SUPREME COURT OF QUEENSLAND

CITATION:	*Lee v Crime and Corruption Commission & Anor* [2015] QSC 226
PARTIES:	**ANTHONY LEE** (applicant) **v** **CRIME AND CORRUPTION COMMISSION** (first respondent) and **COMMISSIONER OF POLICE** (second respondent)
FILE NO:	No 2174 of 2015
DIVISION:	Trial Division
PROCEEDING:	Civil Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	4 September 2015
DELIVERED AT:	Brisbane
HEARING DATE:	21 April 2015
JUDGE:	Daubney J
ORDERS:	**1. The originating application is dismissed.** **2. The applicant shall pay the respondents' standard costs (including any reserved costs) of and incidental to the originating application.**
CATCHWORDS:	STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – GENERAL APPROACHES TO INTERPRETATION – GENERALLY – where the applicant is a Police Officer with the Queensland Police Service – where the first respondent provided notice that the first respondent would assume responsibility for the investigation of allegations against the applicant under s 48(1)(d) of the *Crime and Corruption Act* 2001 – whether the first respondent has power under s 48(1)(d) of the *Crime and Corruption Act* 2001 to assume responsibility for the investigation of the allegations against the applicant. *Crime and Corruption Act* 2001, s 15, s 20, s 33, s 34, s 35, s 41, s 42, s 45, s 46, s 48, s 49, s 50, s 51, s 219BA, s 219G, s 219I *Crime and Misconduct Act* 2001, s 48, 219G, 219H

	Crime and Misconduct and Other Legislation Amendment Act 2014 *Queensland Civil and Administrative Tribunal Act*, s 20, s 23
	Kabourakis v Medical Board of Victoria [2006] VSCA 301 *Kitching & Anor v Queensland Commissioner of Police & Ors* [2010] QSC 303 *Lee v Crime and Corruption Commission & Anor* [2014] QCATA 326 *Minister for Immigration v Bhardwaj* (2002) 209 CLR 597 *Minister for Immigration and Ethnic Affairs v Kurtovic* (1990) 21 FCR 193
COUNSEL:	P Davis QC and A Scott for the applicant R N Traves QC and EP Mac Giolla Ri for the first respondent C Capper (sol) for the second respondent
SOLICITORS:	Queensland Police Union Legal Group for the applicant Official Solicitor for the Crime and Corruption Commission for the first respondent Legal Division, Public Safety Business Agency for the second respondent

[1] The applicant has applied for a declaration that the first respondent ("the CCC") has no power under s 48(1)(d) of the *Crime and Corruption Act* 2001 ("the Act") or otherwise to assume responsibility for a particular investigation of certain allegations made against the applicant.

[2] Several preliminary points may be noted:

(a) As will appear, the circumstances of this case extend to a period prior to the commencement of the *Crime and Misconduct and Other Legislation Amendment Act* 2014 which had the effect, amongst other things, of transforming the Crime and Misconduct Commission ("CMC") into the CCC. Counsel for the parties were content for this matter to be determined on the basis of the current legislative provisions;

(b) The solicitor for the second respondent, the Commissioner of Police, informed me that the second respondent abides the order of the Court.

Background

[3] The factual background is uncontentious.

[4] On 18 January 2008, Ms Renee Toms ("the complainant") made a complaint to the Queensland Police Service ("QPS") alleging that while in the Whitsunday watchhouse she had been subjected to excessive force by Constable Benjamin Price ("Price").

[5] On 21 January 2008, the QPS Professional Practice Manager assigned the applicant to investigate the complaint. The applicant was instructed to conduct preliminary inquiries into the incident, including by viewing any video footage of the incident.

[6] On 26 February 2008, the applicant emailed a preliminary report to the Professional Practice Manager saying, amongst other things, that he had attempted to contact the complainant, that he had viewed CCTV footage of the incident, and that the CCTV footage corroborated the version given by Price. He said that the complaint was interwoven with charges before the court (i.e. charges against the complainant) and that no action should be taken until those proceedings were finalised.

[7] On 29 April 2008, the complainant pleaded guilty to various offences.

[8] The applicant then submitted a report to the Professional Practice Manager recommending exoneration of the officers involved in the incident.

[9] Following further complaints by members of the public about Price, the Ethical Standards Command ("ESC") of the QPS took over investigations into Price's conduct. In the course of those investigations, the ESC had occasion to review the investigation which had been conducted by the applicant. It was found that the relevant CCTV footage in fact corroborated the complainant's version of the incident. Price was charged with a number of offences, including the assault on the complainant. On 11 October 2010, Price pleaded guilty in the District Court to those charges, and was sentenced to a term of imprisonment.

[10] On 25 May 2012, the ESC sent files relating to, amongst other things, the complainant's complaint to the CMC.

[11] On 20 December 2012, Mr Darren Brookes, Assistant Director (Police Program, Integrity Services) of the CMC wrote a letter to the ESC entitled "Discipline issues in relation to

Whitsunday investigation". The letter reported on investigations which the CMC had been conducting into the conduct of Price, into other officers who worked with Price, and into "the conduct of those officers tasked to [investigate] previous complaints made against Price". The report contained adverse findings in relation to the applicant's conduct of the investigation:

> "On 5 June 2008 the matter was taken over by ESC as part of the Whitsunday investigation. Senior Sergeant Lee was interview by ESC on 5 August 2008 in relation to his handling of the Ms Toms' complaint and his subsequent investigation.
>
> It's evident that S/Sgt Lee had sufficient information available to him to conduct a disciplinary investigation in a timely manner. He was in possession of the video footage that is *prima facie* evidence of an unlawful assault. In addition to this, Detective Sergeant Nicholas Williams of the Airlie Beach CIB had obtained a witness statement from Ms Toms. Senior Sergeant Lee's inertia in this matter was such that he failed to view the footage, and failed to interview the subject officers. It point of fact he did nothing with the complaint for five (5) months, and this was only addressed when the matter was taken over by the ESC.
>
> During his interview with ESC investigators, S/Sgt Lee claimed that he was unable to contact the complainant to obtain a complaint or statement even though D/Sgt Williams had already done this. S/Sgt Lee states further that he had conversations with Price but did not formally interview him or make a record of their conversations. Absurdly, S/Sgt Lee informed the ESC investigators that he had not even taken the time to view the CCTV footage.
>
> Then without having conducted the most basic of investigations, S/Sgt Lee submitted a request to the PPM of the Region that all the subject officers should be exonerated.
>
> Aside from the total lack of professionalism as a senior officer in the QPS S/Sgt Lee has failed in his duty and has not met the expectations placed in him by his senior managers. Put simply, his abilities to be, and operate as, an Officer in Charge are seriously in question."

[12] The CMC made the following recommendation and request:

> "In relation to Senior Sergeant Lee, his conduct is such that it warrants specific consideration. He is both senior in service and rank and therefore this does not mitigate his conduct. Aside from the outstanding issue relating to the viewing of the CCTV footage S/Sgt Lee's conduct is such that it should fact a disciplinary hearing with the prescribed officer being of no less a rank than Assistant Commissioner.
>
> …
>
> Again, I recommend that the original prosecution case against Ms Toms be re-examined and consideration be given to having this conviction expunged from his record. In making this consideration the QPS should judge the available independent evidence and, if appropriate, contact the complainant to obtain his views in this regard.
>
> I ask that the CMC are notified of the outcome of these inquiries so that I may consider the finalisation of this matter."

[13] Rather than implementing the "disciplinary hearing" referred to in the CMC report, the QPS offered the applicant an alternative to a disciplinary hearing in the form of an "Administrative Consensual Disciplinary Process" ("ACDP"). As described in the relevant Policy under which the ACDP is established:[1]

> "[The ACDP] provides an alternative for police officers to the discipline hearing process. The benefits of the ACDP include the timely provision in writing of a proposed sanction in anticipation of a subject officer's acceptance of responsibility for their conduct."

[14] The Policy further described the circumstances when the ACDP may be undertaken, including that it is not appropriate to deal with the alleged conduct through remedial intervention alone as circumstances warranted disciplinary action.

[15] In short, the ACDP provided a mechanism whereby, if the subject officer accepted responsibility for the relevant conduct and consented to the ACDP process, the matter could effectively be dealt with "on the papers".

[16] The applicant agreed to submit to the ACDP process. By a notice dated 19 June 2013, Deputy Commissioner Ross Barnett determined a sanction against the applicant of a demotion of rank, with such demotion suspended for 12 months subject to the applicant not committing any further misconduct for a 12 month period.

[17] On 2 July 2013, the CMC applied to QCAT, pursuant to then s 219G of the *Crime and Misconduct Act* 2001 ("the *CM Act*"), for a review of that sanction decision.

[18] On 18 October 2013, the CMC sought leave to adduce additional evidence before QCAT under s 219H of the *CM Act*.

[19] On 6 March 2014, a QCAT member gave leave for the CMC to adduce additional evidence, and ordered that the matter be returned to Deputy Commissioner Barnett for further consideration under s 23 of the *Queensland Civil and Administrative Tribunal Act* ("the *QCAT Act*").

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[1] Revised Complaint Management Policy – Administrative Consensual Disciplinary Process (ACDP) – Circular 18/2012.

[20] On 3 April 2014, the applicant filed an application for leave to appeal the decision of the QCAT member.

[21] The matter came on before a judicial member of QCAT, the Hon James Thomas AM QC ("the Judicial Member"). On 19 November 2014, the Judicial Member made the following orders:

> "1. Leave to appeal is granted.
>
> 2. The appeal against paragraph 1 of the QCAT order of 6 March 2014 granting leave to the Crime and Corruption Commission to adduce the evidence therein specified is dismissed;
>
> 3. The appeal against paragraph 2 of the QCAT order in this matter of 6 March 2014 (ordering return of the matter to Deputy Commissioner Barnett for reconsideration pursuant to s 23 of the *Queensland Civil and Administrative Tribunal Act 2009*) is allowed, and that order is set aside;
>
> 4. In its place it is ordered that the decisions of Deputy Commissioner Barnett comprised in Form A (dated 3 June 2013 and 14 June 2013) and Form B (dated 19 June 2013) are set aside under s 24 of the said Act, and the disciplinary proceeding against Anthony Lee is returned for reconsideration and further processing."

[22] The Judicial Member published reasons for his decision.[2]

[23] The Judicial Member undertook a detailed review of the background to the matter, noting that the decision to follow the ACDP was contrary to the CMC's recommendation,[3] and adverting to the difficulty in clearly identifying the charge which had actually been brought against the applicant in the matter. The Judicial Member provided the following overview of the conclusions that he had reached:

> "[24] The following subparagraphs foreshadow some of the conclusions which have been reached in this appeal:
>
> a) The available facts are capable of showing serious misconduct by Sergeant Lee.
>
> b) On the proper interpretation of the '*charge*' that was brought, the more serious aspects of the alleged conduct were not incorporated into the charge that was brought.
>
> c) The point at which cause for concern first arises in the process is when the equivalent of a charge was prepared for inclusion in Form A by the Professional Practices Manager who, under the relevant binding policy,

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2 *Lee v Crime and Corruption Commission & Anor* [2014] QCATA.
3 At [19].

was obliged to '*clearly identify the act or omission which makes the subject officer liable to be considered for disciplinary action*'.[4]

d) On the first issue in this appeal, namely the reception of the additional evidence, leave to appeal should be granted because of the public importance of the matter, but the appeal against the admission of the evidence will be dismissed.

e) On the second issue, namely the further conduct of the proceedings, the decision-maker was understandably concerned to avoid any '*perception of a bias process or outcome, or 'Caesar judging Caesar' (which) … can operate to erode public confidence in the QPS*'.[5] As matters stand that perception has by no means been dispelled in this case.

f) It is desirable that the opportunity be given to the decision-maker to reconsider the appropriate course of proceeding, and for Sergeant Lee to have the opportunity of responding as he sees fit.

g) The appropriate course will be to make an order under s 24(1)(c) of the QCAT Act setting aside the present decisions, and returning the matter to the original decision-maker so that all options remain open to all parties."

[24] It is convenient for me to quote, and respectfully adopt, the Judicial Member's following summary exposition of the police disciplinary system:

"[68] The primary legislation controlling this system is the *Police Service Administration Act* 1990 (Qld) ('PSAA').

[69] Any police officer is liable to disciplinary action when a '*prescribed officer*'[6] considers the officer's conduct amounts to misconduct or a breach of discipline on grounds prescribed by the *Police Service (Discipline) Regulation* 1990 (Qld) ('Discipline Regulation').

[70] The term '*misconduct*' is defined[7] to mean:

Conduct that –

(a) is disgraceful, improper or unbecoming an officer; or

(b) shows unfitness to be or continue as an officer; or

(c) does not meet the standard of conduct the community reasonably expects of a police officer.

[71] The PSAA provides no more than a skeleton for a system. Its procedures and methodology have been brought into operation by a series of '*directions*' issued by the Commissioner of Police which are binding on all officers.[8] Relevant directions for a police disciplinary system include *Disciplinary Hearing (Police Officers) Policy* (No 19 of 2011), dated 19 December 2011,

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4 Revised Complaint Management Policy – Administrative Consensual Disciplinary Process Circular No 18/2012, 30 November 2012, para 2.4 at p 90-1.

5 Appeal record p 21 decision-maker's remark under heading '*Classification*'.

6 I.e. an officer authorised by the *Police Service (Discipline) Regulation* 1990 (Qld) to take disciplinary action in the circumstances of the case in question (PSAA s 7.4(1)).

7 PSAA s 1.4.

8 PSAA, s 4.9(1) and s 4.9(3).

> *Procedural Guidelines for Complaint and Client Service Reporting Policy* (No 53 of 2013) dated 1 July 2013, and, significantly for present purposes, *Administrative Consensual Disciplinary Process (ACDP)* (Circular No 18 of 2012) dated 30 November 2012.
>
> [72] The key to liability for disciplinary action is s 7.4(2) of the PSAA. Disciplinary liability attaches to 'conduct .. which the prescribed officer considers to be misconduct … on such grounds as are prescribed by the regulations'.
>
> [73] The grounds prescribed by the regulations include unfitness, incompetence, inefficiency, negligence, breaches of a prescribed code, breach of a direction of the Commissioner, and '*misconduct*'. Regulation 9 of the Discipline Regulations ('grounds for disciplinary action') is plainly the prescription of the grounds authorised to be prescribed by s 7.4 of the PSAA, and the term '*misconduct*' naturally bears the same meaning as that given to it in the Act. In such cases 'misconduct' is the primary charge, but its definition is so wide that there should be particulars to show which part of the definition is relied on, and of the conduct which is staid to constitute it.
>
> [74] Neither the Act nor the Regulations prescribe any form of process. There is no mention of bringing a charge or of the manner of procedure for its determination. The process is centred on statutory recognition of the power of a '*prescribed officer*' to discipline another police officer for misconduct (or a breach of discipline)."

[25] The Judicial Member then went on to refer to the idiosyncrasies of the police disciplinary system noting, amongst other things, that QCAT review "is the only public review capable of protecting the community (and police officers) from wrong or unacceptable decisions".[9] The Judicial Member also elaborated on the nature of the ACDP, and identified what he perceived as its shortcomings.

[26] The Judicial Member dealt with the legal and evidentiary matters which were in issue before him, and then turned to a consideration of how the matter ought best proceed, saying:

> "[125] The learned Member's order returning the matter to the decision-maker for reconsideration under s 23 of the QCAT Act was, in effect, a consent order supported by all parties. However their approach has now changed, and the competing preferences are whether QCAT should proceed with the present review by way of a fresh hearing under s 20, or whether it should set aside the decision and return it to the decision-maker for reconsideration under s 24."

[27] The Judicial Member then canvassed the competing considerations, including the risk of public perception of a biased process or outcome, and the fact that an outcome based on

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[9] At [76].

the present charge might wear the appearance of the failure of the police disciplinary system. He concluded:

> "[133] I therefore favour a return of the matter to the decision-maker in such a way that will permit him, if so inclined to reconsider the further progressing of the matter. '*The matter*' is of course the disciplinary proceeding against Sergeant Lee. If the original determinations are set aside, the proceedings will have reached the stage described in paragraph 2.5 of the Commissioner's circular of 30 November 2012.[10]
>
> [134] At that stage of proceedings, the decision-maker **may** if he sees fit:
>
> - Make a request to be provided with the material here described as the additional evidence (ACDP para 2.5(2)).
> - Return the matter to the appropriate PPM for further enquiries or investigation (ACDP para 2.5(iii)).
> - Obtain advice from the ESC Legal and Policy Unit or the PPM (under ACDP para 2.7).
> - Invite the Policy Unit and/or the PPM to reconsider its formulation of the false conduct in Form A.
>
> It is also possible that the ESC Assistant Commissioner could reverse the original decision to proceed by way of ACDP.
>
> [135] As earlier observed[11] the prosecutorial function is in the hands of the ESC and PPM, while the quasi-judicial duties are entrusted to the decision-maker. It seems clear that the drafting of the charge, i.e. the '*summary of fault conduct*' as stated in Form A, is ultimately a matter for the PPM rather than the decision-maker (see ACDP paras 2.4, 2.5). But the decision-maker has the right to request the PPM to provide 'additional particularly relevant material'[12] and to give the PPM the opportunity of reconsidering inadequately drawn charges[13].
>
> [136] Clearly QCAT has no power to require the decision-maker or anyone else to act contrary to the requirements of the ACDP.
>
> [137] If an order is made to set aside the present determinations and return the matter to the decision-maker it may well be that he will choose to obtain the 'additional material' in the way mentioned in [135] above. But I do not think that QCAT has the right or power to direct the decision-maker or the Police Department how the various administrative functions within the ACDP prior to determinations of the decision-maker are to be performed.[14] In particular, QCAT's power under s 219H of the CMC Act does not include power to direct the adduction of evidence anywhere else than in QCAT's own review.

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[10] The revised Complaint Management Policy – Administrative Consensual Disciplinary Process – Circular No 18 of 2012, 30 November 2012; see appeal record, 91-2.

[11] Above, [81(f)].

[12] ACDP cl 2.5(ii).

[13] ACDP cl 2.5(iii).

[14] See [63] above.

> [138] Any further review of any subsequent determination will be on the merits of what transpires. But I do not think that the decision-maker can be directed as to what evidence he is to ask for or receive.
>
> [139] I therefore do not propose to give any directions to the decision-maker under s 24(1)(c) of the QCAT Act as to how he should proceed in the matter. It is enough to observe that the setting aside of the present determinations means that a range of further action will now be available to all parties.
>
> [140] Any further determinations will of course be open to further review on the application of the CMC or of Sergeant Lee."

[28] Consequent upon that decision by the Judicial Member, Assistant Commissioner O'Regan of the ESC wrote to the applicant's solicitor (and, it would seem, the CCC) on 16 December 2014 advising:

> "After careful consideration of the conduct and other relevant factors, I am of the view that the most appropriate course of action is to finalise the matter by way of managerial action rather than disciplinary action. A relevant factor in making this decision is your client's willingness to undertake 60 hours unpaid community service in recognition of his failure.
>
> The managerial action will require Senior Sergeant Lee to attend the Integrity and Performance Group, Ethical Standards Command to complete a face to face program on professionalism and ethical decision making. Finally, it is my intention to personally chastise Senior Sergeant Lee in accordance with section 11 of the *Police Service (Discipline) Regulations 1990*."

[29] On 19 December 2014, Mr Paxton Booth, Acting Executive Director (Corruption) of the CCC wrote to Assistant Commissioner O'Regan advising:

> "I refer to your letter dated 16 December 2014 and my letter of 18 December 2014 and confirm that the Commission does not agree that dealing with Senior Sergeant Lee by way of managerial action is an appropriate course of action.
>
> The Commission has obtained preliminary advice in relation to the above matter and your letter of 16 December 2014.
>
> Pursuant to section 48(1)(d) of the *Crime and Corruption Act* 2001 the Commission is assuming responsibility for the investigation of the allegations against Senior Sergeant Anthony Lee.
>
> Pursuant to section 48(3) we advise that you not take any further action in relation to the matter, including your proposed course of action to finalise the matter by way of managerial action against Senior Sergeant Lee."

[30] Further correspondence ensued, particularly between the applicant's solicitor and the CCC, with the applicant's solicitor querying the entitlement of the CCC to purport to assume responsibility for the investigation into the applicant pursuant to s 48(3) of the

Act. On 20 February 2015, Mr Booth wrote to the applicant's solicitor confirming the CCC's intention to proceed, saying:

> "As you know, this matter originally proceeded by ACDP, with the Commission successfully applying to QCAT for review of the sanction imposed by the QPS. Your client appealed that decision but the Honourable James Thomas, AM QC dismissed that appeal and in his judgment made several pointed comments about the seriousness of Snr Sgt Lee's conduct. Ultimately, the matter was remitted to the QPS for further consideration.
>
> The Commission understands that the QPS has determined that your client's conduct can adequately be dealt with by managerial guidance. The Commission did not anticipate such an outcome, particularly in light of Thomas QC's comments, and has written to the QPS outlining the Commission's disapproval of that outcome. We **enclose*** a copy of our letter of 13 January 2015 to Commissioner Stewart setting out the basis of the Commission's concerns.
>
> At this stage, the Commission has assumed responsibility for the investigation into Snr Sgt Lee's conduct which includes an allegation that the decision of Snr Sgt Lee to exonerate Price was dishonest, and the Commission will review material from the 'fresh evidence' admitted at QCAT."

***Crime and Corruption Act* 2001**

[31] The present challenge is to the CCC's purported exercise of its power to assume responsibility for the investigation into the applicant pursuant to s 48(1)(d) of the Act. Section 48(1) provides:

> "**48 Commission's monitoring role for corrupt conduct**
>
> (1) The commission may, having regard to the principles stated in section 34 –
>
> (a) issue advisory guidelines for the conduct of investigations by public officials into corrupt conduct; or
>
> (b) review or audit the way a public official has dealt with corrupt conduct, in relation to either a particular complaint or a class of complaint; or
>
> (c) require a public official –
>
> (i) to report to the commission about an investigation into corrupt conduct in the way and at the times the commission directs; or
>
> (ii) to undertake the further investigation into the corrupt conduct that the commission directs; or
>
> (d) assume responsibility for and complete an investigation by a public official into corrupt conduct."

[32] I observe at this point that counsel for the applicant accepted that, in the circumstances of the case, the relevant conduct, which would allegedly have constituted "official misconduct" under the *CM Act*, had been replaced with the concept of "corrupt conduct" under the Act. In the Schedule 2 Dictionary to the Act, the term "corruption" is defined to mean "corrupt conduct"[15] and "police misconduct".[16] The definition of "police misconduct", however, excludes "corrupt conduct".

[33] Part 3 of the Act confers a "corruption function" on the Commission as follows:

> "**33 Commission's corruption function**
>
> The commission has the function (the ***corruption function***) to ensure a complaint about, or information or matter involving, corruption is dealt with in an appropriate way, having regard to the principles set out in section 34.
>
> **34 Principles for performing corruption function**
>
> It is the Parliament's intention that the commission apply the following principles when performing its corruption function –
>
> (a) **Cooperation**
>
> - the commission and units of public administration should work cooperatively to deal with corruption
>
> (b) **Devolution**
>
> - subject to the cooperation and public interest principles and the capacity of the unit of public administration, action to deal with corruption in a unit of public administration should generally happen within the unit
>
> (c) **Public interest**
>
> - the commission has an overriding responsibility to promote public confidence in the way corruption within a unit of public administration is dealt with
> - the commission should exercise its power to deal with particular cases of corruption when it is appropriate having primary regard to the following –
>   - the capacity of, and the resources available to, a unit of public administration to effectively deal with the corruption
>   - the nature and seriousness of the corruption, particularly if there is reason to believe that corruption is prevalent or systemic within a unit of public administration
>   - any likely increase in public confidence in having the corruption dealt with by the commission directly"

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[15] That term is defined in s 15 of the Act.
[16] That term is also defined in the Schedule 2 Dictionary to the Act.

[34] Section 35 sets out a non-inclusive list of the ways in which the CCC performs its corruption function, including:[17]

> "Assuming responsibility for, and completing, an investigation, by itself or in cooperation with a unit of public administration, if the commission considers that action to be appropriate having regard to the principles set out in section 34".

[35] Section 41 of the Act provides:

> "**41 Responsibility of commissioner of police**
>
> (1) The commissioner of police has primary responsibility for dealing with complaints about, or information or matter the commissioner of police reasonably suspects involves, police misconduct.
>
> (2) The commissioner of police also has a responsibility to deal with a complaint about, or information or matter involving, corrupt conduct that is referred to the commissioner of police by the commission."

[36] Section 42 then prescribes the way in which the Commissioner of Police must deal with complaints, including by providing in s 42(5):

> "(5) If the commission refers a complaint about corrupt conduct to the commissioner of police to be dealt with, the commissioner of police must deal with the complaint in the way the commissioner of police considers most appropriate, subject to the commission's monitoring role."

[37] Specifically in relation to the CCC, s 45 provides:

> "**45 Responsibility of commission**
>
> (1) The commission has primary responsibility for dealing with complaints about, or information or matter involving, corrupt conduct.
>
> (2) The commission is responsible for monitoring how the commissioner of police deals with police misconduct."

[38] By s 46, the CCC is authorised to take various forms of action in dealing with a complaint, including referring a complaint about corrupt conduct to a public official "to be dealt with by the public official or in cooperation with the commission, subject to the commission's monitoring role".[18]

[39] Section 48, as I have already noted, sets out provisions relating to the Commission's monitoring role for corrupt conduct.

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[17] Section 35(1)(g).
[18] Section 46(2)(b) of the Act.

[40] Part 3 Division 5 of the Act then deals with actions to be taken following an investigation. Section 49 provides, *inter alia*, as follows:

> "**49 Reports about complaints dealt with by the commission**
>
> (1) This section applies if the commission investigates (either by itself or in cooperation with a public official), or assumes responsibility for the investigation of, a complaint about, or information or matter involving, corruption and decides that prosecution proceedings or disciplinary action should be considered.
>
> (2) The commission may report on the investigation to any of the following as appropriate –
>
> …
>
> (f) the chief executive officer of a relevant unit of public administration, for the purpose of taking disciplinary action, if the report does not relate to the conduct of a judge, magistrate or other holder of judicial office.
>
> (3) If the commission decides that prosecution proceedings for an offence under the Criminal Code, section 57 should be considered, the commission must report on the investigation to the Attorney-General.
>
> (4) A report made under subsection (2) or (3) must contain, or be accompanied by, all relevant information known to the commission that –
>
> (a) supports a charge that may be brought against any person as a result of the report; or
>
> (b) supports a defence that may be available to any person liable to be charged as a result of the report; or
>
> (c) supports the start of a proceeding under section 219F or 219G against any person as a result of the report; or
>
> (d) supports a defence that may be available to any person subject to a proceeding under section 219F or 219G as a result of the report.
>
> (5) If the director of public prosecutions requires the commission to make further investigation or supply further information relevant to a prosecution, whether started or not, the commission must take all reasonable steps to further investigate the matter or provide the further information."

[41] Section 50 enables the CCC to apply to QCAT under s 219I for sanctions against, relevantly, a police officer if the CCC has reported to the chief executive officer of a unit of public administration under s 49 that a matter may involve corrupt conduct and there is evidence supporting the start of disciplinary proceedings for corrupt conduct against the person.

[42] I note, for completeness, that the Queensland Police Service is a "unit of public administration" for the purposes of the Act.[19]

[43] Section 51 of the Act provides:

> "**51 Other action for corruption**
>
> (1) Nothing in this part limits the action that may lawfully be taken by the commission or a unit of public administration to discipline or otherwise deal with a person for corruption.
>
> *Example –*
>
> The commissioner of police may bring a disciplinary charge against a police officer under the *Police Service Administration Act 1990*.
>
> (2) Subsection (1) is subject to section 47 and 48."

The present application

[44] Counsel for the applicant submitted that the CCC now does not have the power to "further deal with the allegations against the Applicant when those allegations have already been dealt with for the purposes of [the Act] by the decision of Assistant Commissioner O'Regan on 16 December 2014".[20] The applicant's submissions continued:[21]

> "In short, it is the Applicant's submission that the matter is *functus officio*. The power under [the Act] to deal with the allegations against the Applicant, by further investigation or otherwise, is spent. The CCC's purported exercise of power under s 48(1)(d) of [the Act] and its further investigation is not authorised."

[45] After referring to observations by Gummow J in *Minister for Immigration and Ethnic Affairs v Kurtovic*[22] as to the circumstance in which a decision-maker's power to make a decision might be regarded as spent, counsel for the applicant submitted:

> "32. Clearly, the [CCC] has power to '*assume responsibility for and continue an investigation*' before a final decision has been made on the allegations to which the investigation relates. Here, however, a final decision was made by Assistant Commissioner O'Regan on 16 December 2014. On the proper construction of the CC Act, the power to '*deal*' with the allegations under the CC Act was thereby spent and the CCC's powers in relation to the allegations, under s. 48(1)(d) or otherwise, are no longer available."

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[19] Section 20(1)(d) of the Act.
[20] Applicant's submissions, para 30.
[21] Applicant's submissions, para 30.
[22] (1990) 21 FCR 193 at 211.

[46] Three reasons for this contention were advanced:

(a) In reliance on the proposition derived from *Minister for Immigration v Bhardwaj*[23] that the "requirements of good administration, and the need for people to know where they stand, mean that finality is a powerful consideration", it was argued that if the CCC "could re-open an investigation after a decision had been made on an allegation then there could be no end to the occasions that the CCC could reopen a matter, even many years into the future".[24]

(b) By the statutory conferral on the CCC[25] of a right, which is subject to a time limit, to apply to QCAT for a review of a decision of an agency in relation to an allegation of "corruption", Parliament evinced an intention that the CCC "does not have some overriding power to treat findings and determinations which are otherwise final and binding as being forever provisional".[26] It was argued:[27]

> "This mechanism for QCAT review would be otiose if the CCC could simply revive an investigation of an allegation even after a final decision on the allegation has been made by another agency on a referral by the CCC to the agency to deal with that allegation itself."

(c) Section 48(1)(d) confers power to "complete" an investigation. It was argued:[28]

> "If an investigation is already 'complete', because a final decision has been made, then the power under s 48(1)(d) is not available."

[47] The submissions of counsel for the CCC focused strongly on the "monitoring role" of the CCC under the Act, it being contended that the present application went to "the extent of the monitoring role of [the CCC] under the Act in promoting the way in which allegations of corruption within units of public administration are dealt with".[29] It was argued, by reference to the provisions of the Act, that the legislative scheme "emphasises the primacy and importance of the role" of the CCC, and that the legislation intended that the

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23 (2002) 209 CLR 597 at [8].
24 Applicant's submissions, para 34.
25 By s 219G of the Act.
26 Citing *Kabourakis v Medical Board of Victoria* [2006] VSCA 301 at [76] per Nettle JA; *Minister for Immigration v Bhardwaj* (2002) 209 CLR 597 at [8] per Gleeson CJ.
27 Applicant's submissions, para 35.
28 Applicant's submissions, para 36.
29 First respondent's submissions, para 1.

monitoring role under s 48 be construed broadly,[30] and in a way which gives effect to the purposes of the Act.[31]

[48] In response to the applicant's submissions, counsel for the CCC advanced arguments including:

(a) In a case of an allegation of corrupt conduct, the Act permits both disciplinary action within a unit of public administration, and investigation and action by the CCC in respect of an allegation of corrupt conduct. Argument was addressed to me (by both sides) on this point, and particularly with respect to the meaning to be attributed to s 51 of the Act;

(b) There is nothing in the Act which necessarily implies that the CCC must assume responsibility for an investigation before a public official makes a "final decision";[32]

(c) Cases such as *Kabourakis* and *Bhardwaj*, which were relied on by the applicant, concerned only one decision-making body; under the Act, there are two decision-makers in relation to an investigation, i.e. the CCC and the public official;

(d) There is a real doubt, on the authorities, that the decision to deal with the applicant by way of "managerial guidance" is a reviewable decision (as that term is defined in s 219BA of the Act), and accordingly there is real doubt as to the availability of QCAT review of that decision;

(e) The use of the word "complete" in s 48(1)(d) does not constrain the CCC's monitoring role under the Act;

(f) In any event, as a matter of statutory construction, there is "real practical difficulty" in identifying when an investigation is "complete".[33]

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30 First respondent's submissions, para 22.
31 First respondent's submissions, para 23.
32 First respondent's submissions, para 28.
33 First respondent's submissions, para 36.

[49] The parties addressed further submissions to me, particularly going to the question as to whether the decision to take managerial action was a disciplinary action, and could therefore be regarded as a means by which the matter had been dealt with. The applicant's position on this argument, in essence, was that this was a red herring, and the real question for present purposes was whether "the decision is a final decision in the exercise of the statutory function of deciding how to deal with an allegation of corruption".[34]

Discussion

[50] The fundamental tenet on which the applicant's present case rests is that the decision by Assistant Commissioner O'Regan on 16 December 2014 of itself constituted completion of "an investigation by a public official into corrupt conduct" for the purposes of s 48(1)(d). It was on this prime contention that the applicant founded the argument that the CCC's power to "deal" with allegations against the applicant under the Act was spent. It was on this basis that the applicant invoked the principles of finality. It was on this premise that the applicant asserted that, because the decision of 16 December 2014 was a "final decision", then necessarily the investigation was "complete" and there was therefore no extant investigation to which the power under s 48(1)(d) could attach.

[51] For the reasons which follow, however, it seems to me that this premise cannot be accepted.

[52] The nature of the decision made on 16 December 2014 is opaque, particularly in view of the findings and observations made by the Judicial Member. It will be recalled that the events which led to the hearing before the Judicial Member relevantly commenced with the applicant engaging in, or being engaged in, the ACDP. The outcome of that ACDP led to the CCC applying to QCAT for review of the decision made under the ACDP, to leave being given for further evidence to be adduced on the review, and to orders being made by QCAT which required the decision-maker to reconsider the decision under the ACDP. Those were the issues which were the subject of the appeal before the Judicial Member.

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[34] Applicant's Response to the Respondent's Rejoinder, para 2.

[53] Importantly, the Judicial Member noted the difficulties associated with discerning the precise "charge" which had been brought against the applicant under the ACDP. The relevant ACDP form did not identify a charge as such.[35] The Judicial Member reviewed the ACDP documentation and concluded:

> "[46] Mr Davis QC's submission that the 'false information' allegation goes no further than alleging the provision of erroneous or incorrect information is, on examination, clearly correct.
>
> [47] I therefore accept the submission that the only charge so far articulated against Sergeant Lee is one of inadequate investigation rather than of wilful deception or other more sinister conduct."

[54] The Judicial Member then identified a range of charges which might actually have been open on the evidence. He said:

> "[56] In my view some or all of the following allegations would be reasonably open for consideration as particulars of charges:
>
> a) Knowingly making false statements in his report … (with further particulars).
>
> b) Falsely representing to his superior officer that he had examined the footage, knowing the representation to be false.
>
> c) Falsely representing that the footage was non-incriminatory when he had no basis for such a statement.
>
> d) In presenting a disciplinary investigation report, knowingly making false statements.
>
> e) Misrepresenting the content of the footage, knowing he had no basis for such representation and knowing he was lying about having examined the tape.
>
> f) Knowingly misleading his superior officer to whom he was reporting.
>
> [57] It is noted that an allegation of fraud or deceit is sufficiently pleaded by alleging a representation with intention to deceive, or, without belief in its truth, or, recklessly not caring whether it is true or false.[36]
>
> [58] I express no opinion on whether the evidence does substantiate such allegations. I am at this point indicating some of the types of charge that the evidence is capable of justifying, and which to this stage those responsible for pursuing the matter have not adopted."

[55] The Judicial Member then turned to the detail of the matter before him:

> "**Reviewable Decisions and Ultimate Issues**

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[35] *Lee v Crime and Corruption Commission & Anor* [2014] QCATA at [39].
[36] *Derry v Peek* (1889) 14 App Cas 337.

[59] It is not immediately obvious what 'decisions' have been made by the decision-maker that are the subject of the review, as the process does not contain any actual determination as such of guilt or responsibility.

[60] On examination the relevant determination consists of two reviewable decisions which might conveniently be stated as substantiation and sanction.[37]

[61] The reviewable decisions are the product of the decision-maker's determination of the conduct as 'misconduct', his acceptance of Sergeant Lee's equivalent of a plea of guilty (i.e. of his 'acceptance of responsibility'), and his imposition of the sanction. The acceptance of a plea of guilty followed by the imposition of a penalty is regarded in criminal practice as constituting a conviction.[38] By analogy these steps in the ACDP also achieve the effect of a determination that the charge is substantiated.

[62] The 'sanction' decision consists of the imposition of the sanction following acceptance of the proposed sanction by the defendant police officer.

[63] QCAT has no power to reformulate the charges or to review their formulation. Such administrative steps along the way simply do not fall within the definition of 'reviewable decisions' in the CMC Act or CCC Act.[39] Neither in my view does QCAT have power, under s 24 of the QCAT Act to direct a decision-maker or other person with in the Police Department how prosecutorial steps of those kinds must be carried out. The reviewable decision is the ultimate determination of the allegation of misconduct and/or a finding that misconduct is proved.[40]

[64] The first question raised on the present appeal is whether the learned member erred in granting leave to adduce additional evidence in the QCAT review.

[65] This question could ultimately prove to be academic if the matter is now remitted to the decision-maker, as it is possible that there could be further investigations, further summaries of evidence, the formulation of different charges, or even an election by Sergeant Lee to reject the ACDP. However it needs to be determined as the correctness of the present decision is in issue, and it will determine the evidence that is to be used when and if the QCAT review proceeds.

[66] The other question is whether QCAT should proceed with a review of the present determinations, or set them aside and return them for further consideration by the decision-maker, with directions under s 24(1)(c) of the QCAT Act. Counsel are now agreed that the use of s 23 is inappropriate because there is no mechanism in that section for setting aside the present determinations."

[56] Later in his reasons, the Judicial Member made further observations about the unsatisfactory lack of identification of a proper charge within the ACDP process. He

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37 Cf [5] above.

38 *R v Cole* [1965] 2 QB 388.

39 CMC Act s 219BA(1); CCC Act s 219BA(1) (noting that "corruption" includes "police misconduct").

40 *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 335-339, 341-343; *Redland Shire Council v Bushcliff Pty Ltd* [1997] 2 Qd R 97 at 99, 101; *Wilson v Coordinator-General Department of State Development* [2001] QCA 159 at [10] and [15]; Cf *Arndt v Crime and Misconduct Commission and Anor* [2013] QCATA 340.

accepted the submission that the charge under the particular ACDP process should be taken to be the "summary of fault conduct" set out in the ACDP forms, but said:

> "It is however incomprehensible why a charge is never clearly identified as such. In my view this is a thoroughly unsatisfactory way of presenting a charge that is the pivot on which the entire process turns."[41]

[57] The Judicial Member observed that the absence of sufficiently clear directions and the "amorphous content of the 'summary of fault conduct' undoubtedly contributed to the present unsatisfactory situation".[42]

[58] The Judicial Member identified other points of concern with the process and outcome that had occurred so far. In particular, he said that the "charge that was laid was less serious than might reasonably have been laid".[43]

[59] The Judicial Member also referred to the unsatisfactory nature of the decision which had been made to impose a fully suspended sanction on the applicant, noting questions as to the availability of a power to impose such a suspended sanction, and saying that this was an issue that would need to be resolved before the present proceedings could be satisfactorily finalised, and noting that the "virtually unconditional suspension relieved [the applicant] of any significant burden under the order".[44] The Judicial Member said:

> "[94] From a public viewpoint the overall picture is one that is capable of causing significant concern."

[60] After addressing other matters, the Judicial Member then turned to the question of whether the further evidence should have been allowed on the review before the QCAT member. He held that no error had been demonstrated in the QCAT member's decision to order that additional evidence be received on the QCAT review.

[61] The Judicial Member then turned to discussing the way in which the matter should proceed, and particularly whether QCAT should proceed with the present review by way of a fresh hearing under s 20 of the QCAT Act, or whether the decision (i.e. the decision under the ACDP to impose a suspended sanction by way of disciplinary action) should

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41 At [86].
42 At [87].
43 At [89].
44 At [93].

be set aside and returned to the decision-maker for reconsideration. After considering the competing arguments, the Judicial Member said:

> "[133] I therefore favour a return of the matter to the decision-maker in such a way that will permit him, if so inclined, to reconsider the further progressing of the matter. '*The matter*' is of course the disciplinary proceeding against Sergeant Lee. If the original determinations are set aside, the proceedings will have reached the stage described in paragraph 2.5 of the Commissioner's circular of 30 November 2012.[45]

[62] The "Commissioner's Circular of 30 November 2012" was the ACDP policy document to which I referred above, in [13]. Clause 2.5 of that Policy set out the process to be followed for identifying whether the summary of facts which was the subject of the ACDP process disclosed sufficient grounds for disciplinary action, and if so, the considerations relevant to determination of the appropriate sanction. In other words, the outcome before the Judicial Member was that the decision to impose a suspended sanction on the applicant under the ACDP was set aside, and "the matter" (i.e. the disciplinary proceeding against the applicant) was remitted back to the decision-maker for further consideration under the ACDP process.

[63] Clause 2.5 of the ACDP policy provides:

> "**2.5 Prescribed Officer: Review of 'Form A'**
>
> The nominated Prescribed Officer will only be provided the Form A.
>
> If the Prescribed Officer, on an assessment of the summary of facts contained in the Form A, considers:
>
> (i) there are sufficient grounds for disciplinary action, then the Prescribed Officer will proceed with the ADCP;
>
> (ii) there are exceptional circumstances to warrant the inclusion of additional particularly relevant material for the Prescribed Officer to consider when making a determination, a request may be made to the Professional Practices Manager to provide the additional material. Any additional material will generally then be provided to the subject officer with the Form A;
>
> (iii) there is insufficient information to make a determination on the matter, the Prescribed Officer should recommend to the Assistant Commissioner, ESC, that the matter be returned to the appropriate PPM for further inquiries or investigation; or
>
> (iv) there is not sufficient grounds for disciplinary action, the Prescribed Officer should recommend to the Assistant Commissioner, ESC, that the matter be finalised with no further action as the imposition of a sanction would

[45] The revised Complaint Management Policy – Administrative Consensual Disciplinary Process – Circular No 18 of 2012, 30 November 2012; see appeal record, 91-2.

not achieve one of the purposes of discipline and that managerial action may be more appropriate.

In identifying the proposed sanction, the Prescribed Officer will have regard to relevant considerations including:

(i) the nature and circumstances of the conduct;

(ii) the number of allegation/s or incident/s of conduct;

(iii) comparative sanctions;

(iv) sanctions previously imposed on the subject officer;

(v) favourable comments given to the subject officer;

(vi) previous substantiated complaints against the subject officer;

(vii) indications of insight, professional growth, rehabilitation by the subject officer since the conduct that led to the allegation/s;

(viii) any reduction in sanction considered appropriate in anticipation of the subject officer's acceptance of the ACDP; and

(ix) the purpose of discipline as contained in the Human Resources Policies.

The Prescribed Officer will ensure the Form A identifies:

(i) the Prescribed Officer's proposed classification of the conduct;

(ii) the Prescribed Officer's proposed sanction; and

(iii) reasons the proposed sanction and classification of conduct are considered appropriate.

In the case of a proposed 'misconduct' classification the Prescribed Officer must identify in their *reasons* the relevant aspect of the definition, for example, identify the conduct as 'improper' or 'does not meet the standard of conduct the community reasonably expects'.

The Prescribed Officer must link the completed Form A to the Client Service System (CSS)."

[64] The "Form A" referred to in that clause is the form of which the Judicial Member was critical in this case. By cl 2.4 of the Policy, such a form must include a "comprehensive draft summary of the facts", and a "simplified description of the fault conduct" which "must clearly identify the act or omission which makes the subject officer liable to be considered for disciplinary action". In the present case, as found by the Judicial Member, that was effectively a charge of inadequate investigation by the applicant.

[65] The "Prescribed Officer" referred to in cl 2.5 is an officer appointed for that purpose by the Assistant Commissioner, ESC, and must be independent of the investigation process – see cl 2.3 of the ACDP policy.

[66] By his letter of 16 December 2014, Mr O'Regan, who was the Assistant Commissioner, ESC, advised that after "careful consideration of the conduct and other relevant factors, [he was] of the view that the most appropriate course of action is to finalise the matter by way of managerial action rather than disciplinary action", i.e. "the matter" as referred to by the Judicial Member in the passage quoted above, at [61].

[67] Mr O'Regan did not expressly define the "matter" to which he was referring. In the circumstances, however, the only reasonable inference is that he was referring to the alternative disciplinary process under the ACDP in respect of the effective charge of inadequate investigation by the applicant.

[68] Clause 2.5 prescribes that finalisation by recourse to "managerial action" may only occur if the "Prescribed Officer, on an assessment of the summary of facts contained in the Form A, considers … there is not sufficient grounds for disciplinary action", and makes a recommendation to the Assistant Commissioner ESC.

[69] There is no evidence, nor any suggestion in the letter of 16 December 2014, of such an assessment or recommendation by a "Prescribed Officer" in this case. Indeed, the letter clearly suggests that it was Mr O'Regan who undertook the "careful consideration" which led him to the view that managerial action would be most appropriate.

[70] Regardless of who made the assessment, if the requirements of cl 2.5 were otherwise being observed, a conclusion must have been reached that there were not sufficient grounds for disciplinary action in respect of the effective charge of inadequate investigation by the applicant. Yet that is precisely the same effective charge on which, when the ACDP was first invoked, the disciplinary sanction of the suspended demotion was imposed.

[71] On its face, that is a startling outcome. Without further explanation, it is an outcome which, to adapt words already quoted from the Judicial Member, is capable of causing significant concern from a public viewpoint. The material before me provides no explanation for how an effective charge which initially attracted a disciplinary sanction could now be assessed as not being underpinned by sufficient grounds for disciplinary action.

[72] The same concerns (at least) arise if it be the case that the apparent decision to take managerial action on the effective charge of inadequate investigation was made without reference to the considerations prescribed by cl 2.5 of the policy.

[73] This is not the forum for exploring the basis for the decision communicated by the letter of 16 December 2014, and accordingly I make no further comment.

[74] It is clear, in my view, that the most that can be said about the effect of the decision of 16 December 2014 was that it purported to finalise "the matter", i.e. the alternative disciplinary process relating to the effective charge of inadequate investigation by the applicant.

[75] In the circumstances of this case, I do not consider that the decision of 16 December 2014 could properly be regarded as completing an investigation into corrupt conduct.

[76] In *Kitching & Anor v Queensland Commissioner of Police & Ors*,[46] Peter Lyons J had under consideration the monitoring power conferred by s 48(1)(c)(i) of the *CM Act* to require a public official to report about an investigation into corrupt conduct. That provision is in the same terms in s 48(1)(c)(i) of the Act. His Honour said:[47]

> "The *CM Act* does not, in terms, preclude the exercise of the power conferred by s 48(1)(c)(i) after an investigation has been completed. Of its nature, an investigation is a process which may be recommenced at any time, for example, because new evidence becomes available, or because it is realised that further consideration is required. Moreover, it is not a process, the outcome of which alters status, rights, or legal relationships in some binding fashion. At most, it results in the formulation of conclusions and recommendations which are, of their nature, provisional. Given the primary responsibility and monitoring role conferred on the CMC in relation to official misconduct, there is no reason to limit by implication the effect of this provision."

[77] In the circumstances of this case, it is clear that there was evidence and other subject matters for investigation which went beyond the matters identified in the ACDP documentation. These were described at length by the Judicial Member, and included matters of evidence held by the CMC (now the CCC) which were not considered at the time the ACDP was formulated. Indeed, the fact that those matters had not been considered in the formulation of the ACDP was the very basis for the CCC seeking to

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[46] [2010] QSC 303.
[47] At [85].

lead this as additional evidence on the review before QCAT. On the appeal before the Judicial Member, he concluded that it would be unfair not to allow the CMC to adduce the evidence on review, saying:[48]

> "It would also be prejudicial to the CMC's (or the CCC's) oversight role in disciplinary matters if any review sought by it must be limited to the material that the police officers involved in an ACD process choose to include in Form A."

[78] Counsel for the applicant placed particular weight on the principle of "devolution" articulated in s 34(b) of the Act, and the practical expressions of that principle in, for example, s 42(5).

[79] Counsel also pointed to the expansive definition of the term "deal with" in the Schedule 2 Dictionary to the Act, noting that the term includes:

> "(a) investigate the complaint, information or matter; and
>
> …
>
> (d) start a disciplinary proceeding; and
>
> (e) take other action, including managerial action, to address the complaint in an appropriate way."

[80] There is, however, another important principle expressly invoked by s 34, namely the public interest, and a clear expression in s 34(c) that the CCC has an overriding responsibility to promote public confidence in the way corruption within a unit of public administration is dealt with. The monitoring powers in s 48 must be exercised having regard to all of the principles set out in s 34, and not just the principle of "devolution". Relevant also is the fact that, by s 45(1), it is the CCC which has primary responsibility for dealing with complaints about, or information or matters involving, corrupt conduct. The existence of that primary responsibility is reinforced, relevantly, by the fact that, under s 46(2), a referral by the CCC of a complaint about corrupt conduct to be dealt with by a public official is expressly subject to the CCC's monitoring role. So too is a devolution of a complaint to the Commissioner of Police under s 42(5).

[81] Apart from the matters referred to by the Judicial Member, evidence was led before me from a CCC investigator,[49] in which he said:

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[48] At [123].
[49] Affidavit of Simon Alfred Hewlett-Smith (sworn on 14 April 2015), filed 14 April 2015.

> "2. I am the commission officer responsible for the corruption investigation in relation to Senior Sergeant Anthony Lee (**Lee**), conducted by the CCC.
>
> 3. The investigation into the alleged conduct of Lee was commenced by the CCC on 19 December 2014.
>
> 4. The investigation has and/or plans to, examine and consider the following:
>
> (a) the electronic and any other documentary evidence in relation to the entries recorded on the QPS 'Compass Summary Reports' system; the relevant sections of those reports (if any); and any other relevant activities on Compass, and the QPS record keeping system;
>
> (b) obtain statements from the relevant police and civilian witnesses;
>
> (c) any other relevant evidence from the initial investigation conducted by Lee.
>
> 5. To date, the investigation has produced information which may be of assistance in our investigation of Lee's alleged conduct."

[82] As I have already said, the most that can be said about the decision of 16 December 2014, is that it purports to finalise the alternative disciplinary process in respect of the effective charge of inadequate investigation by the applicant. Whether it is efficacious in that regard is not a question for determination here.

[83] But in the circumstances of this case, I do not consider that it can properly be said that the making of the decision of 16 December 2014 necessarily or automatically means that there is nothing left to complete in the investigation into corrupt conduct. It follows that the making of that decision did not have the consequence that the CCC's power to assume responsibility for the investigation into corrupt conduct was spent. To hold otherwise would, in my view, amount to a subversion of the CCC's primary responsibility for dealing with complaints about corrupt conduct, and the patent importance of its monitoring role. Moreover, to hold that a current decision to deal with what is apparently now regarded as a minor disciplinary matter by "managerial action" would have the effect of precluding the CCC from investigating allegedly corrupt conduct, and would undermine Parliament's express intention that the CCC have an overriding responsibility to promote public confidence in the way corruption within a unit of public administration is dealt with.

Conclusion

[84] For the foregoing reasons, I will not declare, as sought by the applicant, that the CCC has no power under s 48(1)(d) of the Act, or otherwise, to assume responsibility for the investigation of allegations against the applicant.

[85] There will be the following orders:

1. The originating application is dismissed.

2. The applicant shall pay the respondents' standard costs (including any reserved costs) of and incidental to the originating application.