeley did not act with any dishonest intent and there had not been, to the best of his knowledge, any subsequent ownership claim to the bottle of wine.

[36] With regard to the second matter concerning Mr Hubbard's biography the State Services Commissioner found that Mr Feeley:

... took an unnecessary risk in handing out the Allan Hubbard biography as a reward for staff performance. Copies of the biography were given in the context of a prize-giving at the Christmas gathering where other books with a business and leadership focus were also given to high performing staff as recognition of achievement. The risk arose from choosing a book where the selection of it could be misinterpreted, as it subsequently was.

Mr Rennie noted that Mr Feeley strongly rejected any suggestion the prizes were used "as an act of mockery" or as "booby-prizes".

[37] The Commissioner informed Minister Collins that he intended to talk with Mr Feeley and advise him of his (the Commissioner's) expectation that as chief executive of a public service organisation and the director of a law enforcement agency his behaviour must be above reproach at all times. Mr Rennie indicated to the Minister that he would caution Mr Feeley to take care in all he does as his actions would always be open to scrutiny and interpretation. Beyond that the Commissioner did not consider these matters warranted any further action on his part.

[38] A statement outlining the matters contained in the letter was released to the media by the State Services Commissioner, and on 20 October 2011 Minister Collins was reported in the *Herald* as stating:

I think it was very clear that I was disappointed with the events that led to this matter being referred to the SSC in the first place and understand Mr Feeley is now well aware of why his actions were inappropriate. I don't expect to see a repeat of the behaviour.

I don't think it's appropriate for a law enforcement body to put itself in a position where it might appear to have acted in an unprofessional manner,

even though Mr Feeley was quite clearly trying to congratulate and celebrate the staff for their work.

The fact is they need to have a very dispassionate view taken in the SFO as well as other law enforcement agencies when they undertake their work. But it's an error of judgment which he has acknowledged.

An article in the *National Business Review* the following day said “Ms Collins is known to be furious with Mr Feeley’s inappropriate and embarrassing conduct.”

*A forged email is sent to the Herald and National Business Review*

[39] On 9 November 2011 the *Herald* and *National Business Review* received a copy of another email allegedly written by Mr Feeley on 26 March 2010. This email indicated that Mr Feeley wanted to convene a meeting to “toast the inevitable” implementation of his draft organisational review. The implication was that the restructuring had been predetermined and was therefore unfair and prejudicial to staff who had lost their jobs.

[40] At the outset there was suspicion about the authenticity of the email and it was never published by the *Herald*. The *National Business Review* later reported that it had been sent a forged email.

[41] Following a Police investigation, Anita Killeen was charged in the District Court with forging and using the email. Ms Killeen had been the chief prosecutor for the SFO, that position having been disestablished as a result of the restructuring. Having earlier taken sick leave, she left the SFO in May 2010. Her personal grievance proceedings against the SFO were not resolved until mid-August 2011.

[42] A full sentence indication hearing, which included the presentation of medical evidence, was held on 24 October 2012. The sentence indication was that if Ms Killeen pleaded guilty she would be discharged without conviction. Such an outcome was not opposed by the Crown.

[43] On 11 December 2012, following receipt of the sentence indication, and after careful and extensive consideration of the matter, Judge Sharp ordered that

Ms Killeen be discharged without conviction. Having regard to the medical evidence that I have seen, it is not difficult to understand why the Court arrived at this sentence. Given the suppression orders made in the District Court, I have also made orders to ensure that all suppression orders relating to Ms Killeen are not undermined.

*Mr Feeley resigns*

[44] During July 2012 Mr Feeley gave notice to the SSC that he was resigning as director of the SFO so that he could take up a position as chief executive of the Queenstown Lakes District Council. He left the SFO on 5 October 2012.

[45] Several months earlier, on 12 December 2011, Ms Collins had become Minister of Justice and no longer carried ministerial responsibility for the SFO. The Honourable Anne Tolley replaced Ms Collins as Minister of Police and minister in charge of the SFO. Ms Tolley held that role when Mr Feeley resigned.

[46] When announcing the appointment of Simon McArley as acting chief executive and director of the SFO, the State Services Commissioner said:

In his time as Chief Executive, Adam Feeley has effectively transformed the SFO and put clear performance measures in place during a period of record workload for the organisation.

He has reaffirmed public confidence in the SFO by successfully prosecuting high profile cases and forging constructive relationships with other agencies in the law enforcement area.

No public comment about Mr Feeley's resignation was made at the time by either Minister Collins or Minister Tolley.

*The Slater email*

[47] Cameron Slater is a longstanding family friend of Ms Collins and her husband. In addition to the family background and politics, the two families each had a member with an uncommon and difficult to handle medical condition. At all times relevant to this report Mr Slater operated the blog site known as "Whale Oil". Ms Collins and Mr Slater were in frequent communication with each other.

[48] On 5 October 2011 Mr Slater had sent the following email:

To mark [redacted] Carrick

Ok guys here is an update on the state of play on Adam Feeley.

Today is the 4th straight day of headlines and additional revelations about Adam Feeley. I am maintaining daily communications with Jared Savage at the Herald and he is passing information directly to me that the Herald can't run and so are feeding me to run on the blog. in the meantime I also have additional information flowing in via my tipline. That information will be drip fed into the media or via my blog.

Herald articles

Fran O'Sullivan: More than a storm in a champagne flute

Editorial: SFOs bubbly an error of judgment

SFO bubbly celebrations vindictive: Petricevic

Ex-SFO chief decries champagne incident

Cathy can outline her contact with Fran O'Sullivan separately. Basically though the Herald and other media are now picking up our lines that this situation is like "Caesar's Wife" where the SFO must be beyond reproach. If he nicked a bottle of wine what else has he nicked or hidden from receivers and liquidators?

So far the Herald has been running this, expect NBR to publish on Friday. Cathy will be chatting with Jock Anderson and I will cover Matt Nippert.

Our (Cathy's) nickname for Feeley (Five Fingers Feeley) has stuck. journalists ringing me actually use to describe Feeley now in phone conversations.

I also spoke at length with the Minister responsible today (Judith Collins). She is gunning for Feeley. Any information that we can provide her on his background is appreciated. I have outlined for her a coming blog post about the massive staff turnover and she has added that to the review of the State Services Commissioner. She is using the review of these events to go on a trawl looking for anything else. It is my opinion that Feeley's position is untenable.

I have also arranged with Matthew Hooton for iPredict (<https://www.ipredict.co.nz>) the prediction markets to have a new stock released so people can invest on the probability of Adam Feeley getting the sack before Christmas or leaving. These stocks [Email cuts off]

It is now apparent that Mark is Mark Hotchin, the redacted name is Cathy Odgers, and Carrick is Carrick Graham.

[49] Plainly Ms Collins was unaware of this email until it was brought to her attention by the Prime Minister on 30 August 2014. Ms Collins rejects the suggestion that she was “gunning” for Mr Feeley, that she wanted information about him, or that she wanted him to step aside. She also denies that any such statements were made by her to Mr Slater.

*This inquiry is initiated*

[50] As recorded earlier, Ms Collins resigned on 30 August 2014 and this inquiry was initiated after the Slater email came to the attention of the Prime Minister. Later that day Ms Collins stated in a press release:

This morning I informed the Prime Minister that I am resigning as a Minister from Cabinet.

A new allegation has come to light from an email conversation from 2011 between Cameron Slater and others suggesting I was undermining the then Director of the Serious Fraud Office. I was not party to this email or discussion and have only today been made aware of it.

I absolutely and strongly deny this and any suggestion of inappropriate behaviour. I am restrained in clearing my name while I am still a Minister inside Cabinet and I believe the right thing to do is to resign as a Minister so I am able to clear my name.

I have asked the Prime Minister for an Inquiry into these serious allegations so that my name can be cleared. I will, of course, cooperate with any Inquiry.

The Election should be focused on the issues that matter such as law and order, health, education and the economy and I do not want this matter to be a distraction for the Prime Minister or the National Party during the campaign.

I am a strong advocate for the people of Papakura and I will continue to put the same passion and energy into representing them.

I am getting on with my job as MP for Papakura and will campaign strongly for re-election this year.

[51] The next day the following press statement was released by the State Services Commissioner:

The State Services Commission was contacted by the Prime Minister's Office over the last 24 hours on this issue.



Any activity that undermines, or has the potential to undermine, the trust and confidence in the public service to impartially serve the interests of the government and New Zealanders is a matter of concern to me.

It is important that Chief Executives and Ministers mutually support each other to carry out their respective roles, in order to work together to serve the best interests of New Zealand and New Zealanders. Ministers are entitled to hold public servants to high standards of trust and performance and, in turn, should respect the role the public service plays.

I am therefore extremely concerned by an allegation that a Minister has associated with third parties to discuss influencing my assessment of a Public Service Chief Executive. If true, this would be wholly unacceptable.

I told the Prime Minister's Office that Judith Collins had a positive view of Mr Feeley's performance through her time as Minister responsible for the Serious Fraud Office.

The Commission has reviewed its documentation and sought the recollections of staff responsible for the SFO portfolio at the time in coming to this view. This includes the period following the date of the email in October 2011 released today by the Prime Minister. Earlier in 2011, Judith Collins had raised with me the appropriateness of Mr Feeley's consumption of a bottle of champagne following a media inquiry.

It was appropriate that she spoke to me about this matter and my view on the matter was released publicly at the time.

Any campaign to undermine my confidence in Adam Feeley's performance was entirely ineffective and unsuccessful. He was a strongly performing Chief Executive through his tenure for his work in transforming the SFO and vigorously pursuing criminal conduct in respect of finance company collapses.

I would be very happy to consider Mr Feeley's return to the Public Service in the future.

[52] On 1 September 2014 Mr Slater was interviewed by Mike Hosking on the NewstalkZB "Breakfast" programme. During the interview Mr Slater denied that he was working with Ms Collins against Mr Feeley or that he was being paid to undermine him. Mr Slater said Ms Collins was completely innocent and that she was the victim of a long-term smear campaign.

[53] Later that day Mr Slater was interviewed by Larry Williams on Newstalk ZB. Mr Slater denied that he had received "any inside information" on the SFO from Ms Collins. When asked why he had said (in the email) that Ms Collins was "gunning" for Mr Feeley he responded:

Well I got the feeling that she was quite cross with the fact that Mr Feeley was in the media all the time and that this bottle of wine issue had come up. Me saying gunning for – it’s probably a wrong term – turn of phrase, but I could imagine that ministers would be angry when chief executives are constantly in the media rather than doing work.

He said that he had “embellished” the email and that conversations with Ms Collins were “generally one-way discussions. You talk, she listens.”

[54] Mr Feeley was also interviewed by Mr Hosking during the ZB “Breakfast” programme on 1 September 2014. When asked whether he was aware that “Hotchin and all those guys were out to get you”, Mr Feeley said that he was always puzzled about the intensity of the “various smear campaigns generally about me and the SFO”, but he had no idea how co-ordinated they were. He said he did not draw “any dots” and just thought “they were bloggers or journalists or individuals with an axe to grind.”

[55] Mr Feeley told Mr Hosking that he had wanted to move his family to Queenstown for about 10 years, that he “loved working at the SFO”, and that he had left on his own terms. The interview then turned to his relationship with Ms Collins. Mr Feeley said:

... no one would believe me if I said it wasn't a little bit tense for a period there but overall no different to any other Minister. We got on as Chief Executives and Ministers do – constructively, professionally.

He said it was tense because Ms Collins was not happy about the champagne bottle matter, and that he had taken it “on the chin” and moved on.

### **The Inquiries Act 2013**

[56] Because this is one of the first inquiries to be conducted under the Inquiries Act it is helpful to outline some provisions of the Act that have particular significance in the context of this inquiry.

#### *Establishing the inquiry*

[57] Under section 6(3) a minister may, by notice in the *Gazette*, establish a government inquiry for the purpose of inquiry into, and reporting on, any matter of

public importance. In this case the matter of public importance is the allegation that Ms Collins was involved in efforts to undermine Mr Feeley during his tenure as director of the SFO, or had inappropriately disclosed or received information about Mr Feeley.

[58] It is implicit in section 7 that the terms of reference govern the scope of the inquiry.<sup>4</sup> This inquiry relates to allegations that Ms Collins was involved in efforts to undermine Mr Feeley during his tenure as director of the SFO. In other words, it is limited as to both subject matter and time.

[59] In addition the terms of reference list four specific matters that are to be inquired into. The first two are specific as to subject matter and time. The third is specific as to subject matter and, by implication, as to time. While the fourth matter is more open, it is nevertheless confined to issues that are relevant to the preceding matters and only to the extent necessary to provide a complete report.

[60] Having said that, it should be made clear that evidence outside the timeframe mentioned in the terms of reference might be relevant so long as it relates to the subject matter of the inquiry. For example, communications or conversations after alleged events might shed light on whether or not those events actually occurred.

[61] Each component of the terms of reference will be discussed in greater detail later.

#### *Underlying duty of the inquiry*

[62] When exercising powers and performing duties under the Act the inquiry is required by section 10 to:

... act independently, impartially, and fairly.

These are, of course, fundamental obligations all of which have been applied at each stage of the inquiry.

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<sup>4</sup> The terms of reference for the inquiry are quoted at [9] above.

[63] Section 11 makes it clear that while the inquiry can make findings of fault, it has no power to determine the civil, criminal or disciplinary liability of any person.

*Counsel to assist inquiry*

[64] In accordance with section 13 Victoria Casey of Wellington, barrister, was appointed as counsel to assist the inquiry. I am extremely grateful to Ms Casey for her invaluable assistance.

*Inquiry procedure*

[65] Under section 14(1) an inquiry “may conduct its inquiry as it considers appropriate” unless otherwise specified by the Act or in the terms of reference. Apart from specifying the subject matter of the inquiry and timeframes for commencement and reporting, the terms of reference do not contain specific directions as to the conduct of the inquiry.

[66] In the context of this inquiry section 14(2) and (3) are particularly important:

- (2) In making a decision as to the procedure or conduct of an inquiry, or in making a finding that is adverse to any person, an inquiry must—
  - (a) comply with the principles of natural justice; and
  - (b) have regard to the need to avoid unnecessary delay or cost in relation to public funds, witnesses, or other persons participating in the inquiry.
- (3) If an inquiry proposes to make a finding that is adverse to any person, the inquiry must, using whatever procedure it may determine, be satisfied that the person—
  - (a) is aware of the matters on which the proposed finding is based; and
  - (b) has had an opportunity, at any time during the course of the inquiry, to respond on those matters.

Without limiting the earlier subsections, section 14(4) lists matters that may be determined by an inquiry, such as conducting interviews, calling witnesses, holding hearings, and the like.

[67] Each phase of the inquiry was planned and conducted with section 14(2) and (3) firmly in mind. In the case of the core participant Ms Collins, applying section 14(3) was reasonably straightforward. She was the last person to be interviewed and it was possible to make her aware of possible adverse findings and provide her with a draft report for comment. It was more difficult to implement the subsection in the case of some other people who were interviewed. This reflected the evolving nature of the inquiry. As far as possible interviewees were given an opportunity during the course of the interview to expand on matters upon which there might be adverse findings relating to that person, and some persons were provided with an opportunity to make comments on sections of a draft report.

[68] Without going into detail, steps taken to ensure compliance with section 14(2) and (3) included:

- convening a telephone conference with Francis Cooke QC, counsel for Ms Collins, during which the proposed inquiry procedure was discussed;
- formulating protocols to ensure that the inquiry confined its assessment of Ms Collins' electronic communications<sup>5</sup> to those that were relevant, or potentially relevant, to the inquiry;
- applying similar protocols to communications involving Ms Collins that were held by the Department of Internal Affairs or the Parliamentary Service;
- informing all persons who were required for interview that they were entitled to be accompanied by legal counsel;
- when it was likely that an adverse finding would be made against any person, making that person aware of the matters on which the proposed finding would be based, and providing an opportunity for the person to respond;
- deferring Ms Collins' interview until all other interviews had been completed;

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<sup>5</sup> There were no written communications.

- providing Ms Collins with a draft copy of the report and inviting her comments before completing this report.

Where necessary these matters will be discussed in greater detail later in this report.

### *Suppression orders*

[69] Section 15 of the Inquiries Act makes provision for orders forbidding the publication of the whole or part of any evidence or submissions presented to the inquiry. Before making such an order, the following criteria need to be taken into account:

- the benefits of observing the principle of open justice;
- the risk of prejudice to public confidence in the proceedings of the inquiry;
- the need for the inquiry to ascertain the facts properly;
- the extent to which publication of the proceedings may prejudice the security, defence, or economic interests of New Zealand;
- the privacy interests of any individual;
- whether it would interfere with the administration of justice, including any person's right to a fair trial, if an order were not made;
- any other countervailing interests.

[70] A number of persons who gave evidence to the inquiry requested orders under section 15 in relation to specific matters, primarily related to the protection of the privacy interests of other persons, or in relation to matters not relevant to the inquiry. Each request has been considered and a number of orders have been made.

[71] There were also requests for more extensive suppression orders, including requests for suppressions of name and of the full record of the inquiry. Having

considered those requests I concluded that while suppression of submissions was appropriate (and I will come back to the reasons), it was not appropriate to suppress the name of any witness, the transcript of interviews, or other evidence (other than in relation to specific matters). When reaching this conclusion I was influenced by three particular factors.

[72] First, as will be discussed in a moment, one of the factors underlying my decision to conduct interviews in private was that the Official Information Act would apply once the report was delivered.<sup>6</sup> While it was always possible that I might take a different view about public access to the transcript and other evidence once the interviews had been completed, in the event nothing emerged that altered my initial view.

[73] Secondly, each summons alerted the person required for interview to the fact that the Official Information Act would apply. Each summons stated:

The interview will not be open to the public. In accordance with sections 32 and 33 of the Inquiries Act 2013 the recording of the interview and the transcript prepared from the recording will be subject to the Official Information Act 1982 and the Public Records Act 2005 once the inquiry has reported, subject to any orders made under s 15(1).

While I can understand that some of those interviewed considered that their privacy was being invaded, they were required to attend because it was believed they might be able to provide information that was relevant to the inquiry. Where appropriate, particular components of their evidence has been suppressed.

[74] Thirdly, for reasons that I am about to give, I concluded that sweeping suppression orders would be inconsistent with the underlying purpose of section 15 of the Act, as I interpret it. This is especially so when section 15 is read in conjunction with section 32, which specifies that once the inquiry has reported the Official Information Act applies to all documents created or received by the inquiry (except those relating to internal deliberations). To a large extent, my interpretation is underpinned by the legislative history.

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<sup>6</sup> See [86] – [88].

[75] As summarised by the Law Commission in its 2008 report *A New Inquiries Act*,<sup>7</sup> previous practice varied. Inquiries, particularly Ministerial inquiries outside the Commissions of Inquiry Act 1908, were often held in private, and an inquiry's records were not usually accessible by the public.

[76] Inquiries under the Commissions of Inquiry Act have a specific exemption from the Official Information Act, in that submissions and evidence to the inquiry are expressly excluded from the definition of "official information" in section 2(1) of the Official Information Act. The position in relation to the records of Ministerial inquiries (which were not established under legislation) is more obscure.

[77] The Law Commission appears to have taken the view that not only should the position be clarified, but also that there should be a shift to greater openness and transparency:<sup>8</sup>

As already noted, the Official Information Act 1982 (OIA) does not apply to commissions in general while in operation and never applies to evidence and submissions presented to them.

While we believe that the restriction on access while the inquiry is in progress should continue, people may wish to access inquiry information that is not already in the public domain after the inquiry has reported. While the OIA does not apply to information held by commissions of inquiry, once an inquiry concludes it is *functus officio* and the documentation tends to be held physically by the overseeing public agency (usually the Department of Internal Affairs (DIA)) until it is transferred to Archives New Zealand. At that interim stage, the documentation, other than evidence or submissions which are not official information, is likely to be subject to OIA requests since it is 'held by' a department under the Act.

We think it should be made clear that once an inquiry has concluded its task, the OIA does apply to inquiry information, excluding evidence or submissions. We think that it is appropriate that the OIA continues not to apply to sensitive evidence and submissions, even once the inquiry has reported. In addition, we consider that any notes relating to the internal deliberations of the inquiry should be excluded from the OIA.

While the language in this last paragraph is a little ambiguous, when read with the Commission's recommendations it is clear that the Commission was proposing a general rule that the Official Information Act should apply to evidence and submissions unless they are "sensitive".

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<sup>7</sup> Law Commission *A New Inquiries Act* (NZLC R102, 2008).

<sup>8</sup> At [6.59] – [6.61].



[78] The shift to greater public access appears to have been endorsed, and strengthened, by the legislature. When introducing the bill at its first reading, the Honourable Christopher Finlayson stated:<sup>9</sup>

The bill also sets out procedures for public access to inquiries and to their documentation. At present, information held by commissions of inquiry and royal commissions is not subject to the Official Information Act 1982. This bill provides that once an inquiry has been completed, documentation from both public inquiries and Government inquiries will be subject to the Official Information Act. However, information will be able to be withheld on specified grounds, such as where a submission provided to an inquiry contains sensitive information.

[79] At the second reading a supplementary order paper introduced by the Honourable Trevor Mallard added “the benefits of observing the principle of open justice” to the criteria which the inquiry must take into account under section 15(2). This amendment was supported by both sides of the House and is now reflected in section 15(2)(a). In speaking to the order paper, Grant Robertson stated that this new criterion:<sup>10</sup>

... puts in place language that says the default presumption is one of openness. Yes, there may well be occasions when we need to make things secret, but in the order of events as we would normally have them it would be open. We think that is an important change. It means that being subject to the Official Information Act remains the default position but there will be occasions, using the powers under clause 15, for there to be matters kept secret.

[80] I am therefore satisfied that the legislative history supports the view that openness is to be favoured once the inquiry process is completed.

[81] On the other hand, I am satisfied that it is appropriate to suppress both the draft report and submissions received.<sup>11</sup> The draft report represents part of the internal deliberative process of the inquiry and section 32(2)(b) contemplates that information within this category will not be subject to the Official Information Act. Submissions received on the draft report (or in response to indications given at

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<sup>9</sup> (12 May 2009) 654 NZPD 3135.

<sup>10</sup> (20 August 2013) 692 NZPD 12637.

<sup>11</sup> As explained above at [67], comments on aspects of the draft report were invited from various parties who were likely to be adversely affected to satisfy the requirements of section 14(2) and (3) of the Act.

interview) also need to be suppressed because publication of those submissions would effectively undermine suppression of the internal deliberative process.

*Core participant*

[82] During the telephone conference with Mr Cooke I indicated that it was my intention to designate Ms Collins a “core participant” in terms of section 17, and subsequently that designation was confirmed in writing. When reaching the decision to designate Ms Collins a core participant, I considered each of the matters referred to in section 17(2).

[83] As a core participant Ms Collins had the right to give evidence and make submissions to the inquiry. Soon after the inquiry commenced Ms Collins voluntarily provided a comprehensive affidavit setting out her position, and I am grateful to her for having done so. After all other interviews had been completed Ms Collins was interviewed at length in the presence of her counsel on 29 October 2014. Subsequently, Mr Cooke provided very helpful submissions.

*Evidential matters*

[84] Section 19(a) provides that an inquiry may “receive any evidence that, in its opinion, may assist it to deal effectively with the subject of the inquiry, whether or not the evidence would be admissible in a court of law”. Section 19(b) provides for evidence to be taken on oath or affirmation.

[85] Under section 20 there is power to require any person to produce documents, allow copies to be made, and to provide information to the inquiry. Notices under that section were issued to 13 people and organisations.<sup>12</sup>

[86] In addition to the information obtained via section 20 notices, I decided to receive evidence on oath or affirmation by way of private interviews in Wellington. In the summons requiring their attendance, the interviewees were informed that they

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<sup>12</sup> Notices issued to the following: Anita Killeen, Cameron Slater, Carrick Graham, Jock Anderson, Judith Collins, Matthew Hooton, Matthew Nippert, Nicky Hager, Department of Internal Affairs, the Parliamentary Service, State Services Commissioner, Vodafone New Zealand and Spark New Zealand (formerly Telecom).

were entitled to bring a legal advisor to the interview and to be paid reasonable costs and travel expenses. Some interviewees elected to have a lawyer present. Where an interviewee lived outside Wellington their travelling expenses were met (and where they were accompanied by a legal advisor from outside Wellington, the legal advisor's travelling expenses were also met).

[87] When deciding to adopt what is essentially an inquisitorial approach on oath or affirmation by way of private interviews I took into account the criteria listed in section 15(2), including the principle of open justice. Having weighed all matters I concluded that in all of the circumstances this method would result in a fair, but robust, inquiry.

[88] Amongst the factors that led me to this conclusion were:

- the subject matter of the inquiry;
- the evolving manner in which information would come before the inquiry;
- my expectation that this method would promote a full and frank disclosure of information;
- the statutory requirement to avoid unnecessary delay and cost;
- after the inquiry has reported, all documents created by the inquiry or received in the course of the inquiry (subject to section 32(2)) will be “official information” for the purposes of the Official Information Act;
- the ability in the meantime to inform the public about the inquiry through a website.<sup>13</sup>

[89] While on the subject of evidential matters, it is necessary to mention two other matters: first, the standard of proof that should be applied when arriving at

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<sup>13</sup> <[www.dia.govt.nz/Government-Inquiry-Collins-Inquiry](http://www.dia.govt.nz/Government-Inquiry-Collins-Inquiry)>.

findings; and, secondly, whether electronic material that has been “unlawfully obtained” should be considered.

[90] As to the first matter, the Inquiries Act does not refer to the standard of proof that should be applied by an inquiry. In *Re Erebus Royal Commission; Air New Zealand Ltd v Mahon*<sup>14</sup> the Privy Council observed with reference to the Erebus Royal Commission:<sup>15</sup>

... The first rule is that the person making a finding in the exercise of such a jurisdiction must base his decision upon evidence that has some probative value in the sense described below.

...

The technical rules of evidence applicable to civil or criminal litigation form no part of the rules of natural justice. What is required by the first rule is that the decision to make the finding must be based upon *some* material that tends logically to show the existence of facts consistent with the finding and that the reasoning supportive of the finding, if it be disclosed, is not logically self-contradictory.

In my view those observations are consistent with the philosophy behind the Inquiries Act and still represent the law. I have therefore applied them when arriving at the findings contained in this report.

[91] Now I turn to the second matter. The underlying issue is whether it is appropriate for the inquiry to use improperly obtained material (provided it is relevant) in reaching its findings. This arises from the fact that some of the material before the inquiry was originally “hacked” by a person/s unknown from Mr Slater’s computer. Strong concerns about the derivation of this information were expressed by a number of people who were interviewed.

[92] As the Law Commission noted in the commentary for its draft evidence code (which formed the basis of the Evidence Act 2006):<sup>16</sup>

... [i]mproperly obtained evidence is admissible in civil proceedings, subject to relevance and the general exclusion in s 8.

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<sup>14</sup> *Re Erebus Royal Commission; Air New Zealand Ltd v Mahon* [1983] NZLR 662.

<sup>15</sup> At 671.

<sup>16</sup> Law Commission *Evidence: Code and Commentary* (NZLC R55, volume 2, 1999) at [C152].

While the High Court recently declined to admit improperly obtained evidence in *Commissioner of Police v Marwood*,<sup>17</sup> it seems to me that the outcome in that case reflected the particular circumstances of the case, and I do not think it undermines the proposition that improperly obtained evidence will generally be admissible in a civil proceeding.

[93] Overseas decisions are generally consistent with the New Zealand position. In other words, there is a reluctance to exclude such information.<sup>18</sup>

[94] I have no difficulty in concluding that improperly obtained material should be taken into account on this occasion. The Inquiries Act contains wide powers that are intended to enable an inquiry to fulfil its purpose and exclusion of improperly obtained material would exclude information that is clearly relevant to the inquiry.

[95] As Curtis J said in *Wong v Insurance Corporation of British Columbia*:<sup>19</sup>

I can think of few things more likely to bring the administration of justice into disrepute than courts rendering judgments on the basis of facts which are provably false but for the fact that relevant evidence was excluded ...

By analogy the same reaction might be expected if this inquiry declined to take into account relevant, though originally improperly obtained, material. In the end, however, most of this material was also provided to the inquiry by Mr Slater in response to a section 20 notice.

### *Journalists' privilege*

[96] Section 27(1) confers on witnesses and other persons participating in the inquiry the same immunities and privileges that they would have had if they were appearing in civil proceedings. Subpart 8 of Part 2 of the Evidence Act 2006 applies to the inquiry as if the inquiry were a civil proceeding and every reference to a Judge was a reference to the inquiry.

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<sup>17</sup> *Commissioner of Police v Marwood* [2014] NZHC 1866.

<sup>18</sup> See, for example, *Helliwell v Piggott-Sims* [1980] FSR 356; *Jones v University of Warwick* [2003] EWCA Civ 151, [2003] 1 WLR 954 (United Kingdom); *Southern Equities Corp Ltd (in liq) v Bond* (2001) 78 SASR 554 (Australia); *Wong v Insurance Corporation of British Columbia* (1993) 16 CCLI (2d) 143 (BCSC) (Canada).

<sup>19</sup> *Wong v Insurance Corporation of British Columbia* (1993) 16 CCLI (2d) 143 (BCSC) at 150.

[97] Under section 68 of the Evidence Act (which is included in Subpart 8 of Part 2 of that Act) journalists' privilege applies to civil proceedings with the result that a journalist is not obliged to answer any questions or to produce any document that would disclose the identity of the informant or would enable that identity to be discovered. The mainstream journalists who were required to produce documents or present themselves for interview invoked that privilege. I did not consider that section 68(2), which allows a Judge to override that privilege in certain circumstances, applied.

*The possibility of a Police investigation is raised*

[98] After Mr Slater had been given notice by the inquiry that he was required to provide specified information and to attend an interview, he brought to the attention of counsel assisting the inquiry (Ms Casey) that a complaint laid with the Police covered matters that were within the scope of this inquiry. He expressed concern about his position if the Police investigation led to the laying of charges. He also noted that a civil action by the Financial Markets Authority (FMA) against Mr Hotchin was current and that he was concerned about an article published by Ms O'Sullivan following her interview by the inquiry<sup>20</sup> which he considered was highly prejudicial to his legal position.

[99] Cathy Odgers and Carrick Graham had also been approached by Ms Casey about appearing before the inquiry. They raised similar issues to those raised by Mr Slater.

[100] It emerged that the Honourable David Parker, shadow Attorney-General, had written to the police on 1 September 2014 asking them to investigate various matters. These included the allegations against Ms Collins, Mr Slater, Mr Graham, and others, concerning the alleged undermining of the SFO and Mr Feeley.

[101] Ms Casey then took steps to ascertain whether the Police intended to pursue Mr Parker's complaint. On 15 October 2014 the Police informed Ms Casey by emailed letter that they did not at this time intend to commence any criminal

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<sup>20</sup> Fran O'Sullivan "We need to know who tried to fit up SFO boss" *The New Zealand Herald* (online ed, Auckland, 11 October 2014).

investigation into the matters that had been raised about the former Minister, subject to the reservation that the matter might be reconsidered if any substantive evidence was subsequently provided to the Police.

[102] When the possibility of a Police investigation was first raised, it was necessary to consider whether the power to temporarily suspend the inquiry conferred by section 16 of the Inquiries Act might need to be exercised. That section provides:

**16 Power to postpone or temporarily suspend inquiry**

- (1) An inquiry may, after consultation with the appropriate Minister or appointing Minister, as the case may be, postpone or temporarily suspend the inquiry if—
  - (a) another investigation is being, or is likely to be, carried out into matters relating to the inquiry; and
  - (b) the inquiry is satisfied that to commence or continue the inquiry would be likely to prejudice—
    - (i) the investigation referred to in paragraph (a); or
    - (ii) any person interested in that investigation.
- (2) The inquiry must commence or continue when it is satisfied that to do so would no longer prejudice the other investigation or any person interested in it.

In view of the letter from the Police I decided that subsection (1) did not apply, and that it was unnecessary to consider the possibility of suspending the inquiry any further.

[103] For completeness section 63 of the Evidence Act 2006 should also be mentioned:

**63 Replacement of privilege with respect to disclosure requirements in civil proceedings**

- (1) This section applies to a person who is required by an order of the court made for the purposes of a civil proceeding—
  - (a) to disclose information; or
  - (b) to permit premises to be searched; or

- (c) to permit documents or things to be inspected, recorded, copied, or removed; or
  - (d) to secure or produce documents or things.
- (2) The person does not have the privilege provided for by section 60 and must comply with the terms of the order.
  - (3) No evidence of any information that has directly or indirectly been obtained as a result of the person's compliance with the order may be used against the person in any criminal proceeding, except in a criminal proceeding that concerns the falsity of the information.

As can be seen, this section removed the protection of privilege against self-incrimination in civil proceedings (on the basis that any such information could not be used in criminal proceedings.)

[104] By virtue of section 27(1) of the Inquiries Act, section 63 of the Evidence Act applies to this inquiry. As already mentioned, section 27(1) provides that persons participating in an inquiry have the same immunities and privileges as they would have if they were appearing in civil proceedings. Thus orders made by the inquiry to disclose information or to produce documents are not subject to the privilege against self-incrimination. But the information or documents cannot be used in criminal proceedings (except in relation to the falsity of the information).

### **The inquiry process**

[105] In broad terms the inquiry involved three separate, but overlapping, phases: obtaining all relevant, or potentially relevant, electronic material; interviewing witnesses; and preparing the report.

[106] Initially I hoped that all the relevant electronic material would be assembled before interviews began. However, process issues (no fault of Ms Collins) led to significant delays. Given that situation, I was forced to commence interviews before all the relevant electronic material was available. Information was still coming in while the interviews were being conducted, and a comprehensive set of electronic material was not received until after all interviews were completed. Although this was not ideal, I do not believe that in the end it compromised the inquiry.



[107] Now I turn to some specific matters relating to the first two phases of the inquiry process.

*Electronic material held by Ms Collins personally*

[108] But for this inquiry Ms Collins' electronic records would be legitimately regarded by her as entirely personal and private. Thus at the outset it was necessary to devise a method of conducting the inquiry that would achieve three objectives:

- locate all relevant, or potentially relevant, electronic communications;<sup>21</sup>
- exclude any communications that did not fall within that category;
- determine whether relevant, or potentially relevant, communications might have been deleted and, if so, whether they could be recovered.

KPMG was engaged to assist the inquiry in achieving those objectives.

[109] Before taking any steps, KPMG (and any relevant staff) entered into a confidentiality agreement.<sup>22</sup> At the conclusion of the inquiry any material gathered by KPMG which is not relevant to the inquiry, is to be destroyed.

[110] The protocols to be adopted were summarised in an email dated 26 September 2014 from myself to Mr Cooke:

1. The inquiry wishes to obtain information from the personal electronic records for the Hon Judith Collins and understands that she has expressed a willingness to cooperate in that process. This letter is directed to establishing an appropriate process and to allow access to that information, and a protocol to deal with any material that may be subject to parliamentary or other privilege.
2. The information the inquiry wishes to examine is likely to be contained in Ms Collins' email, facebook, telephone and other electronic records from mid 2009 to 31 August 2014. It is proposed that the information will be collected through targeted searches conducted by the inquiry's forensic expert, Chris Budge from KPMG (assisted by appropriate staff).

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<sup>21</sup> Again, I note that there were no written communications.

<sup>22</sup> All other people assisting with the inquiry were also required to enter into confidentiality agreements.

3. A notice under s 20 of the Inquiries Act 2013 accompanies this letter.
4. A separate process is being followed in relation to the electronic records held by the Parliamentary Service and/or Ministerial services.
5. I propose the following process for access to Ms Collins' personal records:
  - 5.1. The inquiry will confine its consideration to documents that are relevant or potentially relevant to the Terms of Reference.
  - 5.2. Ms Collins will make available in the next 48 hours the personal computers and electronic devices that she has used over that period, and that she still has access to (desktop computers, laptop computers, smart phones, iPads etc) for copying by the forensic expert. This can be done either by allowing the expert to remove and copy the device off site, or at one or more suitable locations nominated by Ms Collins in Auckland or Wellington. The attached notice requests the related information that will assist in this process.
  - 5.3. The copied base data will be securely held by KPMG (and subject to appropriate confidentiality agreements) who will take the necessary steps to prepare it for searching. The inquiry will specify the search parameters for each search (it is anticipated that there may be iterative searches), and will inform you of the search parameters on each occasion that a search is directed by the inquiry. Ms Collins will be entitled to make representations to the inquiry about the search parameters. Given the timeframe within which the inquiry is to be conducted, any such representations must be provided very promptly. Searches will be conducted by KPMG staff, who will have first executed appropriate confidentiality undertakings. The inquiry will not have access to the base data. Ms Collins or her representative is welcome to attend any step of this process.
  - 5.4. Ms Collins will be provided with access to the documents identified in each search. While ideally she would be provided with the collected documents in advance of the inquiry receiving a copy, the timeframes for this inquiry are very constrained. The proposal is therefore that the results of each search are provided to the inquiry at the same time, but subject to the following processes.
  - 5.5. At the moment it is proposed that the search results will be made available through secure remote access, which will allow multiple parties to view the material at the same time, and, obviously, from a distance. An option of on-site only access at KPMG offices or the offices of the inquiry would be possible, but is obviously more complex and less practical. I also understand that the increase in data security is not very significant.
  - 5.6. Ms Collins will have the opportunity to make representations to the inquiry as to the relevance or potential relevance of any document. Any such representation will have to be made very promptly.
  - 5.7. Only documents that are considered to be relevant or potentially relevant will be received into the records of the inquiry.

5.8. If Ms Collins considers that any document in the search result is subject to parliamentary privilege, and the inquiry considers that the document is otherwise relevant to the inquiry, the document will be referred to the Speaker. If the Speaker upholds the claim for privilege the inquiry will either delete the document, or, if that is not appropriate, take steps to ensure that the document is not used or disclosed in a manner inconsistent with the privilege. (If the inquiry does not consider the document to be relevant, it will be deleted without the need to refer it to the speaker.)

5.9. If Ms Collins wishes to raise any other ground of privilege, and the inquiry considers that the document is otherwise relevant to the inquiry, the document will be referred to an appropriately qualified independent person for review.

5.10. Ms Collins is also able to request the inquiry to consider making orders under s 15 of the Inquiries Act 2013 in relation to any private or confidential documents.

5.11. Once the inquiry is completed the base data held by KPMG will be destroyed, and a certificate from KPMG confirming destruction will be provided to Ms Collins.

5.12. KPMG is also able to provide further information on its security systems for securely storing the data during the course of the inquiry and for preventing unauthorized access to either the base data or the collected search material.

[111] It will be noted that the timeframe mentioned in paragraph 2 of the letter (mid 2009 to 31 August 2014) is wide. This reflects that at the beginning of the inquiry very limited information was available. The period chosen (spanning the lead up to Mr Feeley's employment until Ms Collins' resignation) was intended to ensure that no potentially relevant information would be missed.

[112] It was anticipated, however, that as further information came forward the focus of the inquiry would narrow. This proved to be the case.

#### *Ms Collins' telephone and social media records*

[113] Ms Collins allowed forensic copies of her laptop, two iPhones and iPad to be taken by KPMG. She also provided access to her webmail and social media accounts. Ms Collins advised that all other computers and electronic devices used by her during the requested time period were provided by Ministerial Services.

[114] Very little in the way of relevant or potentially relevant material was obtained through KPMG's analysis of this data. I am advised that the records accessed by

KPMG did not, to a large extent, cover the critical period of September-October 2011. Where records were available for that period, they were not directly relevant to matters of interest to the inquiry.

[115] In response to the inquiry's section 20 notice, Ms Collins stated that her Facebook account was deleted in 2013 when her public page was established by Ministerial Services. I am advised that those earlier Facebook records are no longer accessible.

[116] I was advised that comprehensive telephone records were not available from the Department of Internal Affairs or the Parliamentary Service.

[117] The inquiry obtained from Vodafone and Spark call records for the four month period of July to October 2011 in relation to calls between Mr Slater and Ms Collins on the numbers provided by Ms Collins. Those records disclosed a number of calls from Ms Collins to Mr Slater, but no calls at all from Mr Slater to Ms Collins. Mr Slater confirmed by statutory declaration that the telephone number provided by Ms Collins was correct, and would have been used by him. He also confirmed that he did not communicate with Ms Collins at that time by way of Skype or any other VoIP service.

[118] The absence of telephone records for Mr Slater's calls is surprising given that both Ms Collins and Mr Slater confirmed that they phoned each other often. I have therefore proceeded on the basis that the absence of telephone records for Mr Slater's calls does not indicate that Mr Slater did not call Ms Collins during the relevant period. Rather, based on their evidence, it seems likely that Mr Slater did call Ms Collins, but the inquiry has no information as to when calls were made or how long they lasted.

*Electronic/written material held by Parliamentary Service/Department of Internal Affairs*

[119] Through Ms Casey I was informed that the electronic records from the devices provided by Ministerial Services for the relevant period would be held by the

Department of Internal Affairs (for records prior to mid-September 2011) and the Parliamentary Service (for records post mid-September 2011).

[120] Arrangements were made to access those records while also respecting the protocol in Appendix C of the Privileges Committee report on *A question of privilege regarding the use of intrusive powers within the Parliamentary precinct*.

[121] The arrangements adopted are summarised in a letter dated 26 September 2014 from myself to the Clerk of the House, the General Manager of the Parliamentary Service, and the Chief Executive of the Department of Internal Affairs:

1. The inquiry wishes to obtain information from the electronic records for the Hon Judith Collins and, possibly, key staff in her office, held by Ministerial services and the Parliamentary Service. This letter sets out my understanding of the basis upon which this information is to be provided.

2. Accompanying this letter is a notice issued under s 20 of the Inquiries Act 2013.

3. In accordance with the protocol in Appendix C of the Privileges Committee report on *A Question of privilege regarding the use of intrusive powers within the Parliamentary precinct*.

3.1 The Hon Judith Collins will be informed by both the Parliamentary Service and the Department of Internal Affairs that access to information about her is being sought under legal authority.

3.2 The Hon Judith Collins or her chosen representative will then be given a copy of the documents at the same time as the documents are supplied to the inquiry.

3.3 The Hon Judith Collins will then have the opportunity to claim parliamentary privilege in respect of any of the documents concerned and to make arrangements for any information for which parliamentary privilege is claimed to be held by the Clerk so that a certificate can be obtained from the Speaker that proceedings in Parliament are in fact involved and the claim of privilege can be sustained.

3.4 Officers from the Office of the Clerk of the House will also be available to assist in identifying any information for which a claim of parliamentary privilege can be made.

4. I also note the following arrangements:

4.1 If the Hon Judith Collins raises any other ground of privilege in relation to any document that is not subject to a claim of parliamentary privilege, and the inquiry considers that the document is otherwise relevant to the inquiry,

the document will be referred to an appropriately qualified independent person for review.

4.2 The Hon Judith Collins is also able to request the inquiry to consider making orders under s 15 of the Inquiries Act 2013 in relation to any specific private or confidential documents that are provided to the inquiry.

4.3 The Hon Judith Collins has also requested that she be provided with confirmation that each person (whether employed staff or contractor) engaged in meeting this request who has access to her electronic records as part of that process sign an appropriate confidentiality undertaking, confirming that they will not discuss or disclose any information other than to designated persons within your agencies, the inquiry, counsel assisting the inquiry, or any person designated by the inquiry for that purpose.

4.4 The inquiry will assess whether documents provided are relevant or potentially relevant to the Terms of Reference. Only those documents that fall within that category will be received into the records of the inquiry.

5. A copy of this letter will be provided to the Hon Judith Collins.

[122] At the request of the Parliamentary Service and the Department of Internal Affairs, the original section 20 notice of 26 September 2014 was replaced with a two stage process whereby these agencies provided a list of email addresses, and then copies of communications between the email addresses that were identified as being potentially relevant. I understand that due to technical and time constraints (again unrelated to Ms Collins) the inquiry cannot be totally confident that it has received a complete record of the electronic communications between the requested email addresses.

[123] The following matters are particularly noted:

- Neither the Department of Internal Affairs nor the Parliamentary Service have access to the records of the personal email addresses operated by Ms Collins.
- The records held by the Department of Internal Affairs can be accessed only through restored “back-up” tapes. I understand that any emails created and deleted within the back-up period would not be located by the Department’s search. Given time constraints the usual back-up period selected for the restoration was three months, so only emails retained for longer than that period would have been located. As it happens, the handover to the

Parliamentary Service occurred in mid-September 2011, so a separate back-up for the period 1 to 16 September 2011 was also undertaken.

- The transition of records from the Department of Internal Affairs to the Parliamentary Service happened over the critical period for the inquiry's investigation, being September and October 2011. The Department of Internal Affairs has provided records up to 16 September 2011. The Parliamentary Service confirmed that all of Ms Collins' mailboxes were migrated to their control on 29 September 2011, and that would have included all emails remaining in the mailbox at that date.

[124] I am advised that, as with the material accessed by KPMG, very little in the way of relevant or potentially relevant material was disclosed through this process.

*Electronic/written material held by Mr Slater*

[125] Consideration was given to whether the method utilised for the recovery of electronic material from Ms Collins personally and from the Parliamentary Service and the Department of Internal Affairs should be extended to Mr Slater. This would have involved substantial intrusion into his privacy even though he was not the primary focus of the inquiry. It would also have involved significant time and expense, which is a statutory consideration.

[126] After a good deal of consideration I decided that this approach was not justified. Instead Mr Slater was required to produce the following material pursuant to section 20 of the Act:

1. All records held by you, or to which you have access, of communications between you and the Hon Judith Collins or her staff (including but not limited to email, Facebook and other media) touching on any of the following matters:
  - 1.1 Adam Feeley;
  - 1.2 The Serious Fraud Office, or any of its staff or former staff members;
  - 1.3 The Hanover group of companies;
  - 1.4 Mark Hotchin;

- 1.5 Carrick Graham;
  - 1.6 Cathy Odgers.
2. All records held by you, or to which you have access, of communications between you and Carrick Graham, Cathy Odgers, Mark Hotchin, Jared Savage, Matthew Hooton, Anita Killeen, or any of them (including but not limited to email, facebook and other media), touching on any of the following matters:
- 2.1 Adam Feeley;
  - 2.2 The Serious Fraud Office, or any of its staff or former staff members;
  - 2.3 Any actual or anticipated investigation by the Serious Fraud Office or any other agency of the Hanover group of companies or its directors;
  - 2.4 The Hon Judith Collins.

Mr Slater was interviewed after the material required by this notice had been provided by him.

[127] When the accuracy of Mr Slater's disclosure was checked against the records from other sources it emerged that he had failed to disclose a few emails, none of which were of particular significance. Having raised this matter with Mr Slater at his interview, I decided that there was no justification for taking the matter any further.

*Obtaining information from other people and interviews*

[128] As already mentioned, section 20 notices requiring specified documents or information to be provided were issued to 13 people and organisations.<sup>23</sup> Some of those people were later interviewed. In some cases specific questions were put to people who answered by way of statutory declaration, thereby avoiding the necessity for those people to be interviewed.<sup>24</sup>

[129] During the course of the inquiry the following persons were interviewed on oath or affirmation:<sup>25</sup>

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<sup>23</sup> At fn 12.

<sup>24</sup> These were Nicky Hager, Matthew Nippert, Jock Anderson and Matthew Hooton.

<sup>25</sup> This list reflects the order in which people were interviewed.



- Iain Rennie, State Services Commissioner;
- Sir Maarten Wevers, former chief executive of the Department of the Prime Minister and Cabinet;
- Jared Savage, investigations editor for the *Herald*;
- Simon McArley, former general manager of the financial markets and corporate fraud team at the SFO and acting director after Mr Feeley left. He is now a barrister practising in Auckland;
- Helene Quilter, a former Deputy State Services Commissioner, now Secretary of Defence;
- Fran O’Sullivan, a columnist for the *Herald*;
- Stefan Herrick, former press secretary for Ms Collins, now external communications manager for ANZ banking group;
- Anita Killeen, former chief prosecutor of the SFO, now a barrister practising in Auckland;
- Adam Feeley, former director of the SFO, now chief executive of the Queenstown Lakes District Council;
- Carrick Graham, managing director of Facilitate Communications which specialises in political, media and engagement strategies;
- The Honourable Anne Tolley, who succeeded Ms Collins as the Minister responsible for the SFO;
- Cameron Slater, who operates the Whale Oil blogsite;
- Judith Collins, member of Parliament for Papakura.

While there was an attempt to interview in a logical sequence, in the end the sequence (except for Ms Collins) was largely dictated by the availability of witnesses.

[130] In each case these people were interviewed by Ms Casey and myself and the interviews were recorded and transcribed.<sup>26</sup> In some cases statements had been prepared by the interviewee before the interview commenced and this approach was of considerable assistance to the inquiry.

[131] Both Ms Odgers and Mr Hotchin reside overseas. Following email correspondence with Ms Casey, Ms Odgers provided a sworn statement and I decided that it was unnecessary to interview her. While I initially intended to interview Mr Hotchin, I ultimately decided that this was unnecessary. Although Kerry Finnigan was mentioned in emails, I decided that it was unnecessary to interview him.

[132] That completes the outline of background matters and explains the approach to the inquiry. Now I turn to the matters raised by the terms of reference.

### **Approach to the terms of reference**

[133] The terms of reference revolve around allegations that Ms Collins was involved in efforts to undermine Mr Feeley as SFO director. Three specific questions are posed, namely, whether: there is any evidence that Ms Collins undermined or attempted to undermine Mr Feeley; Ms Collins provided information about Mr Feeley to Mr Slater or any other party who was not entitled to it; Ms Collins inappropriately sought or received information about Mr Feeley from Mr Slater or any other party. Any other issues relevant to those matters are also to be identified and reported upon.

[134] This report will adopt a staged approach to the terms of reference.

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<sup>26</sup> The exception is the interview of Sir Maarten Wevers, where, due to technical issues, the interview was not recorded. However, Ms Casey had taken full notes which were transcribed and checked for accuracy by Sir Maarten.

[135] It will begin by examining whether there were any efforts to undermine Mr Feeley during his tenure as director of the SFO. In the absence of such efforts the allegations concerning Ms Collins will be without substance, although it might arguably still be necessary to consider questions 2 and 3.

[136] Conversely, if the outcome is that there *were* efforts to undermine Mr Feeley as director of the SFO, it will then be necessary to consider whether Ms Collins was involved (effectively question 1), followed by the two remaining questions posed by the terms of reference. In that event each question will be addressed separately.

**Were there efforts to undermine Mr Feeley?**

[137] I approach this question on the basis that two possibilities need to be explored: whether Ms Collins *acting alone* undermined or attempted to undermine Mr Feeley; and whether *any other people* undermined or attempted to undermine Mr Feeley. Having answered those questions it will then be possible to decide whether the three questions posed by the terms of reference need to be addressed.

[138] As to the first question I can confidently find that there is no evidence that Ms Collins acting alone made efforts to undermine Mr Feeley. Given the complete absence of evidence supporting that proposition, no further discussion is required.

[139] Moving to the second question (whether other people made efforts to undermine Mr Feeley) the evidence before the inquiry raises two possibilities. First, employees and/or former employees of the SFO made efforts to undermine Mr Feeley. Secondly, the people associated with the email of 5 October 2011,<sup>27</sup> or some of them, did so.

[140] I now consider each of those possibilities.

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<sup>27</sup> This email is quoted at [48].

*Did SFO employees/former employees make efforts to undermine Mr Feeley?*

[141] It is clear that when Mr Feeley took up his appointment as director of the SFO he faced a very difficult task. As Ms Collins said during her interview, it was a “tough” role to take on.

[142] Mr Feeley had been appointed to head an organisation that had been through the unsettling process of preparing for disestablishment during the previous two years. The tasks he faced included reinvigorating the culture of the SFO, as well as developing an enduring relationship with the Police and other organisations involved in the investigation of financial crime. Given that many of the staff had been with the organisation for a long time, this was always going to be difficult.

[143] Soon after taking up his role as director of the SFO in November 2009, Mr Feeley set about restructuring. His evidence was:

Several senior staff were made redundant, including Gib Beattie, the Assistant Director of the SFO (who had been with SFO from its inception) and Anita Killeen, the Chief Prosecutor. “Radical” changes (in the minds of some staff) were made to internal processes and policies, and the Office adopted a practice of jointly investigating cases with Police, the Securities Commission, and liquidators. A number of employment grievances were lodged and the environment within sections of the organisation could best be described as “toxic” for a number of months.

Mr Feeley said that four out of the five senior managers left and that in addition 25-30 percent or more of the staff “turned over” in the first year. In his words, it was a “very divided organisation”.

[144] Restructuring of the SFO appears to have first attracted media attention on 29 March 2010 when the *Herald* reported that the SFO was set to lose five senior staff.<sup>28</sup> After stating that the five staff members whose positions had been disestablished would be able to apply for new roles in the SFO, the article continued:

... colleagues say it is unlikely they will stay.

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<sup>28</sup> Jared Savage, “SFO shake-up to ditch 5 senior posts” *The New Zealand Herald* (online ed, Auckland, 29 March 2010).

So it appears that even at this early stage staff members were talking to the media. However, while there was obviously disquiet about the restructuring on the part of some staff members, the evidence does not establish that at this early stage there was any overt effort to undermine Mr Feeley.

[145] On 9 April 2010 the SFO issued a press statement announcing the restructuring:

A restructuring package announced today will help the Serious Fraud Office (SFO) position itself as the lead law enforcement agency for investigating and prosecuting serious and complex financial crime, Chief Executive Adam Feeley said.

The SFO announced the restructuring following a comprehensive review of the organisation.

“The SFO has set some challenging goals for the next three years, and having the right organisational structure and capability is the starting point for ensuring we can achieve this,” Mr Feeley said.

“This new structure will enable much greater inter-agency collaboration, a more flexible approach to major investigations with reliance on external resources where appropriate, and a faster, more responsive approach to investigations.

“The decisions were taken after an extensive consultation process with staff and external stakeholders, and it has been particularly encouraging that staff submissions on the proposals were unanimously supportive of change.”

The changes are aimed at improving fraud detection, with improved intelligence and more self-initiated fraud inquiries.

Specialist investigations teams will be formed for corporate and markets fraud, and bribery, corruption and Police-linked cases.

The changes involve disestablishing three management positions and creating five new management positions. There will be no reduction in staff numbers.

Mr Feeley said the SFO would be recruiting additional legal, accounting and investigative staff to build the Office back up to its establishment numbers.

“It is important to maintain a strong and capable Serious Fraud Office in the fight against financial crime, and the additional recruitment will ensure there is ongoing capability in the organisation.”

Not surprisingly this press release attracted relatively widespread comment in the print media and in online news sites.

[146] Over the next 18 months there were other publications concerning the SFO. There is nothing in these to suggest that they were generated by disaffected current or former staff who were seeking to undermine Mr Feeley. That said, it nevertheless appears that there was continuing discontent on the part of some current and/or former staff, and Mr Feeley expressed the view to the inquiry that the campaign against him actually began soon after he commenced restructuring the SFO.

[147] At least in terms of overt action, things changed dramatically when the champagne bottle email was leaked to the media in late September 2011. While the identity of the person who leaked the email has not been established, it can be safely inferred that the leak was initiated by current or former staff member/s of the SFO. Given the content of the email, the purpose of disclosing it to the media could have only been for it to be published and for Mr Feeley to be discredited in the eyes of the public (and probably in the eyes of his employer and his minister).

[148] But this was not an isolated event. Within a week there was a further disclosure to the media alleging that Mr Hubbard's biography had been presented by Mr Feeley at a 2010 staff Christmas function as a "booby-prize". When he investigated this matter the State Services Commissioner concluded that Mr Hubbard's biography was one of a number of prizes given in the context of a prizegiving for high performing staff as recognition of achievement. On the evidence before the inquiry, particularly the evidence of Mr McArley, I am satisfied that the Commissioner's interpretation of the presentation was correct. There was no malice on Mr Feeley's part and no intention to denigrate Mr Hubbard or anyone else that was under investigation by the SFO.

[149] Even allowing for Mr Feeley's enthusiasm, it is difficult to conceive that the person responsible for passing the information about Mr Hubbard's biography to the media could have genuinely believed that the books were presented as a booby prize. Rather this characterisation of the presentation was designed to add fuel to the adverse publicity against Mr Feeley that was already occurring. Put another way, it was intended to undermine him as director of the SFO.

[150] Whether this second leak concerning Mr Hubbard’s biography was instigated by the same person/s as the first leak has not been established. But for present purposes that is not critical. It can be safely concluded that by this time current or former staff member/s were involved, and that there was a sustained effort to undermine Mr Feeley as director.

[151] In the meantime a post on the Whale Oil blog on 4 October 2011 indicated that information about the internal culture of the SFO was coming in “thick and fast”.<sup>29</sup> A post two days later stated that information about the “dysfunctional nature of the SFO under [Mr Feeley’s] watch” continued to pour in.<sup>30</sup> There were also a number of posts about staff turnover since Mr Feeley joined the SFO.<sup>31</sup>

[152] Some idea of the kind of information that was being supplied to the Whale Oil blogsite can be derived from the following post:<sup>32</sup>

... It is an unhappy place to work. The management team and the chief executive are regarded as inexperienced and arrogant. In fact none of them – apart from Rhys Metcalfe – have prosecuted or been involved in a case of fraud (fraud defined by the Crimes Act standards not Securities Act matters) before joining the office. Nick Paterson literally screams at people at work. There are tears and divisions between camps of people in the office. The two teams headed by Nick Paterson and Simon McArley hate each other and each thinks the other is elitist. Nick Paterson’s team is called the “Departure Lounge” because everyone who joins the team resigns pretty quickly and Simon McArley’s team is called the “Koru Lounge” because they are seen as pretty arrogant.

Mr Slater blogged that this was the fourth separate correspondent “spilling their guts about the SFO and Five Fingers Feeley”.

[153] After these leaks had occurred Mr Feeley attempted to locate the source by conducting an internal forensic investigation involving staff emails and computers. While Mr Feeley was criticised for this investigation, his actions need to be kept in perspective. Ms Quilter told the inquiry that she “actively encouraged” Mr Feeley to

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<sup>29</sup> Cameron Slater “Five Fingers Feeley – ‘A Cowboy’” (4 October 2011) Whale Oil Beef Hooked <[www.whaleoil.co.nz/2011/10/five-fingers-feeley-a-cowboy/](http://www.whaleoil.co.nz/2011/10/five-fingers-feeley-a-cowboy/)>.

<sup>30</sup> Cameron Slater “Staff retention an issue at SFO” (6 October 2011) Whale Oil Beef Hooked <[www.whaleoil.co.nz/2011/10/staff-retention-an-issue-at-sfo/](http://www.whaleoil.co.nz/2011/10/staff-retention-an-issue-at-sfo/)>.

<sup>31</sup> See for instance Cameron Slater “Staff issues at SFO, CTD” (7 October 2011) Whale Oil Beef Hooked <[www.whaleoil.co.nz/2011/10/staff-issues-at-sfo-ctd/](http://www.whaleoil.co.nz/2011/10/staff-issues-at-sfo-ctd/)>.

<sup>32</sup> Cameron Slater “Staff issues at SFO, CTD” (7 October 2011) Whale Oil Beef Hooked <[www.whaleoil.co.nz/2011/10/staff-issues-at-sfo-ctd/](http://www.whaleoil.co.nz/2011/10/staff-issues-at-sfo-ctd/)>.

conduct the investigation to ensure that the SFO systems were secure. Apart from that it is hardly surprising that a law enforcement agency would attempt to locate and close down internal leaks. Like a good deal of the criticism faced by Mr Feeley, the criticism of him for conducting the internal investigation lacked balance.

[154] Mr McArley told the inquiry that this investigation “unsettled the office terribly” at a time when things were starting to settle. Although the internal investigation did not establish the source of the leaks, it revealed some other matters, including one matter that led to the dismissal of a staff member. Obviously this investigation did not improve the relationship between Mr Feeley and disaffected staff or former staff.

[155] On 15 October 2011 information about Mr Feeley’s internal investigation reached the Whale Oil blogsite.<sup>33</sup>

I have been informed that Adam Feeley has instigated a witch hunt at the Serious Fraud Office in an attempt to find the leaks about Bridgecorp and Hubbard embarrassments.

This post also described other aspects of the internal investigation, including “Five Fingers Feeley has hired his top-end Northern Club mates at PriceWaterhouseCoopers to clone server and work laptops” and “Staff emails are now monitored”.

[156] It is beyond argument that most of the information being fed to the Whale Oil blogsite came from within the SFO. Mr Slater confirmed during his interview that it was his impression that most of the information coming to the tipline originated from within the SFO. While in some cases the contents of the information supplied have probably been embellished by Mr Slater, other posts purport to quote the information supplied. Given the nature of the information, it can be inferred that the person/s supplying the information were intent on undermining Mr Feeley in his capacity as director of the SFO.

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<sup>33</sup> Cameron Slater “Witchhunt underway at SFO” (15 October 2011) Whale Oil Beef Hooked <[www.whaleoil.co.nz/2011/10/witchhunt-underway-at-sfo](http://www.whaleoil.co.nz/2011/10/witchhunt-underway-at-sfo)>.



[157] Information from within the SFO was not only being fed to Whale Oil. It was also being fed to Mr Savage of the *Herald* who told the inquiry that there was “a lot of information coming in”. For example, on 4 October 2011 Mr Savage sent an email to Mr Slater:

Feel free to use any of this stuff ... best to refer to as something from the tipline, rather than a current insider ...

A few days later, on 7 October 2011, a further email from Mr Savage to Mr Slater:

Just got off the phone with someone, apparently Feeley has not been in the office all week ...

Information of this kind must have come from someone within the SFO who was not kindly disposed towards Mr Feeley and was wishing to undermine him.

[158] In November 2011 the *Herald* and *National Business Review* received an email purporting to have been sent by Mr Feeley in March 2010. This email invited certain members of the staff to “toast the inevitable”. There can be no mistaking the underlying purpose. It was intended to undermine Mr Feeley by suggesting that he had predetermined the restructuring. When Mr Feeley denied sending the email it was quickly established that it was a forgery and Ms Killeen was successfully prosecuted, pleaded guilty, and was discharged without conviction.

[159] When giving evidence to the inquiry Ms Killeen said that she had no memory (for medical reasons that I have suppressed) about whether or not she had sent the email. But she accepted that it was possible that she had, given the state of her health at the time. The evidence before the inquiry points to her having been responsible for the email reaching the media. When this incident is set alongside the earlier leaks, a continuing pattern of leaks designed to discredit Mr Feeley is apparent, albeit that Ms Killeen’s actions might have been independent of the actions of others.

[160] My conclusion is that former and/or current staff members of the SFO were leaking information to the mainstream media (primarily the *Herald*) and the Whale Oil blogsite from late September through to November 2011. Those leaks were intended to, and did, generate widespread comment in the print media and on

Whale Oil, most of which was adverse to Mr Feeley. I find that publication of the leaked material was intended by current and/or former staff of the SFO to undermine Mr Feeley in his capacity as director. It is my belief that several people were behind these leaks.

*Did the individuals associated with the email of 5 October 2011 make efforts undermine Mr Feeley?*

[161] When Mr Slater supplied the inquiry with his copy of the email sent on 5 October 2011 it became apparent that the document provided to the Prime Minister's office was incomplete. This probably reflects the manner in which the email was sent to the Prime Minister's office rather than any deliberate attempt to hide anything.<sup>34</sup>

[162] It is now apparent that the 5 October email was originally sent to Mr Hotchin, Mr Finnigan, Cactus Kate (Ms Odgers) and Mr Graham. It reads:

**Subject:** Update on SFO/Feeley sting

Ok guys here is an update on the state of play on Adam Feeley.

Today is the 4th straight day of headlines and additional revelations about Adam Feeley.

I am maintaining daily communications with Jared Savage at the Herald and he is passing information directly to me that the Herald can't run and so are feeding me to run on the blog. In the meantime I also have additional information flowing in via my tipline. That information will be drip fed into the media or via my blog.

Herald articles

Fran O'Sullivan: More than a storm in a champagne flute

Editorial: SFOs bubbly an error of judgment

SFO bubbly celebrations vindictive: Petricevic

Ex-SFO chief decries champagne incident

Cathy can outline her contact with Fran O'Sullivan separately. Basically though the Herald and other media are now picking up our lines that this situation is like "Caesar's Wife" where the head of the SFO must be beyond reproach. If he nicked a bottle of wine what else has he nicked or hidden from receivers and liquidators?

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<sup>34</sup> Apart from the redacting of Ms Odgers' name. Ms Odgers informed the inquiry that she passed the email of 5 October 2011 to a trusted "intermediary" for advice and that person eventually passed it to the Prime Minister's office. Ms Odgers' concerns in doing so were expressed by her as "purely political".

So far the Herald has been running this, expect NBR to publish on Friday. Cathy will be chatting with Jock Anderson and I will cover Matt Nippert.

Our (Cathy's) nickname for Feeley (Five Fingers Feeley) has stuck. Journalists ringing me actually use to describe Feeley now in phone conversations.

I also spoke at length with the Minister responsible today (Judith Collins). She is gunning for Feeley. Any information that we can provide her on his background is appreciated. I have outlined for her a coming blog post about the massive staff turnover and she has added that to the review of the State Services Commission. She is using the review of these events to go on a trawl looking for anything else. It is my opinion that Feeley's position is untenable.

I have also arranged with Matthew Hooton for iPredict (<https://www.ipredict.co.nz>) the prediction markets to have a new stock released so people can invest on the probability of Adam Feeley getting the sack before Christmas or leaving. *These stocks generate considerable political pressure and essentially allow the market to decide on someone's guilt or innocence in this case.*

*There is information about his former employment at [redacted]. I have received this information from MPs and City Councillors about their ethics and behaviour. More clarity is needed around those issues before going to press on those. There is also information about his cowboy tendencies when at Crown minerals, again confirmation is required.*

*There is more to release and I will update you all on progress.*

*My posts on Adam Feeley are:*

*Former SFO boss comments on Triple-F*

*Herald Editorial on Five Fingers Feeley*

*Fran Flays Five Fingers Feeley again*

*<http://www.whaleoil.co.nz/2011/10/fist-in-the-face-for-five-fingers-feeley-from-fran/>*

*<http://www.whaleoil.co.nz/2011/10/five-fingers-feeley-a-cowboy/>*

*<http://www.whaleoil.co.nz/2011/10/storm-in-a-tea-cup/>*

*<http://www.whaleoil.co.nz/2011/10/five-fingers-feeleys-job-on-the-line/>*

*Ok that's it for now, will update as developments occur.*

The parts in italics were not included in the email that was sent to the Prime Minister's office.

[163] Of the people associated with the email, only Mr Slater and Mr Graham were interviewed. Ms Odgers, who resides overseas, voluntarily supplied a very detailed declaration and, taking into account that declaration, the timeframe for reporting and the need to avoid unnecessary expense, I decided not to interview her.

[164] Although Mr Hotchin, who also resides overseas, was prepared to be interviewed by either video link or teleconference, I ultimately decided not to interview him. Again, that reflected the information already received, the timeframe for reporting and the desirability of minimising cost. I also decided not to interview Mr Finnigan.

[165] Mr Graham told the inquiry that he met with Mr Hotchin in January 2011 and discussed the provision of public relations services seeking to readdress numerous misleading, defamatory and incorrect comments about Mr Hotchin that had been published in the New Zealand media. His task was to develop a strategy that endeavoured to rebalance the public perception of Mr Hotchin. A key element of this public relations strategy was to address and answer media and public commentary around Mr Hotchin's role at Hanover Finance. The strategy was around "telling Mr Hotchin's side of the story".

[166] As part of the endeavour to manage media coverage Mr Graham engaged two bloggers: Mr Slater of the Whale Oil blogsite and Ms Odgers of the Cactus Kate blogsite. Central to the engagement with those bloggers was the requirement that anything they commented on was to be based solely on material that was already in the public arena.

[167] Mr Graham told the inquiry that when the champagne bottle incident concerning Mr Feeley hit the media at the beginning of October 2011 the bloggers saw it as an opportunity that could be pursued and that:

... while it would be nice to have a clearly defined corporate strategy in the media relations and stakeholder engagement and that sort of stuff, dealing with people who have some very strong views on how they should do things or what they should do, a lot of it you do unleash.

[168] For his part Mr Slater told the inquiry that he was initially engaged to set up a separate website for Mr Hotchin and that over time:

... we were able to give some pushback to the media so much so that they actually stopped writing headlines about Mark Hotchin all the time and I think that is the value that we got is that we managed to shunt him off the front pages of the papers.

Mr Slater confirmed that they were instructed never to publish anything unless it was already in the public domain. He said that he has not done any work for Mr Hotchin since 2012.

[169] Mr Slater said that when the story about Mr Feeley came along he initially thought there was “nothing” in the story. However, he changed his mind the next day. As he put it, there was “a media feeding frenzy and we joined in”.

[170] Ms Odgers explained the background to her blogsite “Cactus Kate” which she operated from 2006 to 2013. When she stopped blogging in 2013 she removed it from the Internet. Her understanding was that copies of her posts would be held in the National Archives and she has since recovered the archived material and provided the inquiry with material that appeared to her to be relevant to the terms of reference.

[171] Around February 2011 she was approached by Mr Graham to provide online media support for Mr Hotchin and to advise on a strategy to counter his treatment by the media. The period of engagement was from February 2011 to April 2012. She was primarily responsible for all the research and writing in often highly technical areas of law and business analysis. Her instructions were to only use information already publically available. Eventually the media “wore themselves out and the negative media around Mr Hotchin subsided”.

[172] When the publicity surrounding the champagne bottle incident occurred it became a natural extension of her blogging forum, but it was not connected to Mr Hotchin. She believes that it would be:

... stretching the boundaries of our importance in the scheme of things to suggest one post by myself that conflicted with Mr Slater’s original reaction and then a small series of cut/paste articles published on Mr Slater’s blog from sources from New Zealand Herald reporter Jared Savage, constitutes undermining someone in such an important role as New Zealand’s Premier regulator which is what Adam Feeley was. Neither Mr Slater or myself took the bottle of champagne that started Mr Feeley’s public perception issues, Mr Feeley did. We didn’t even break the story of the act, the New Zealand Herald did from their own sources.

Ms Odgers said that she considered Mr Feeley's behaviour was not up to what should be expected of New Zealand's leading regulator and she believed he should be sacked.

[173] Now it is necessary to trace the history of events by reference to the documents that are relevant to the issue under consideration. Although many of these documents have already been mentioned, the parts relevant to the matter under consideration will be repeated where necessary.

[174] After the *Herald* had published its front page story on the morning of 1 October 2011, Mr Slater was scathing in his blog that afternoon. He accused the *Herald* of taking the whole front page for a "non-story about the SFO drinking a \$70 bottle of champagne they didn't pay for". However, after an email discussion with Ms Odgers he posted a blog the next morning headed "Cactus Kate on Five Fingers Feeley". This blog endorsed Cactus Kate's view that all was not well in the SFO, Mr Feeley needed to be accountable, and:<sup>35</sup>

I can't see Crusher<sup>36</sup> endorsing pinching people's belongings no matter how small.

The blog went on to say that the Minister's charges were "out of control, rancid and need discipline" and that they would not be getting it from their current leader (Mr Feeley). It was predicted that strong action would be taken by Minister Collins.

[175] On the morning of 3 October 2011 Mr Graham emailed Ms Odgers, with a copy to Mr Slater:

Excellent work on FFF.<sup>37</sup> President of Law Society comments in support of FFF reprehensible!

The previous day the President of the New Zealand Law Society had been reported in the media as saying, "It's a \$70 bottle of champagne. It's not a legal issue. It's not a story."<sup>38</sup>

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<sup>35</sup> Cameron Slater, "Cactus Kate on Five Fingers Feeley" (2 October 2011) Whale Oil Beef Hooked <[www.whaleoil.co.nz/2011/10/cactus-kate-on-five-fingers-feeley/](http://www.whaleoil.co.nz/2011/10/cactus-kate-on-five-fingers-feeley/)>.

<sup>36</sup> Minister Collins.

<sup>37</sup> Five Fingers Feeley.

<sup>38</sup> Jared Savage "Blowtorch on SFO chief over celebration" *The Herald* (online ed, Auckland,

[176] During the afternoon of 3 October 2011 Mr Slater sent an email to Mr Savage of the *Herald* telling him “on the quiet Collins is gunning hard for Five Fingers Feeley ... she is disgusted by his indifference.” There was also an email from Ms Odgers to Mr Slater saying, “Pushing Crusher to sack him”.

[177] Soon after that (still on 3 October 2011) Mr Slater sent the following email to the Mr Hotchin, Mr Finnigan, Ms Odgers and Mr Graham:

An opportunity has arisen to nail Adam Feeley. On Saturday the Herald broke a story about Adam Feeley nicking a bottle of Gossett champagne and skiting about it in an email then drinking it at the office shout when charges were laid in the Bridgecorp case.

Someone in the SFO is leaking emails...if they leaked on that we can get them to leak on other (I'm working over Jared Savage in that regard).

Meanwhile Cathy and I have taken up the cudgel ramping pressure on Feeley to quit.

I spoke with Judith Collins yesterday about the case and she is livid. She has referred Feeley to the SSC and she wants him gone. She is now feeding me information in regards to this.

Bill English has come out now and said it a storm in a teacup which has set off Judith Collins, she is now gunning not only for Feeley but also for English. Related to all this is the delightful back story of Feeley and Power so a wedge can be driven there.

I have spoken with NBR and also with Herald with my insider information and so we are really ramping pressure to get Feeley.

If you have any information on Feeley then make it available and we can add it to the attacks.

Further on Mr Slater said that there was “more to come on this story” and that he had “arranged for questions to be asked at the post cabinet press conference about the difference between FFF and Phil Heatley over \$70 worth of wine.”<sup>39</sup>

[178] Two days later, on 5 October 2011, the email that subsequently came to the notice of the Prime Minister was sent by Mr Slater to the other members of the group.<sup>40</sup> Leaving aside for the moment whether the matters attributed to

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3 October 2011).

<sup>39</sup> Mr Heatley had resigned his Ministerial portfolios in 2010 as the result of allegations of misspending taxpayer money and making a wrongful declaration.

<sup>40</sup> This email is quoted at [162].

Minister Collins in that email reflect what she said, this email effectively updated the recipients about the attack that was being mounted against Mr Feeley. It also sought any further information that might be capable of supporting the attack.

[179] At this point I leave the documentary record to comment on the attack upon Mr Feeley. When Mr Slater was questioned at interview about why he was attacking Mr Feeley, he said:

I consider the fact that Mr Feeley stole a bottle of wine and consumed it to be a bonus ... A free hit against Adam Feeley just because it's there.

At a later stage of the interview Mr Slater was again asked about the motivation behind the attack on Mr Feeley. He said that it was to “jump on the bandwagon, to keep on pushing that, to get a scalp”.

[180] The frequent references to “Five Fingers Feeley”, and the connotations of dishonesty that that such a nickname conveys, obviously added sting to the attack. In addition, there were direct references in some of the blogs to Mr Feeley having “pinched” the bottle of champagne.

[181] The State Services Commissioner found that although there was a lapse of judgement on the part of Mr Feeley, there was no dishonest intent and to the best of the Commissioner’s knowledge there had not been any claim to ownership of the bottle of champagne. It now appears from the evidence before the inquiry that at least one of the Bridgecorp receivers were actually present at the offices of the Eden Park Redevelopment Board when the first three bottles of champagne were drunk. Even without that additional information the allegation that Mr Feeley had stolen the bottle of champagne was patently unsustainable in law. It was also unfair to Mr Feeley.

[182] Returning to the documentary record, the following day (6 October 2011) Ms Odgers responded to Mr Slater, with the email also going to other members of the group:

Cheers Cam. Fran is locked and loaded and gunning for Feeley so she won't stop. ... I fed her the info the other day and see she's used it in her column Tuesday.



The reference is to Fran O’Sullivan, a columnist for the *Herald*. When Ms O’Sullivan was interviewed by the inquiry she strongly refuted any suggestion that Ms Odgers had any influence over her column. For present purposes, however, it is unnecessary to dwell on this matter because I am satisfied that Ms O’Sullivan was not part of the group under consideration.

[183] Over the next few months there was significant email traffic between Mr Slater, Ms Odgers and Mr Graham. Mr Feeley is only mentioned in three emails. On 18 October 2011 Mr Graham commented in an email to Mr Slater and Ms Odgers that he had seen Mr Feeley on an aeroplane and “he looked very pale and Simon Moore was holding his hand”.<sup>41</sup> Ms Odgers responded, “Yeah well best she sack him”. Then on 15 November 2011 Mr Graham emailed Mr Slater and Ms Odgers about “lumping” the FMA’s chief executive and its chairman “in with SFO’s Adam Feeley in terms of disregard for taxpayers and the mum and dad investors they seem to care so much about”.

[184] There is further reference to Mr Feeley in an email dated 22 December 2011 from Mr Graham to Mr Hotchin:

Following on from Fran O’Sullivan’s article what we (Cathy & Cam included) would like to do is roll out the following.

- a) Focus on the FMA and its leaking to the media before any changes even made with drip feed blog posts asking them why they are not widening the ‘love’ i.e if they're going after Hanover then why aren't they going after the recipients of the loans that Hanover made (we have the list), the media (APN/TVNZ) who took Hanover’s advertising spend to promote the company et cetera.
- b) It’s clear the FMA thinks it’s okay to conduct themselves in public so we can drive the issues we want out there as well. This includes posts and stories on:
  - i. Where did the money go? – Developers who failed to repay the money; Bring back in Allied and Alloway & dilution of Allied shares.
  - ii. Where is the money going – i.e. going to Allied then Nationwide receivers who are collecting and keeping it on behalf of govt under guarantee scheme (using theme Mum & Dad investors will be shocked to see the money going to the Govt)

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<sup>41</sup> Mr Moore was Crown Solicitor for Auckland at that time.

*iii. Posts that the SFO leakers are leaking again showing Feeley having significant issues not being addressed and the shambles that the SFO culture is*

*iv. Using the Sheppard defamation case as example of why FMA keeps pursuing case against Hanover when their case is weak ( - appeasing an Assoc Board Member – and pursuing personal vendetta against MH (potentially weaving in Simon Botherway)) as well as how Hughes is inappropriately using the media.*

- c) We'll use the posts to raise various issues and feed them to mainstream to start asking the questions they're failing to now. From the end of this week there will be a serious news vacuum and if we can fill that space then our side will be run.

(Emphasis added)

Notwithstanding the recommendation it appears that Mr Hotchin and his lawyers were uneasy about being involved in any attack on Mr Feeley. That part of the strategy was not carried any further.

[185] One other email should be mentioned. On 16 August 2012 Mr Graham emailed Mr Slater and Ms Odgers:

Just off ph to MH. The C&M strategy of bringing others into the pit has now some attraction.

Seems Tony Gapes is thinking he's a bit of a star witness for the SFO against our man. ...

It would be very interesting if various sources could be wound up creating a C&M swirl around Tony Gapes ...

Mr Graham told the inquiry that the words "C&M" refer to "chaos and mayhem", which was a tongue in cheek expression that they used about themselves.<sup>42</sup> While there is reference to the SFO, there is no reference to Mr Feeley and I have decided that this email does not warrant further consideration because it is beyond the scope of the inquiry.

[186] That is the evidence. Does it support the conclusion that one or more of the group associated with the email of 5 October 2011 made efforts to undermine Mr Feeley? To the extent that the following discussion is directed at those

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<sup>42</sup> Ms Odgers says that she was no longer working for Mr Hotchin at this point in time.

associated with the email of 5 October 2011, it is for the purpose of identifying any undermining of Mr Feeley that took place so that Ms Collins' involvement (if any) can be determined.

[187] As already flagged, I have concluded that Mr Hotchin and Mr Finnigan can be eliminated from further consideration. While in an indirect sense Mr Hotchin's brief led to Mr Slater and Ms Odgers (and to a lesser extent Mr Graham) becoming involved in an attack upon Mr Feeley, the evidence before the inquiry does not justify the conclusion that Mr Hotchin was actively involved. Similarly, although Mr Finnigan received some of the emails (apparently in the capacity as an employee of Mr Hotchin), there is no evidence that he was actively involved.

[188] That leaves Mr Slater, Ms Odgers and Mr Graham. I have referred to them in that order because, as I will now explain, I believe it reflects their relative involvement in efforts to undermine Mr Feeley as director of the SFO.

[189] Once Mr Slater decided that Mr Feeley had stolen the bottle of champagne, he used the Whale Oil blogsite to mount an attack on Mr Feeley. His explanation was that he had simply joined in a media frenzy. Although it was clearly an opportunistic attack, it was nevertheless a sustained attack on Mr Feeley making full use of leaked information from within the SFO. Judging from posts on the Whale Oil blogsite the attack began on 2 October 2011 and continued through to at least 21 October 2011.

[190] In addition to the frequent references to Five Fingers Feeley, many of the blogposts were of an extreme nature. For example, one blogpost said that the SFO was being run by "an ego-maniac more concerned with his media image than actually getting on and doing what the taxpayer pay him for".<sup>43</sup> In another blogpost two days later Mr Slater found it astounding that Mr Feeley "hasn't even tendered his resignation".<sup>44</sup> And after issues surrounding Mr Hubbard's biography came to

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<sup>43</sup> Cameron Slater "Staff retention an issue at SFO" (6 October 2011) Whale Oil Beef Hooked <[www.whaleoil.co.nz/2011/10/staff-retention-an-issue-at-sfo/](http://www.whaleoil.co.nz/2011/10/staff-retention-an-issue-at-sfo/)>.

<sup>44</sup> Cameron Slater "DHC on Five Fingers Feeley" (8 October 2011) Whale Oil Beef Hooked <[www.whaleoil.co.nz/2011/10/dhc-on-five-fingers-feeley/](http://www.whaleoil.co.nz/2011/10/dhc-on-five-fingers-feeley/)>.

light Mr Slater blogged “Five Fingers Feeley has to go” and this latest information “must be the last nail in Adam Feeley’s coffin”.<sup>45</sup>

[191] On any view of the matter the attack mounted by Mr Slater can only be construed as a determined effort on his part to undermine Mr Feeley. The attack seems to have been driven by Mr Slater’s belief that Mr Feeley had stolen the bottle of champagne and that he should be accountable.

[192] Now I turn to Ms Odgers. It appears that her approach to the champagne bottle incident led to Mr Slater’s change of heart about the significance of the story. Like Mr Slater she used extreme language in her emails to describe Mr Feeley, including the description “Five Fingers Feeley”. Indeed, Ms Odgers said that in keeping with her “blogging character and past treatment of regulators” she gave Mr Feeley the nickname “Five Fingers Feeley” in relation to the taking of the champagne.

[193] I find that Ms Odgers was also involved in the efforts to undermine Mr Feeley. While it is not strictly necessary to compare the efforts of Mr Slater and Ms Odgers, it is my view that once he had decided that Mr Feeley should be attacked, Mr Slater played the leading role. As far as I can see Ms Odgers’ involvement was more in the nature of behind the scenes encouragement than anything else. Nevertheless, for the purpose of determining the matters raised by the terms of reference, I believe that Ms Odgers played a role in the efforts to undermine Mr Feeley.

[194] Finally, it is necessary to consider the role of Mr Graham. His evidence to the inquiry was to the effect that when it came to the attack on Mr Feeley the two bloggers were out of control and there was not much that he could do about it. While to a certain extent that might be true, Mr Graham was nevertheless involved, at least in the sense of providing encouragement in email conversations concerning Mr Feeley.<sup>46</sup>

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<sup>45</sup> Cameron Slater “Five Fingers Feeley has to go”, (8 October 2011) Whale Oil Beef Hooked <[www.whaleoil.co.nz/2011/10/five-fingers-feeley-has-to-go/](http://www.whaleoil.co.nz/2011/10/five-fingers-feeley-has-to-go/)>.

<sup>46</sup> See, for example, his email of 3 October 2011 which is referred to at [175] above.

[195] Again, it is unnecessary to precisely define the role that Mr Graham played in undermining Mr Feeley. Suffice to say that in my view it was subsidiary to the roles played by Mr Slater and Ms Odgers.

*Was there any link between the two “efforts” to undermine Mr Feeley?*

[196] To the extent that information from current or former staff members was going to Mr Slater, who played a lead role in the other campaign, it could be said that there was a link between the two campaigns. Mr Savage also played a part in both campaigns by passing on leaked information to Mr Slater. Beyond that the evidence does not suggest that the two efforts to undermine Mr Feeley were linked.

[197] Possibly there was an attempt to co-ordinate the two efforts when Mr Graham contacted Ms Killeen via LinkedIn on 5 June 2012:

I've watched over the last few months how Feeley has run a media campaign against you. If you're up to it I'd be keen to have a chat about how we could try and re-balance the media attention to be more around to your side to the story.

This offer was declined by Ms Killeen. Mr Graham indicated to the inquiry that this approach to Ms Killeen was in the nature of a “cold call”.

[198] Two days after this approach was made, Mr Graham sent an email to Mr Slater and Ms Odgers saying that contact had been made and that he would follow this up again “when she's in the paper again”. There is no evidence of any further contact. Thus, even if there was an attempt to co-ordinate the two campaigns, it did not go anywhere.

### *Summary of findings*

[199] I find that from early October 2011 there were two separate “efforts” to undermine Mr Feeley during his tenure as director of the SFO. The first, which had begun in late September 2011, was conducted by persons who were either current or former employees of the SFO. It is likely that a group of people was involved. The second revolved around Mr Slater, Ms Odgers and Mr Graham, with Mr Slater playing the leading role through his Whale Oil blogs.

[200] Clearly the second campaign was opportunistic. While it added something to the first (to the extent that most of Mr Slater's blogs added comment to the information that was being leaked by current or former staff), it is debatable how much this second campaign actually added to the first campaign. I doubt that it added much.

[201] The *Herald* played a part in both efforts to undermine Mr Feeley. It published leaked information from within the SFO and (through Mr Savage) exchanged information with Mr Slater. It has to be said, however, that in terms of the attack on Mr Feeley, the coverage in the *Herald* (and also in the *National Business Review*) was more balanced. Consequently, for the purposes of this inquiry I have proceeded on the basis that those two publications were not in any true sense involved in efforts to undermine Mr Feeley.

[202] Having decided that there were in fact two efforts to undermine Mr Feeley, it is now necessary to explore whether there is any evidence that Ms Collins was involved in either of those efforts. That brings me to question 1.

**Whether there is any evidence Ms Collins acted inconsistently with the conduct expected of a minister by undermining or attempting to undermine Mr Feeley's tenure as Director of the Serious Fraud Office**

*The terms of reference*

[203] It appears that this question has been carefully framed to ensure that the inquiry focuses on whether there is *any evidence* that Ms Collins undermined or attempted to undermine Mr Feeley. It is to be taken as read that such conduct, if established, would be inconsistent with the conduct expected of a minister.<sup>47</sup>

[204] While the terms of reference refer to *any* evidence, the fundamental obligation under section 10 to conduct the inquiry *fairly* must give rise to an obligation to consider the probative value of the evidence. It would be unfair to Ms Collins if evidence completely lacking in probative value resulted in question 1 being answered in the affirmative.

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<sup>47</sup> Sir Maarten Wevers was of the view that such conduct would be inconsistent with the conduct expected of a minister.

[205] When considering the question raised by the terms of reference it is helpful to identify the relevant evidence by reference to a number of milestones (or periods leading up to or following those milestones):

- before the champagne bottle email became public;
- when the champagne bottle incident and Mr Hubbard's biography matters became public;
- the release of the SSC report;
- the SSC performance review of Mr Feeley in 2011;
- responsibility for the SFO is transferred to Minister Tolley; and
- Mr Feeley's resignation.

Once all the relevant evidence has been identified it will then be analysed and conclusions reached as to its probative value.

*Before the champagne bottle email became public*

[206] This covers the period from November 2009 (appointment of Mr Feeley) to the end of September 2011 (leak of the email concerning the champagne bottle incident).

[207] As already recorded, Minister Collins was pleased with the decision to appoint Mr Feeley as director of the SFO. In her affidavit she said Mr Feeley:

... had a lot of drive and energy and I welcomed his new approach to reinvigorating the SFO. Without going into details there remained significant issues within the SFO ...

Ms Collins said she encouraged Mr Feeley to improve the culture of the SFO and build on his relationship with the Police. She also wanted him to try and build a better relationship with the Securities Commission (which was subsequently replaced by the Financial Markets Authority).

[208] This evidence is consistent with the SSC's records provided to the inquiry.

[209] As part of the SSC's annual review of Mr Feeley's performance (as is customary with public service chief executives) Minister Collins was interviewed on 23 September 2010. To the extent that they are relevant to this report, the notes of that interview record the Minister's views:

... Mr Feeley had to take on some big issues, particularly to restructure the SFO and move out some senior staff. ... He has demonstrated good skills to get the SFO to where it is today. He handled the difficult task of moving out long serving staff very well. ...

Mr Feeley has brought energy and drive to the role. He is committed to doing a good job and has done well. There is a different feel to the SFO. He has developed greater openness, including work being managed through cross-organisational teams.

Mr Feeley has been more active with the media. While occasionally too active, from where the SFO was he probably felt he needed to tell people more about what they are working on, and sharing some of the messages.

Mr Feeley has set the bar high, with an ambitious work programme. There are risks with this that have to be recognised. He is very good at keeping the Minister informed about things she should know. The Minister is able to have more confidence in what the SFO is doing, bearing in mind its independent role. ...

Mr Feeley has also done a good job in building relationships across the sector. ...

Following the interview these notes were forwarded to Minister Collins to ensure that they accurately reflected her views. She confirmed that they were accurate.

[210] As is customary with reviews of chief executives, there was a second meeting with the Minister. At this meeting on 10 December 2010 Minister Collins was again interviewed (this time by Mr Rennie and Ms Quilter) about Mr Feeley's performance and her expectations for the next year. Again, the Minister was supportive. However, a SSC file note dated 20 December 2010 records that the Minister expressed concern about Mr Feeley's media relations.

[211] According to the file note the Minister told the SSC Mr Feeley's announcement at a select committee of an arrest the following day was not to happen again. She considered that Mr Feeley needed help in dealing with the media and she



wanted Mr Feeley to be “less gung ho, less personal and more professional, and more use of ‘we’ rather than the ‘I’”. The file note recorded that these matters had been passed onto Mr Feeley, who said that he would take them on board. The file note also recorded the Minister’s view that the performance of the SFO had improved and that this was due to Mr Feeley.

[212] When interviewed by the inquiry Ms Collins described Mr Feeley’s first year as director as a “hard but good year”. She acknowledged that he faced difficult challenges when restructuring the SFO. While she was concerned about Mr Feeley being seen in the media as much as he was, that issue did not assume any particular significance in their continuing relationship (except in relation to the champagne bottle and Mr Hubbard’s biography). She did not recall any issue involving Mr Feeley’s announcement at a select committee hearing.

[213] Mr Feeley’s description of his relationship with the Minister is consistent with Ms Collins’. He said that in the early stages of his tenure Ms Collins encouraged the reorganisation of the office. She was supportive of the office receiving additional funding and visited the office on a number of occasions. She had high expectations of the SFO and their meetings were generally relaxed. He could not recall any occasion where she expressed to him any significant displeasure over the work of the SFO. It was his recollection that the issues concerning media relations had been raised with him through the SSC.

*When the champagne bottle/biography matters became public*

[214] In the context of the question under consideration the events surrounding this event are obviously very important. For that reason they need to be covered in some detail.

[215] On Friday 30 September 2011 Mr Feeley forwarded to Minister Collins’ press secretary, Mr Herrick, a proposed reply to the media enquiry he had received from the *Herald* about the champagne bottle matter. Mr Herrick responded that Mr Feeley should get his own advice on the proposed press release and that he should also consider advising the State Services Commissioner, Mr Rennie.

[216] That evening Mr Herrick forwarded the email from Mr Feeley (including Mr Feeley's proposed reply to the media questions) to Mr Rennie with the comment that Mr Feeley's email related to an article that was likely to appear in the *Herald* the next day. Mr Herrick told the inquiry that before responding to Mr Feeley's email and referring the matter to the State Services Commissioner, he would have consulted with other people in Minister Collins' office. He is not sure whether he would have spoken to the Minister (given that this was a Friday it is unlikely that the Minister was in Wellington).

[217] It is apparent, however, that one way or another Minister Collins became aware of the matter that evening because she rang Mr Rennie. He told the inquiry:

... the gist of the conversation was Minister Collins saying that her office staff had alerted her to this issue off the back of Adam Feeley's email and that my recollection is that she said she would forward through to me what he had provided to her staff member and that ... as this was a matter around the chief executive's behaviour it was a matter for essentially me to look at as I wished.

When asked whether the Minister was "furious" at the time, Mr Rennie's response was that he would not have characterised her phone call to him in that way. She was "calm, measured ... I think reasonably concerned that the chief executive's behaviour had gotten to the media and she was drawing that to my attention ... as his employer."

[218] Mr Rennie recalled that the Minister's telephone call to him was on a Friday evening and that he took the call at his beach house. He noted that the general election was due to be held in November and that no minister likes matters that are "slightly untidy in their portfolio", especially at that stage of the election cycle. In answer to a question Mr Rennie said that if the Minister had been "steaming" he would have recalled. She was not.

[219] In her affidavit Ms Collins said that on the strength of the information she had received she considered Mr Feeley's alleged conduct was inappropriate. She was disappointed that the incident had occurred because one of the issues that she had discussed with him was the development of a "more sober, less partisan media

profile” and it seemed to be obviously wrong to drink champagne that did not belong to the SFO. She considered it a significant lapse of judgement.

[220] When interviewed by the inquiry Ms Collins explained that the timing of the revelation was a “disaster”. Parliament was going into the last week of question time before rising for the general election. In addition crime statistics that were extremely favourable to the Government were due to be released the following Monday morning, 3 October 2011.<sup>48</sup> She had also built a reputation for getting her agencies working well and having competent leaders in them. Consequently adverse publicity of this kind was unwelcome.

[221] For those reasons, as Ms Collins stated in her affidavit, she was happy not to have to deal with the issue:

... and to turn down the temperature of media interest (which would have become more intense if they could connect a Minister with the champagne consumption issue, even tangentially) by saying the matter had been referred to the SSC.

When interviewed during the inquiry Ms Collins said they had to close the matter down “very fast”. Although she was concerned about the matter (because it indicated a serious error of judgement on the part of Mr Feeley), she was not angry. Rather she was disappointed Mr Feeley’s hard work would be defined by “a silly bottle of champagne”.

[222] The Minister’s reaction to the champagne bottle revelation was also explored when Mr Herrick was interviewed. He said that he worked closely with the Minister, his office being three doors away from the Minister’s. His recollection was that the Minister’s attitude in general was one of “disappointment”.

[223] It needs to be explained at this point that on 5 October 2011 Ms O’Sullivan wrote in the *Herald* that the Minister was “understandably furious”.<sup>49</sup> When asked during the inquiry who told her that, she said that it came from the Minister’s office, but did not disclose the source (except to say she had not spoken to the Minister).

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<sup>48</sup> This is confirmed by Ms Collins’ ministerial diary.

<sup>49</sup> Fran O’Sullivan “More than a storm in a champagne flute” *The Herald* (online ed, Auckland, 5 October 2011).

Indications were (at least as I interpreted them) that this remark was being attributed to Mr Herrick. However, when he was asked whether he had told Ms O'Sullivan that the Minister was "furious", he was adamant he would not have done so. He said that if the Minister had been furious it would have left an impression on him, and it had not. He commented that the Minister had a very strong public persona and he thought that there would have been an expectation on the part of the media that she would be furious.

[224] Mr Feeley told the inquiry that he had attempted to ring the Minister so he could discuss the allegations with her and had been told by her office that she would not take his call. While Ms Collins did not specifically recall that event, she believed that she would have declined to take Mr Feeley's call because the matter had been referred to, and was under investigation by, the State Services Commissioner. Consequently, she was not in a position to discuss the matter with Mr Feeley.

[225] On 1 October 2011 the morning edition of the *Herald* carried front page coverage about the matter, under the headline "SFO celebrates on Bridgecorp bubbly". The coverage described the email inviting staff to the function, Mr Feeley's explanation about the function, and how he came to have possession of the bottle of champagne. There was no mention of the action that had been taken by the Minister (referring the matter to the SSC).

[226] However, the online version of the article was updated to record.<sup>50</sup>

A spokesman for SFO Minister Judith Collins said she was unable to comment as she had referred the matter to the State Services Commissioner, who employs Adam Feeley as the chief executive of the white collar crime agency.

This is consistent with Mr Herrick's evidence. He said that he had not responded to enquiries he had received from the *Herald* until the morning of 1 October 2011. His response was as published in the online version.

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<sup>50</sup> Jared Savage "SFO boss faces employment probe" *The Herald* (online ed, Auckland, 1 October 2011).

[227] Telephone records disclose that Ms Collins rang Mr Slater's cellphone on Sunday 2 October 2011 with the call lasting 14:43 minutes. The same day Ms Odgers sent an email to Mr Slater and Mr Graham saying that she was "Pushing Crusher to sack him." However, there is nothing to suggest that Ms Odgers was in any direct communication with Minister Collins. Indeed, the evidence is to the contrary.

[228] On 3 October 2011 Mr Slater sent an email to Mr Savage which included the statement:

On the quiet Collins is gunning hard for Five Fingers Feeley...she is disgusted by his indifference.

Mr Slater told the inquiry that, if he remembered correctly, Minister Collins had said to him, "Why doesn't he just do his job and stop talking to the media?" Mr Slater said that he was probably "overblowing this a little bit". He said that "gunning hard" would be his terminology based on a brief telephone conversation with the Minister. It was his recollection that the Minister must have said something to the effect that she was "disgusted by his indifference".

[229] As recorded earlier in this report, Ms Collins denies that she was "gunning" for Mr Feeley, that she was "disgusted by his indifference", or that she would have said either of those things. She is certain that Mr Slater made them up. She had handed the matter over to the State Services Commissioner and there was absolutely no reason for her to have said those things.

[230] In his email of 3 October 2011 (about the opportunity having arisen to "nail" Mr Feeley)<sup>51</sup> Mr Slater stated:

I spoke with Judith Collins yesterday about the case and she is livid. She has referred Feeley to the SSC and she wants him gone. She is now feeding me information in regards to this.

Bill English has come out now and said it a storm in a teacup which has set off Judith Collins, she is now gunning not only for Feeley but also for English. Related to all this is the delightful back story of Feeley and Power so a wedge can be driven there.

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<sup>51</sup> This email is quoted in full at [177] above.

As mentioned earlier, the telephone records confirm that there had been a telephone call from the Minister to Mr Slater the previous day.

[231] When asked during his interview whether the Minister had actually said the things attributed to her in this email, Mr Slater responded that he believed Ms Collins had said she had referred Mr Feeley to the SSC and it was his impression that she had said that she was livid and that Mr Feeley was constantly in the media. But the reference to the Minister wanting Mr Feeley “gone” was him “talking it up ... from nothing”, and the Minister would never have said that to him. He also acknowledged that the statement the Minister was “feeding information” to him was untrue and not based on anything that the Minister had said.

[232] As far as the reference to the Deputy Prime Minister Bill English is concerned, Mr Slater told the inquiry that it is well known that Ms Collins and Mr English “dislike each other”. Mr Slater said that Ms Collins would have taken “great umbrage” at Mr English’s comment over a matter that was within her jurisdiction.

[233] Ms Collins strongly denied that she would have said, or given the impression, that she was livid with Mr Feeley. Her attitude was that everyone makes mistakes and she had no interest in wanting him “gone”. Having referred the matter to the State Services Commissioner she would not have had any further information to pass on to Mr Slater. Ms Collins believes that Mr Slater made up the comment about the Deputy Prime Minister because it suited his story. There is no way she would have blamed Mr English for trying to dampen down the story, which was exactly what she was trying to do.

[234] On 5 October 2011 Mr Slater sent the email that gave rise to this inquiry.<sup>52</sup> In the context under consideration the critical paragraph is:

I also spoke at length with the Minister responsible today (Judith Collins). She is gunning for Feeley. Any information that we can provide her on his background is appreciated. I have outlined for her a coming blog post about the massive staff turnover and she has added that to the review of the State Services Commissioner. She is using the review of these events to go on a

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<sup>52</sup> That email is quoted in full at [162].

trawl looking for anything else. It is my opinion that Feeley's position is untenable.

The telephone records indicate that there was a call at 1.25 pm lasting 8:25 minutes on 5 October 2011. The email was sent at 9.56 pm on the same day.

[235] Again Mr Slater was questioned about what he had been told by Ms Collins. He said that the words “gunning for” were his words and were not words that Ms Collins would ever use. When asked whether they were a “pure creation” on his part he responded:

Well it's an amalgam of what – the displeasure that she would have passed onto me, especially around him being in the media all the time and also the comments that I received from Jared Savage and also just having a long-term knowledge of Judith Collins. I'm actually putting – I'm putting my words around things and embellishing them and it's cost her her job.

Mr Slater said that the impression Mr Feeley was in the media all the time had come from several people, not just from Ms Collins. Later he said that Ms Collins did say to him at one point that she found it disquieting that Mr Feeley was conducting his job in the public domain and that he should be conducting his job in his office.

[236] Mr Slater said that the words “any information that we can provide her on his background is appreciated” was “me talking again.” In relation to the comment “I have outlined for her a coming blog post about the massive staff turnover”, Mr Slater said that he told the Minister that this would be published tomorrow.

[237] With reference to the statement that Ms Collins had added the massive staff turnover issue to the SSC's investigation, Mr Slater told the inquiry that he could not recollect how he got that impression, but it might at that stage have been public knowledge. He could not recall the telephone conversation directly and it might not have come from Ms Collins. I note at this point that Ms Quilter confirmed to the inquiry that Ms Collins did not seek to add the issue of staff turnover to the SSC's investigation.

[238] Finally, in relation to the statement “she is using the review of these events to go on a trawl looking for anything else”, Mr Slater said that he was not sure that this

came from her. He added that it was not the sort of thing that she does. Mr Slater said that the statement that Mr Feeley's position was untenable was his opinion, not one expressed by Ms Collins.

[239] Each of these statements by Mr Slater was put to Ms Collins. In broad terms her view was that statements in this email reflected the pattern of the earlier emails and was intended by him to make his story "look good". She believed that he had found it helpful to exaggerate the significance of his connection to her and was offering "circumstantial detail" designed to reinforce his account of events.

[240] Ms Collins noted that Mr Slater was saying the same thing over and over again and that what he said could have been discerned from other media comments or by virtue of Mr Slater "wishing it to be so". Her understanding was that Mr Slater had manufactured a story and he wanted to believe it. While she might have talked about the media coverage and discussed with Mr Slater why he was attacking Mr Feeley through his blogsite, the last thing she wanted was to have it blown out of proportion. To the contrary, it was in her interests to shut the matter down, and that is what she was trying to do.

[241] On 7 October 2011 Mr Slater emailed Mr Savage:

Spoke to Crusher yesterday, she has asked the SSC to widen the scope of their inquiries to look at staff turnover and culture etc

She wants him gone, she does not believe this is a storm in a champagne flute. ...

Given that the information contained in this email seems to replicate the information contained in the email of 5 October 2011, Mr Slater thought he was probably referring to the conversation mentioned in the earlier email and that the reference to "yesterday" was a mistake.

*Release of the SSC report*

[242] Before Mr Rennie sent his letter of 17 October 2011 about the outcome of his investigation to Minister Collins, there was a telephone conference between the Minister, Ms Quilter and Gordon Davis, the SSC's chief legal advisor. Ms Quilter



told the inquiry she took the Minister through the findings she had reached and her recommended course of action to the State Services Commissioner. This was the first contact she had had with the Minister (or the Minister's office) about these matters.

[243] Ms Quilter's evidence was that during telephone conference with the Minister:

I had taken her through my findings and she had accepted my findings. She didn't want any, I suppose, silly events or incidents to detract from the work of the office and she was disappointed in his behaviour, but she didn't dwell on that.

At no stage did Ms Quilter gain the impression that the Minister was "furious" in the sense of being intemperate or extreme.

[244] Mr Davis provided a statutory declaration about his recollection of the telephone conference with the Minister. He confirmed that Ms Quilter took the Minister through the process, her findings, and how the State Services Commissioner was going to deal with the matter. He recalls responding to a question from the Minister about what would happen if she was to lose confidence in the director, by saying that she would need to raise the matter with the Commissioner. The Minister did not follow up with any further questions. Nor did the Minister attempt to persuade Ms Quilter to take an alternative approach. He was not aware of any pressure being placed on Ms Quilter or the Commissioner by the Minister or anyone on her behalf.

[245] On 20 October 2011 there was a headline in the *Herald* "Police minister 'disappointed' in SFO boss".<sup>53</sup> The article said that the minister was disappointed in the Serious Fraud Office boss for celebrating the charges against Mr Petricevic with Bridgecorp champagne and that the minister did not expect the behaviour to be repeated. It was reported that Ms Collins had stated Mr Feeley "now knew why his actions were inappropriate, but that she would raise the matter with him."<sup>54</sup>

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<sup>53</sup> Claire Trevett "Police minister 'disappointed' in SFO boss" *The Herald* (online ed, Auckland, 20 October 2011).

<sup>54</sup> The statement that the minister made to the *Herald* has already been quoted in full at [38] and does not need to be repeated.

[246] The following day Jock Anderson reported in the *National Business Review*.<sup>55</sup>

Ms Collins is known to be furious with Mr Feeley's inappropriate and embarrassing conduct, so his future may be bleak if he cannot keep Ms Collins' confidence.

In response to a section 20 notice Mr Anderson said that he was sure that Ms Collins did not personally tell him she was furious with Mr Feeley, but others had on an "unattributable basis".

[247] The Minister and Mr Feeley met on 27 October 2011. Between 30 September and 27 October there had been no contact between them apart from Mr Feeley's emailed apology on 1 October. Mr Feeley told the inquiry that he felt "really nervous that she didn't want to speak to me" (on 30 September 2011) and that he was somewhat alarmed because rightly or wrongly he thought the matter was becoming elevated to a level that was not warranted. He regarded himself as "persona non grata" with the Minister until the SSC's investigation was completed.

[248] Mr Feeley thought that Mr Rennie was also present when he and the Minister met on 27 October 2011. He is probably mistaken because Mr Rennie had no recollection of attending the meeting and Mr Herrick recalled that the meeting was only between the Minister and Mr Feeley.

[249] In any event Mr Feeley told the inquiry that he was surprised by Minister Collins' reaction:

... she smiled at me and said, "Adam, do you have something to say to me?" and I said, I obviously wanted to reiterate the apology that I sent you some weeks back. I think something to the effect that my conscience is clear in terms of the probity of my behaviour, but it was unwise, given the events that had been around the office and the adverse conclusions that people could and indeed have drawn. From recollection, I don't think I spoke for a particularly long time before she kind of climbed into the conversation and went on to say ... something to the effect that, you know, "you will always be the target of criticism. You know, SFO is doing good work and we can't have it undermined", words to that effect.

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<sup>55</sup> Jock Anderson "Feeley's deal expires in a year" *The National Business Review* (online ed. New Zealand, 21 October 2011).

When asked whether there was an element of “ticking off”, Mr Feeley agreed that there was, but added that there were no raised voices and nothing aggressive about it. He described the Minister’s attitude as “stern, but as I said, pretty civil”.

[250] Although he was not present at the meeting Mr Herrick recalled the meeting between the Minister and Mr Feeley. Overall he did not detect a great deal of tension by the Minister towards Mr Feeley at the time. While the Minister had been disappointed when the issue concerning the champagne bottle matter arose, his recollection was that “this blew over very quickly”.

*State Services Commission performance review of Mr Feeley in 2011*

[251] This annual review commenced before the champagne bottle incident reached the media and arrangements had been made by Ms Quilter to discuss Mr Feeley’s performance with Minister Collins on 5 October 2011. However, when the champagne bottle incident surfaced the performance review was deferred pending the SSC’s investigation.

[252] After the SSC’s investigation had been completed the performance review resumed. Ms Quilter and the Minister discussed Mr Feeley’s performance on 8 November 2011. The draft record of that meeting records the Minister’s views:

Adam and his people work effectively with the Minister’s office. The relationship is harder to manage, given the location of the Serious Fraud Office (SFO) in Auckland. This also means that the Office is not as well attuned to public sector practices and ministerial expectations. For example, the Minister’s Office only received a day’s notice that Adam was planning on travelling overseas. The SFO is aware of expectations now and generally keep the Minister’s office well informed.

The SFO is in a far better state than it was before. The Minister’s disappointment would have to be around adherence to public service standards of behaviour, as shown by the champagne e-mail and some of the culture in the Office. There are still some disgruntled staff in the SFO and this makes it more important that the public profile of the Office rests on what has been achieved – not what will be achieved. Adam is sharing the public profile load with some of his senior leaders which is good, and ensures that the SFO is seen as bigger than one person. Less media coverage would be good. The Minister is concerned that the SFO has a culture of professionalism, not just in their work but in the way they behave.

Adam has good relationships with his counterparts in the justice and financial enforcement sector, for example with NZ Police, the Companies

Office and the FMA.<sup>56</sup> It is important to have a good relationship with Sean Hughes and the FMA and Adam has done good work on preparing a memorandum of understanding. This has not been signed yet (the delays are outside Adam's control) and it will be important to get this done so that responsibilities are clear and duplication is reduced.

The SFO does not appear to have a clear view on what is needed in terms of finance, and needs one – and to be straightforward about saying what they need. The critical issue going forward is for Adam to overcome the less desirable behaviour in the Office and be seen to be effectively leading the SFO and getting the work done. There have been a number of staff changes, and that may be sign of a problem.

Adam has lifted the performance and profile of the SFO and performance is vastly improved on a year ago, but the Office needs to be settled a little more, and to remember it is not a commercial agency, but a law enforcement arm of government.

Again the notes of the meeting were checked by the Minister for accuracy after the meeting.

[253] It was Ms Quilter's opinion that Minister Collins had conducted that meeting "professionally and appropriately" and that the Minister had been able to contextualise the year's performance and the results the SFO had achieved "really well". The final SSC performance review for Mr Feeley for the period up to 29 November 2011 was very favourable to Mr Feeley.

*Responsibility for the SFO is transferred to Minister Tolley*

[254] Minister Collins became the senior minister within the justice sector when she became the Minister of Justice and handed over responsibility for the SFO to Minister Tolley in December 2011.

[255] Minister Tolley told the inquiry:

My recollection is that she talked to me about Adam and the Serious Fraud Office, the difficulties that they had encountered in that office with the reorganisation, dealing with the collapse of the finance companies. It was a glowing report on Adam and his performance, because he had reshaped the whole department and lifted the profile of SFO in the commercial sector. It was a difficult relationship because they were based in Auckland and so therefore they weren't part of Government and weren't – and Adam was deliberately chosen because he was a person who thought outside the box and didn't work in the typical Wellington way. So all the feedback that I got

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<sup>56</sup> Financial Markets Authority.

from Judith around Adam and the SFO were positive, other than those two incidents ...<sup>57</sup>

*Mr Feeley's resignation*

[256] Minister Tolley told the inquiry that when Mr Feeley told her that he was resigning she was disappointed because “he had done a good job” and she “rated him as a chief executive.” Minister Tolley said that when she informed Ms Collins of Mr Feeley’s resignation Ms Collins also expressed disappointment.

[257] As recorded earlier<sup>58</sup> the State Services Commissioner was complimentary when Mr Feeley resigned. He noted that Mr Feeley had transformed the SFO and put clear performance measures in place during a period of record workload for the organisation. Mr Feeley had also reaffirmed public confidence in the SFO by successfully prosecuting high profile cases and forging constructive relationships with other agencies.

*Analysis of the evidence*

[258] Taken at face value the relevant paragraph in Mr Slater’s 5 October 2011 email constitutes evidence that Ms Collins was undermining or attempting to undermine Mr Feeley’s tenure as director of the SFO. According to the email the Minister had conveyed to Mr Slater that she was “gunning” for Mr Feeley, seeking evidence as to Mr Feeley’s background, and had added the staff turnover issue to the matters to be reviewed by the SSC. In addition, she was “on a trawl” looking for anything else.

[259] Provided they are also taken at face value, the two emails sent by Mr Slater on 3 October 2011 support the email of 5 October 2011. According to those emails the Minister had shared with Mr Slater that she was “livid”, was “gunning hard” for Mr Feeley, and she wanted him “gone”. Similar sentiments were also repeated in Mr Slater’s 7 October 2011 email.

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<sup>57</sup> The champagne bottle and Mr Hubbard’s biography matters.

<sup>58</sup> At [46].

[260] Apart from some of the oral evidence given to the inquiry by Mr Slater, those emails represent the only evidence capable of supporting the proposition that Ms Collins was undermining or attempting to undermine Mr Feeley's tenure. An extensive search of Ms Collins' electronic and Parliamentary records did not reveal anything of relevance.

[261] It is now necessary to determine whether or not the emails sent by Mr Slater provide probative evidence against Ms Collins. As already explained, it would be unsafe and unfair to simply take the emails at face value. Thus, before any sound conclusions can be reached, the contents of the emails have to be tested against the other evidence before the inquiry.

[262] The evidence is clear that before the champagne bottle matter hit the media there was a good working relationship between the Minister and Mr Feeley. In short, the Minister was pleased with the way Mr Feeley was handling a very difficult role, the only negative note relating to his involvement with the media. But the evidence does not indicate that this was a major issue, with Mr Rennie describing it as "a relatively low level" concern. That is the background against which the champagne bottle issue arose.

[263] When the champagne bottle incident came to the attention of the Minister she had every reason to be angry and disappointed. It is clear from the evidence that no minister likes "surprises", especially immediately before an election. Obviously the revelations about the champagne bottle incident came as an unwelcome surprise to the Minister and there was a very strong possibility that they would be exploited by opponents. Apart from that, there was every chance that a positive message about crime statistics that were to be published on the Monday morning (3 October 2011) would be derailed. Minister Collins also had a reputation for having agencies and their leaders working well. Faced with that situation it is hardly surprising that the Minister referred the matter to the SSC and her office advised the media accordingly.

[264] In his role as Mr Feeley's employer Mr Rennie considered that in all the circumstances the action taken by the Minister was appropriate, and that view was supported by Ms Quilter. Ms Collins also explained that one of the purposes behind

referring the matter to the SSC was to turn down the temperature of media interest. Given the forthcoming election it is easy to understand the point that Ms Collins is making.

[265] Subsequently there were reports in the media that Minister Collins was “furious” (or, as described in Mr Slater’s email of 3 October 2011, “livid”). If that was her reaction then it must have escaped Mr Rennie, who is a very senior and experienced official. When Minister Collins rang him on 30 September 2011 she was “calm and measured”. It must also have escaped the attention of Mr Herrick who was in close contact with her. Having reflected on this aspect, I believe there was an element of exaggeration by the media and Mr Slater, probably based on what they expected the Minister’s attitude would be.

[266] But in the overall order of things I do not believe that the intensity of the Minister’s reaction is pivotal to the issue under consideration. Whatever her reaction, the critical issue is whether the Minister undermined or attempted to undermine Mr Feeley’s tenure as director of the SFO. Having assessed the evidence as a whole, I am satisfied that the implication in the emails that Ms Collins was undermining or attempting to undermine Mr Feeley is unreliable and untenable. This reflects a number of factors.

[267] First, Ms Collins was a very experienced and senior Cabinet minister. While she obviously considered the champagne bottle incident to be a serious matter, the last thing she would have wanted was for the issue to become part of a political debate leading up to the election. To the contrary, she wanted to downplay the matter. It defies common sense that having referred the matter to the SSC Ms Collins would have then taken the active steps to undermine Mr Feeley ascribed to her by Mr Slater.

[268] Secondly, even allowing for the fact that the Minister was concerned and disappointed about the matters that led to the media publicity, the evidence before the inquiry (apart from the emails) indicates that Minister Collins was supportive of Mr Feeley throughout his tenure as director of the SFO. Any suggestion that she was undermining or attempting to undermine him is incompatible with the evidence

of Mr Rennie, Ms Quilter, Mr Herrick and Minister Tolley, all of which is entirely consistent with the documentary record (apart from Mr Slater's emails). In my view the evidence of these witnesses is reliable and reflects the reality of the situation.

[269] Thirdly, some of the statements contained in Mr Slater's emails are demonstrably wrong. An obvious example is the statement in two of the emails that Ms Collins had added the issue of staff turnover to the matters under review by the SSC. Ms Quilter told the inquiry that this had not happened and her evidence is consistent with the documentary evidence before the inquiry. The suggestion that the Minister was feeding Mr Slater information provides another example. Having referred the matter to the SSC, it is difficult to see how the Minister could have been feeding anything of interest to Mr Slater. Indeed, he effectively conceded that this was so.

[270] Fourthly, Mr Slater acknowledged that some of the statements in the emails had been invented by him. Those matters will be discussed in greater detail when question 2 is considered and it is unnecessary to detail them now. Suffice to say, while there were discussions between Ms Collins and Mr Slater concerning Mr Feeley, these fell well short of establishing that Ms Collins undermined or attempted to undermine Mr Feeley. For present purposes the point is that the acknowledged inventions by Mr Slater further undermine the reliability of the emails (which, in any event, do not stack up against the other evidence before the inquiry).

[271] Fifthly, I formed the impression that when Mr Slater commits to advocacy on a particular topic, he pursues the matter with single-minded vigour coupled with a relatively closed mind. He is also prone to exaggeration. These impressions are based on a number of matters. Mr Slater's blogs relating to Mr Feeley tend to speak for themselves. Once Mr Slater formed the view that Mr Feeley had stolen the bottle of champagne he committed to that view with considerable intensity, regardless of whether his stance was justified. As he said to the inquiry, the revelations about Mr Feeley were a "free hit ... just because [they were] there". I was also able to form impressions about Mr Slater's approach to matters during the course of his interview. Further insight about Mr Slater was provided by Ms Collins when she



was interviewed. She has known Mr Slater very well for a long time. Mr Graham was also able to offer some further insight.

[272] The final point concerns Mr Slater's evidence. When he was interviewed by the inquiry he was in the unenviable position of trying to justify the contents of some of the emails while at the same time doing what he could to protect Ms Collins. On top of that he was trying to remember conversations that took place about three years ago. While I believe that Mr Slater was genuinely trying to assist the inquiry, I decided that his evidence should be approached with great caution, especially where it conflicted with other evidence or the documentary record. However, having said that, there was little in Mr Slater's evidence that directly supported the proposition that Ms Collins had undermined or attempted to undermine Mr Feeley.

#### *Conclusion*

[273] At face value the email sent by Mr Slater on 5 October 2011, coupled with his other emails on 3 and 7 October 2011, might be seen as supporting the proposition that Ms Collins undermined or attempted to undermine Mr Feeley's tenure as director of the SFO. However, once the actions attributed to Ms Collins in those emails are tested against the evidence as a whole, it becomes apparent that they cannot be reconciled with the other evidence. All the other evidence (apart from some of Mr Slater's evidence) is consistent and much of it is supported by the documentary record.

[274] It follows that the allegations contained in the emails are unreliable and there is no cogent evidence to support the proposition that Ms Collins undermined or attempted to undermine Mr Feeley. Nor is there any other evidence that Ms Collins was involved in the efforts to undermine Mr Feeley by staff/former staff of the SFO or Mr Slater and others.

**Whether Ms Collins provided information about Mr Feeley during his tenure as director of the SFO to Mr Slater or any other party who did not have a proper entitlement to receive such information**

*The terms of reference*

[275] For Ms Collins, Mr Cooke submitted that this question should not be read in isolation from the other questions or from the introductory paragraph. He argued that this question is not directed to Ms Collins expressing opinions, or making adverse comments about Mr Feeley, or to the dividing line about when ministerial comment is or is not appropriate. Rather, it is concerned with the provision of “information” as part of the efforts by Ms Collins to undermine Mr Feeley. In setting up the inquiry the Prime Minister was not seeking advice on matters of political judgement.

[276] While I accept that there is strength in Mr Cooke’s argument, I have concluded that the question under consideration is wider than he contends. On my interpretation the introductory paragraph of the terms of reference serves as a context for the specific questions and each question needs to be considered as it stands.

*Expert evidence*

[277] Because the terms of reference, particularly this question, raised issues upon which expert knowledge might assist, Sir Maarten Wevers was asked to share his expertise. Sir Maarten spent approximately 10 years in the Beehive in various roles. He was chief executive of the Department of the Prime Minister and Cabinet for four and a half years under the Clark administration and three and a half years under the current administration. I am very grateful to Sir Maarten for his assistance.

[278] Sir Maarten told the inquiry that ministers have to behave in a manner that upholds the performance standards in the Cabinet Manual and the impartiality of the State Service. Having a chief executive under public attack by ministers is not proper. But that is not the same as a performance issue which should be raised with the State Services Commissioner.

[279] On many occasions, said Sir Maarten, ministers talk in public about how well a chief executive is doing his or her job and questions about that type of issue also arise in the House. The critical qualifier is whether the person receiving the information is entitled to it, which depends on the nature of the information. This is a matter of judgement for the minister.

[280] Interaction between ministers and the media is fundamental to democracy. There is no hard and fast approach. The bottom line involves an exercise of judgement. Every day is different and context is critical. Sir Maarten said if a matter is already in the public domain it can be “quite hard for the minister to stay quiet”. Again, it is a matter of judgement. Similarly, a minister also has to exercise judgement when talking to family or friends.

[281] Mr Rennie was also able to share his expertise about the management of chief executives in the state sector and I am grateful to him for doing so. He first joined the public service in 1986 and has been State Services Commissioner since 2008.

[282] The tripartite relationship under the State Sector Act between a minister, the Commissioner, and a chief executive, was explained by Mr Rennie. While the SSC has responsibility as the employer of chief executives, ministers remain politically answerable. There is no clear dividing line between those two areas of responsibility and ultimately it is a matter of judgement as to whether a matter comes within the minister’s area of responsibility.

### *Cabinet Manual*

[283] Sir Maarten confirmed that the Cabinet Manual is authoritative. It is the “bedrock” for Executive Government and the expected standard of behaviour for ministers.

[284] By way of general comment, clause 2.50 of the Cabinet Manual states that ministers must conduct themselves “in a manner appropriate to their office”. Sir Maarten confirmed that this paragraph indicates that a high standard of conduct is expected.

[285] Clause 2.62 states:

A conflict may arise if people close to a Minister, such as a Minister's family, whānau or close associates might derive, or be perceived as deriving, some personal, financial or other benefit from a decision or action by the Minister or the government. Ministers must therefore be careful not to use information they access in the course of their official activities in a way that might provide some special benefit to family members, whānau or close associates.

Sir Maarten noted that ministers receive an enormous amount of information and the appropriate use of it depends on the nature of the information and what the benefit might be.

[286] Except to the extent that the Cabinet Manual indicates that high standards of conduct are expected of ministers, it is of limited assistance in determining the issues before this inquiry.

#### *Context*

[287] As is apparent from the evidence of both Sir Maarten Wevers and Mr Rennie, context is important when considering the appropriateness or otherwise of ministerial conduct. With that in mind a number of contextual matters should be noted.

[288] The first contextual matter relates to Mr Feeley's visibility in the media prior to the champagne bottle controversy.

[289] On 18 September 2010 the *Herald* reported that the SFO was "coming out of the shadows" and that its chief executive, Mr Feeley, had decided to accelerate efforts begun by his predecessor to make the office more visible.<sup>59</sup> This was followed by an article in the same paper on 8 November 2010 "Adam Feeley – the fraud buster"<sup>60</sup> which referred to Mr Feeley's new media strategy aimed at allowing the public to see the SFO's responsiveness to potential fraud. Another article in the

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<sup>59</sup> John Armstrong, "Political diary: One week in the life of NZ politicians" *The New Zealand Herald*, (online ed, Auckland, 18 September 2010).

<sup>60</sup> Karyn Scherer, "Adam Feeley – The fraud buster" *The New Zealand Herald* (online ed, Auckland, 8 November 2010).

*Herald* on 3 December 2010<sup>61</sup> talked about a new willingness to tell the media and public about investigations the SFO is pursuing. On 25 December 2010 a post on Stuff noted that since Mr Feeley had become director a year ago “the SFO has been unusually open where it can”.<sup>62</sup>

[290] Not all the publicity was favourable. For example, on 22 June 2011, Ms O’Sullivan’s column in the *Herald* asked whether Mr Hubbard would receive a fair trial.<sup>63</sup> She wrote:

On Monday, Feeley's office resorted to a "Hollywood" - a slogan dreamed up by a former SFO director to cover his office's practice of issuing a "whisper" so reporters were prepared for an announcement.

Other comments in the same article referred to the “SFO’s spin-laden press release.”

[291] The next matter relates to publicity surrounding the champagne bottle incident.

[292] When Mr Feeley was first approached by Mr Savage of the *Herald* on Friday 30 September 2011 for comment, a member of his staff responded:

The investigation into Bridgecorp was one of the largest in the SFO’s history, demanding long hours and great commitment from the staff. At the conclusion of the project, it was appropriate to acknowledge the efforts of staff on this matter. In that particular case, it involved a modest number of drinks on a Friday evening with the SFO offices.

It was indicated in the response that it could be attributed to Mr Feeley (later this response attracted the scathing comment from Ms O’Sullivan in her *Herald* column that “no self-respecting journalist would be fobbed off by such ridiculous flannel”).<sup>64</sup>

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<sup>61</sup> Adam Bennett “Update 100-year-old law, says SFO” *The New Zealand Herald* (online ed, Auckland, 3 December 2010).

<sup>62</sup> Fiona Rotheram “The panting watchdog manages to snarl” (25 December 2010) Stuff <[www.stuff.co.nz/business/industries/4493991/The-panting-watchdog-manages-to-snarl](http://www.stuff.co.nz/business/industries/4493991/The-panting-watchdog-manages-to-snarl)>.

<sup>63</sup> Fran O’Sullivan “What odds for a fair trial for Hubbard?” *The New Zealand Herald* (online ed, Auckland, 22 June 2011).

<sup>64</sup> Fran O’Sullivan “More than storm in champagne flute” *The New Zealand Herald* (online ed, Auckland, 5 October 2011).

[293] Mr Savage was not satisfied that the above response answered his enquiry and sought further information. As a result Mr Feeley provided the following statement during the evening of 30 September 2011:

I understand you have made an inquiry regarding a bottle of Gosset which was drunk following the conclusion of the Bridgecorp investigation.

The explanation is quite simple. During the first six months of the Eden Park redevelopment, the redevelopment team was based in the former headquarters of Bridgecorp – John Waller being both the liquidator of Bridgecorp and the Chairman of Eden Park Redevelopment.

Three or four bottles of champagne were left behind after the sudden exit of the directors following liquidation. One bottle was kept with the expectation that it would be drunk at the conclusion of the project.

By quirk of fate, I ended up at SFO before the completion of the project, and considered that – there being no better claimant to the bottle – it was not unreasonable to recognise the completion of a major investigation and the efforts of the staff with a drink.

I would struggle to think that any reasonable person would consider a \$70 bottle of wine an outlandish recognition. Equally, in the context of a \$460M failed company, I doubt that any reasonable person would take issue with the use to which the drink was put.

Next morning the champagne bottle matter featured as the lead story in the *Herald* and became a matter of public controversy.

[294] Mr Cooke submitted that when chief executives conduct themselves in a way that causes public controversy because of suggestions they have acted improperly, public comment by politicians cannot be avoided, particularly when the chief executive has himself made a media release which has potentially inflamed the issue. He noted that there are no rules of conduct suggesting it is off limits for ministers to make public comment in this type of situation and the reality is that it would be impossible not to.

[295] He submitted that in this case it was not the Minister who had created the public controversy, but the actions of the chief executive. He noted that as part of the democratic system, ministers must be free to make comment on matters of controversy of this kind, including when they are the responsible minister. There was nothing inappropriate in the Deputy Prime Minister making comment or the Prime Minister supporting him. It was simply an inevitable part of the

Government's response to adverse publicity caused by Mr Feeley. Although Minister Collins did not agree with the "storm in a champagne flute" line and considered that the issue needed to be recognised as more serious, there was nothing inappropriate about the actions she took.

[296] When considering Mr Cooke's submissions it is, of course, important to take into account the full picture. After Minister Collins referred the matter to the SSC her office only released a brief statement to the media saying that she was unable to comment because she had taken this step. From that time until the SSC reported to her, there were no media statements from her or her office.

[297] In the meantime, however, she was talking to Mr Slater and, as will be found shortly, some of those conversations related to Mr Feeley. Obviously the Minister regarded them as private conversations and had no idea that they (or, perhaps more accurately, Mr Slater's version of the conversations) would be mentioned in Mr Slater's emails to other people. While none of the blogs on Whale Oil make any references to the conversations, the reality is that Ms Collins was talking to Mr Slater in circumstances where she considered it inappropriate to make any comment to the mainstream media.

*Did Ms Collins provide information about Mr Feeley to Mr Slater?*

[298] It will be seen that this question does not allow for the possibility that Ms Collins provided information about Mr Feeley to *any other party*. This reflects that there is no evidence at all that Ms Collins discussed Mr Feeley with any other party (beyond those in her office) during the course of the SSC's investigation.

[299] It is not disputed that Ms Collins and Mr Slater talked frequently, usually by telephone. This is reflected by their evidence and by the telephone records that are available. I accept that some of the conversations, perhaps many, related to purely personal matters that are irrelevant to the inquiry. At the time Mr Slater's mother was ill and Ms Collins was providing personal support to Mr Slater. Apart from that Ms Collins and Mr Slater each had a close relationship with a person that suffered from a medical condition that was uncommon and difficult to handle.

[300] Both Mr Slater and Ms Collins also had a common connection in politics via Mr Slater's father, who was a former president of the National Party. Ms Collins said that they spoke frequently about the political issues of the day. She indicated that Mr Slater had strong opinions and that many of the conversations involved him expressing his views and Ms Collins listening because she considered that this gave her some insights into "grassroots thinking". Mr Slater confirmed that he would often do the talking. Having interviewed both Ms Collins and Mr Slater, I am inclined to the view that this probably reflects the reality of many, but not necessarily all, the conversations.

[301] Soon after Mr Slater's blog "Cactus Kate on Five Fingers Feeley" was posted on 2 October 2011 there was a telephone conversation of almost 15 minutes between Ms Collins and Mr Slater. Ms Collins said that given Mr Slater's post the day before (which was critical of the *Herald's* coverage) she was "really surprised" to see the post and that:

If I have said anything to him on this matter it will be I have sent it to the SSC, that is where it has to be, and I am not going to tell you anything more Cameron I can't. That is exactly what I would have said to him. I might have said, what has happened between Saturday and Sunday but that would be about it, and there is just no way that I would say anything other than that which is the same thing I had said to the other media pretty much, not obviously the last bit. I can't say anything because it is with the SSC, I just couldn't do it.

In response to a question about whether she might have expressed displeasure at Mr Slater's change of attitude, Ms Collins said that she might well have done that.

[302] Ms Collins said that she had no memory of any discussion with Mr Slater about Mr Feeley. Nevertheless, she said, it was a really serious matter and the last thing she wanted was for stories like this to be put up. If she spoke to Mr Slater at all, it would have been along the lines, "Why have you changed your mind from Saturday to Sunday, why are you doing that?" She noted that she and Mr Slater were at odds on this matter and that her interest was in "shutting it down".

[303] Later in the interview Ms Collins said that her mood on the Sunday after reading the blog would have been "exasperation ... we were trying to shove it away for a few weeks, preferably until after Parliament had finished, and here he was



making it worse.” She would have been annoyed with Mr Slater for running the story in the way he did.

[304] Having reached this point it is now necessary to look at Mr Slater’s evidence about the particular emails that lie at the heart of this inquiry. The best way to do this is to quote some of the exchanges that occurred when Mr Slater was interviewed by the inquiry. Unfortunately, it involves repeating some of the information that has already been traversed in this report.

[305] When Mr Slater was questioned about the statement in his email of 3 October 2011 that Ms Collins was “gunning hard” for Mr Feeley and that she was “disgusted by his indifference”, the following exchanges took place:

Q. Well the words “gunning hard” are fairly specific. Do you recall this conversation?

A. No, I don’t recall the conversation directly. I’m putting pieces together from three years ago basically. But my impression was, I mean when I spoke to her about this sort of stuff it would have been along the lines of exactly what I’ve described where I said, “Well, you know we already talked about the newspaper coverage and things like that”. She certainly never intimated to me ever about any particular actions she may or may not have taken and I think there’s public statements out there from the State Services Commission around this in that everything was properly documented and highlighted in this regard.

Q. At this point though, they’re not in the arena. So there are two statements here “gunning hard” and “disgusted by his indifference”.

A. Gunning hard would be my terminology. It’s an inference.

Q. Based on what?

A. Look, I – it would be phone conversations, it would be very brief conversations.

Q. With the Minister?

A. Yes.

Q. “Disgusted by his indifference”?

A. That he didn’t see any problem with taking a bottle of wine that was the property of an organisation that was under investigation by the Serious Fraud Office.

- Q. Is your recollection that the Minister must have said something to that effect to you?
- A. That would be my recollection. But again it would be a conversation in passing that I'd passed onto Jared Savage to blow smoke – you know, basically puff myself up rather than the actions of Judith Collins. She absolutely is so particular about following the rules and maintaining that distance. ...

Mr Slater went on to say that on many occasions he had rung Minister Collins seeking information and had been told by her to put in a request under the Official Information Act.

[306] The email of 3 October 2011<sup>65</sup> was also discussed:

- Q. The next paragraph, "I spoke with Judith Collins yesterday about the case and she is livid."
- A. Yes.
- Q. That's quite a strong phrase?
- A. Yes.
- Q. Can you recall that conversation or is that the same one?
- A. This is in October, this is three days - two days – three days after the story broke. It's probably the same information that I'd already passed onto Jared Savage that she was upset, that he was taking that ambivalent approach to the fact that he was the head of the, you know, premiere law enforcement agency in New Zealand and that he didn't seem to think there's anything wrong with, you know, perking a bottle of wine ...
- Q. You gained the impression that she was very angry?
- A. I think she was angry, the fact that he was indifferent about it. That's my impression and I think she was angry with the fact that he was constantly in the media talking about it.
- Q. Did she say those things?
- A. That she'd referred Feeley to the State Services Commission? I believe she did say that.
- Q. No, that she was livid and that he was constantly in the media?
- A. It's my impression that she did say those.

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<sup>65</sup> In which Mr Slater said that he had spoken with Ms Collins about the case and she was "livid"; the Minister had referred Mr Feeley's conduct to the SSC; "wanted him gone" and was now feeding Mr Slater information.

- Q. ... so she would have told you that she referred him to the State Services Commission?
- A. Well that was a matter of public record.
- Q. And she wants him gone?
- A. That's me talking it up.
- Q. Talking it up from what basis?
- A. From nothing.
- Q. From nothing?
- A. She would never had said to me, she's never said it to me about anybody, anywhere in the State Service that she wants somebody gone.
- ...
- Q. So the next statement and I'm just going to take you through each one of these. "She is now feeding me information in regards to this"?
- A. That's not true.
- Q. So that's not based on anything she said?
- A. Not based on anything she said ...
- Q. The next paragraph refers to Bill English's comment about it being a storm in a teacup, which has set off Judith Collins, she is now "gunning not only for Feeley but also for English." Now accepting you've already told us that "gunning" is your phrase, not hers –
- A. That's my phrase.
- Q. – but is the sentiment correct there?
- A. There's no love lost between Bill English and Judith Collins. That's not even a secret of any import anywhere within politics. It's known that they dislike each other.
- ...
- Q. What gave you the impression that she was gunning now not only for Mr Feeley but also for Mr English?
- A. Well we would have discussed, we would have had a discussion and she would have said something along the lines of, "Did you see what Bill English said? How dare he talk about this. It's not a small matter, this is somebody stealing a bottle of wine" around that. And of course then I've supplied a version of that to a client. I've talked up my relationship with Judith Collins, I've overblown my personal relationship ...

[307] Not surprisingly Mr Slater was questioned extensively about the email of 5 October 2011. It will be recalled that in this email Mr Slater said Ms Collins was “gunning for” Mr Feeley, was seeking further information, had added the staff turnover to the SSC review, and she was on a “trawl” for anything else.

[308] With reference to that email the following exchanges occurred:

Q. Now we'll go down to the paragraph at the bottom of the page, which is central to this inquiry. First you record you spoke at length with the Minister?

A. Yes.

Q. How did that conversation take place? The person to person telephone call, or would it have been some other way?

A. It would have been by telephone.

...

Q. The words “at length” suggest to me that it wasn't just a passing conversation but deeper at least in terms of length?

A. ... At length in this context would possibly be 10 to 15 minutes. ...

...

Q. Now we have a repeat of the words “gunning for”?

A. Yes, that's my words. That's not a term or phrase that she would ever use. Ever.

Q. But were they a pure creation on your part or arising from what she had said?

A. Well it's an amalgam of what – the displeasure that she would have passed onto me, especially around him being in the media all the time and also the comments that I received from Jared Savage and also just having a long-term knowledge of Judith Collins. I'm actually putting – I'm putting my words around things and embellishing them and it's cost her her job.

...

Q. So how did you know that there was a concern about him being in the media all the time?

A. I've heard this from several people, not just from Judith Collins. It's the impression that I've gathered ... Judith Collins did say to me at one point that she found this disquieting that he was conducting his job in the public domain and it's her view that he should be conducting his job in his office.

...

Q. Now "Any information that we can provide her on his background is appreciated."

A. That's me talking again. I'd certainly never provided her any information other than that which was either in the public domain and we were discussing what was the in the public domain or what I believed was about to become in the public domain from my discussions with Fran O'Sullivan or Jared Savage or anybody else. Jock Anderson at the *NBR*.

...

Q. "I have outlined for her a coming blog post about the massive staff turnover", a couple of questions from that. First, was that a post that you had at that stage drafted or was it in your mind?

A. Yes. No, I drafted it.

Q. What did you tell the minister about that?

A. That this is going to be published tomorrow.

...

Q. The words are fairly specific, "she has added"?

A. Yes, but that was in the public domain at the time and I haven't verified the timeline on that. That was in the public domain, that there was a review about the staff turnover. Then it's an assumption on my part that she added that. These are again my words. I can't say whether or not, you know, I can't recall whether or not we discussed that.

Q. Is it possible that you did discuss that aspect?

A. Oh, it's possible, but again what we're seeing here though is the actions of a minister who is doing things properly, using the State Services Commission to handle staffing issues.

Q. Further on, "She is using the review of these events to go on a trawl looking for anything else"?

A. Yes, I'm not sure that that came from her. It's not the sort of thing that she does. ...

Coupled with the email of 5 October 2011 is the email of 7 October 2011, which seems to refer to the same conversation between the Minister and Mr Slater. Given that the information alleged to have been provided was essentially the same there is no need to discuss the exchanges at the inquiry concerning the latter email.

[309] Ultimately the interview returned to whether Ms Collins had said to Mr Slater that she wanted Mr Feeley “gone”:

Q. Well his future, I understood from you, was discussed between Ms Collins and you?

A. I don't believe we discussed his future about whether he should be gone or not. I don't think that's an appropriate assumption that can be made. We were talking about items that were in the public domain and then I was picking up a feeling and intimation/tones from her, you know. I mean she has an imperious nature, for want of a better term, and you certainly know when you're being spoken to sternly or you're getting that impression that there is some unhappiness there. But it's not overt. These are perceptions that I'm picking up as a people watcher or a listener or an observer. But certainly no overt discussions about the future of anybody. She has never spoken to me about anybody in that manner ...

Q. Now I want to be clear here, though. Are you saying that your impression as to her attitude was reflected by her tone or by the matters discussed?

A. By her tone, not by the matters discussed.

Q. Do you say the matters weren't discussed at all?

A. No, I'm not saying they weren't discussed at all, but they're not being discussed in the manner that you're ascribing and that's –

Q. Well tell me again, what do you think was discussed on the 5<sup>th</sup> of October?

A. Well we're discussing what had transpired in the previous four days in the media, or five days in the media, about what was in the public domain. She was expressing to me her feelings, I guess, and I was getting those from her tone, that she was displeased. I've already stated that she thought that he should just get on with his job and stop speaking to the media. I'm not sure but I'm pretty certain that that was out there in the public, not necessarily at that time but subsequently.

Q. Well if it was subsequent though, it couldn't have been in the public.

A. No, that's right.

Q. So as far as the media was concerned, do you think that must have come from her by word of mouth rather than her tone of voice?

A. In as far as the media was concerned?

Q. Mr Feeley being in the media too much?

A. ... But certainly as I've said, nothing overt that was being discussed. She never said anything along the lines of, “Right, I'm going to get

him” or “I’m gunning for him” or anything like that. Those are my words. They’re me overegging a casual conversation and there is no way ... there’s no way that Judith Collins was actively working against Adam Feeley or the Serious Fraud Office in any way, shape or form.

After those exchanges Mr Slater said that he could not put words into a three year old conversation. He just knew how Ms Collins operated, how ethical she was, and how much of a stickler for the rules she was.

[310] Now I turn to Ms Collins’ response, some of which has already been outlined. As mentioned earlier, before she was interviewed Ms Collins was provided with a copy of all the emails discussed above. During the interview she was given an opportunity to read those parts of the transcript of Mr Slater’s evidence that included the passages quoted above. She then responded to each of those passages.

[311] In broad terms Ms Collins rejected any suggestion that she had said anything to Mr Slater that would suggest that she was livid with Mr Feeley, gunning for him, wanted him gone, or was on a “trawl” for information against him. She emphasised that those allegations were the complete the opposite of what she was trying to achieve. Having referred the matter to the SSC it would have been inappropriate for her to have discussed anything with Mr Slater.

[312] Ms Collins was certain that Mr Slater had made up many of the things attributed to her. Alternatively, he had read things into her decision to refer the matter to the SSC. She also thought he might have interpreted her tone as indicating that she was in a “really bad mood” about Mr Feeley, but in reality she was frustrated by Mr Slater’s blogs. Ms Collins believed that it suited Mr Slater’s story to tell his friends “that he has great contacts and he can do whatever he likes and, you know, he can be the added member of their team. That’s the way I see it. And he’s using my name to do it.”

[313] Now it is necessary to reach findings about the information concerning Mr Feeley that Ms Collins passed on to Mr Slater.

[314] Although she cannot specifically recollect the conversation, Ms Collins accepts that she might have discussed Mr Slater's blogs against Mr Feeley. Given that there was a lengthy conversation soon after the Sunday blog against Mr Feeley, it is highly likely that this matter was discussed. Indeed, in all the circumstances it would probably have been very surprising if Ms Collins' decision to refer the matter to the SSC and Mr Slater's blogs were not discussed. I also believe that as the days went by, and the controversy about Mr Feeley continued to rage, there would have been further conversations about those matters. Given the lead up to the election, political matters were probably discussed as well.

[315] On the other hand, I do not accept that Ms Collins said anything that justified Mr Slater's emails stating that she was livid with Mr Feeley, was gunning for him, wanted information about him, had added the staff turnover issue to the matters to be investigated by the State Services Commissioner, or was "on a trawl" for information. Those statements simply do not fit the evidence, especially the evidence reflecting Ms Collins' attitude towards Mr Feeley at the time. While Ms Collins was undoubtedly upset and disappointed that the champagne bottle had arisen, she quickly referred the matter to the SSC and, apart from announcing that this step had been taken, maintained a public silence. Once the SSC reported she remained supportive of Mr Feeley.

[316] My interpretation is that the statements attributed to Ms Collins suggesting she was conveying information about Mr Feeley's future to Mr Slater are embellishments by Mr Slater. While the precise range of factors that prompted him to make those statements is debatable, a number of matters are apparent from the evidence. Mr Slater wanted to "talk up" his association with Minister Collins. Once he reached the conclusion that Mr Feeley has stolen the bottle of champagne, he strongly believed that Mr Feeley should be accountable and could no longer remain as director of the SFO. Mr Slater was also firmly of the view that Minister Collins would not tolerate such conduct and would take strong action. Finally, the Minister's tone during the telephone conversations about Mr Feeley commencing on 2 October 2011 confirmed to Mr Slater that she was unhappy (although he misconceived the underlying reason), and it is unlikely that her tone would have improved as the controversy and Mr Slater's attack on Mr Feeley escalated.



[317] Whatever the explanation underlying Mr Slater's emails, there is no reliable evidence that Ms Collins made statements to Mr Slater about Mr Feeley's position within the SFO. As I have noted earlier in this report, she was a very senior and experienced minister who would have been well aware of the danger of embarking on such conduct. The reliable evidence before the inquiry supports the proposition that no such statements were made.

[318] As a result of the foregoing, I find that information relating to the following topics passed between Ms Collins and Mr Slater :

- the champagne bottle matter had been referred to the SSC;
- Mr Slater's blogs attacking Mr Feeley and why he had changed his stance;
- the media controversy as it evolved; and
- political matters in the context of the forthcoming election.

*Did Mr Slater have an entitlement to receive the information about Mr Feeley provided by Ms Collins?*

[319] When deciding whether Mr Slater was entitled to receive the information passed on by Ms Collins, it is necessary to take into account context and to consider the judgement that would have been exercised by a minister acting reasonably in all the circumstances. Adopting that approach I have no doubt that Mr Slater was entitled to receive the information conveyed by Ms Collins.

[320] "Entitled" in this context does not mean that Mr Slater had a *right* to receive this information. Rather, it refers to him not being a person who was "not entitled" to receive it, in the sense that it was not inappropriate for the Minister to provide it.

[321] On the evidence the first relevant discussion between Ms Collins and Mr Slater in which information was passed took place on Sunday 2 October 2011. By that time the fact that the matter had been referred to the SSC was in the public arena. Even if it had not been, it is difficult to see how there could be any problem if

this information had been given to Mr Slater before it was provided to the mainstream media.

[322] Similar considerations apply to any discussion concerning Mr Slater's change of mind about Mr Feeley's conduct and the content of Mr Slater's blogs. The blogs were already in the public arena and the Minister was undoubtedly entitled to raise these matters with Mr Slater, especially when she was politically accountable for any fallout. Whether or not she was wise to do so is beside the point.

[323] As the controversy escalated it was obviously open to Ms Collins to discuss it with Mr Slater. The evidence does not support the proposition that the Minister disclosed information about Mr Feeley's future. In any event, for most of the period under consideration, that issue was in the hands of the SSC. Again, it is unnecessary to comment on the wisdom of Ms Collins discussing the media controversy with Mr Slater.

[324] Finally, any discussions concerning political matters can be covered very succinctly. There is no evidence to link such discussions with Mr Feeley and under those circumstances they are outside the scope of this inquiry.

### *Conclusion*

[325] Although Ms Collins provided information concerning Mr Feeley to Mr Slater, there was nothing improper about the provision of this information. In all the circumstances Mr Slater was entitled to receive it (in the sense described at [320] above).

### **Whether Ms Collins inappropriately sought or received information about Mr Feeley from Mr Slater or any other party**

[326] Sir Maarten Wevers told the inquiry that ministers are always receiving information of one type or other and they cannot stop it coming in. He said that different issues arise if a minister seeks information. Where information is sought context is important. Sir Maarten commented that it is usually perfectly legitimate

for ministers to seek information about how the agencies for which they are accountable are performing.

[327] There is no evidence that Ms Collins inappropriately sought or received information about Mr Feeley from Mr Slater or from any other party. No further discussion is required.

**Identify and report on any other issues relevant to the above matters, to the extent necessary to provide a complete report on those matters**

[328] There are no such matters.

**Dated this 24<sup>th</sup> day of November 2014**



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**The Honourable Lester Chisholm**