

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

OWNERS CORPORATIONS LIST

VCAT REFERENCE NO. **OC250/2019**
OC1490/2020

CATCHWORDS

Application for orders for discovery from the owners corporation of emails (a) exchanged by committee members of the owners corporation, and (b) exchanged between the owners corporation and certain lot owners; relevance of the documents sought; Compagnie Financière et Commerciale du Pacifique v Peruvian Guano Co. (1882) 11 QBD 55 followed; Seachange Management Pty Ltd v Bevnol Constructions and Developments Pty Ltd [2010] VCAT 269 applied.

FIRST APPLICANT: Owners Corporation PS 419696X
SECOND APPLICANT: Ragini Pope
THIRD APPLICANT: Frank Greca
FOURTH APPLICANT: Sarah Pedley
FIFTH RESPONDENT: Kooi Lean Goh
SIXTH RESPONDENT: Tiow Hoe Goh
EIGHTH RESPONDENT: Livingspring Pty Ltd
NINTH RESPONDENT: Harbourlight (Aust) Pty Ltd 104 600 704
BEFORE Member L. Johnson
HEARING TYPE Hearing on the papers
DATE OF ORDER 1 June 2021
CITATION Owners Corporation PS 419696X v Goh
(Owners Corporations) [2021] VCAT 573

ORDER

1. The first applicant is ordered to make discovery to the respondents of all emails in its possession, and of all emails in the possession of lot owners of the first applicant who were members of the owners corporation committee in January 2019, February 2019 or September 2019, that record the resolutions passed and or record the votes cast at the meetings of the owners corporation committee conducted on any of 15 January 2019, 3 February 2019 and 5 September 2019.
2. The respondents' application for order for discovery by the first applicant of all other emails the subject of the respondents' application is refused.

3. Costs reserved.

Member L Johnson

REASONS

BACKGROUND

- 1 On 24 September 2020, the respondents made an application for orders directing the first applicant, the Owners Corporation (**OC**), to provide further and better particulars and to make further discovery.
- 2 On 28 September 2020, at the conclusion of a hearing in relation to an application for authorisation under s 165(1)(ba) of the *Owners Corporations Act 2006* (**OC Act**), and with the consent of the parties, I considered the parties' applications for further directions for the conduct of the proceeding. I made orders for the parties to file and serve written submissions, and affidavits in support of the respondent's application.
- 3 In accordance with those orders, the respondents filed submissions in relation to their application on 5 October 2020 and the OC filed its submissions in response on 16 October 2020. Due to an administrative oversight, the application and submissions were overlooked, until the issue was raised again by the respondents at a Directions Hearing before Senior Member Price on 15 April 2021.
- 4 The respondents' application was made prior to orders that were made by the Tribunal on November 2020 which joined the second, third and fourth applicants to the proceeding. No application or orders have been made since that date for amendment of the application for discovery orders to include the second, third and fourth applicants. At the Directions Hearing on 15 April 2021, the respondents indicated that they no longer seek further and better particulars in the form set out in the application made in September 2020.
- 5 Accordingly, the application before me is limited to an application in relation to discovery by the OC alone.
- 6 The proceeding has been listed for hearing on 26 July 2021. The parties confirmed to the Tribunal at the Directions Hearing on 15 April 2021 that the timetable set for the hearing would be unaffected by the outcome of the application for further discovery. At that Directions Hearing, the Tribunal made orders, by consent, that the application for further discovery would be determined by the Tribunal on the basis of the written submissions and a decision provided in due course. This is the decision on the application for further discovery.¹

¹ The orders made by the Tribunal on 15 April 2021 also set down a timetable by which the applicants are to file and serve a Third Amended Points of Claim, the respondents are to file and serve a Further Amended Counterclaim, the applicants are to file and serve a Points of Defence to the respondents' Further Amended Counterclaim, and for filing and serving by the parties of further evidence, Tribunal Book, and notice of any deponent or witness that is required to be available for cross examination. The proceeding and counterclaim are listed for hearing commencing on 26 July 2021.

Respondents' application

7 The respondent seeks discovery of certain emails and correspondence. The documents sought fall into two categories. Those categories are best understood from the respondents' submissions in support of their application for orders for discovery.

8 The respondents' submissions in relation to the first category are as follows:

By the SFAPOC [Second Amended Points of Claim], the [OC] seeks orders for the payment of special levies that were allegedly struck between 18 January 2019 and 4 February 2019, and between 11 September 2019 and 27 September 2019 (Special Fee Claim). By the amended points of defence, the respondents deny that the special fees were properly approved or struck.

Self-evidently, the minutes by which the [OC] resolved to approve and strike the special fees are highly relevant to the Tribunal's assessment of the Special Fee Claim. The [OC] has discovered 17 separate sets of minutes of meetings held on 15 January 2019, 3 February 2019 and 5 September 2019. Each of those meetings are recorded as having been held by email.

The respondents have requested discovery of the emails that constitute the meetings. The [OC] has refused to discover those emails on the basis that the emails do not form part of the records of the applicant. The [OC] has not asserted that it is not in possession of the emails (which of course, it must be given the production of minutes of meeting constituted by those very emails).

In the circumstances, the [OC] should be ordered to produce the emails that constitute the meetings held on 15 January 2019, 3 February 2019 and 5 September 2019.²

9 The respondents' submissions in relation to the second category of documents are as follows:

Furthermore, the [OC] has now entered into purported deeds of indemnity with each of [the second, third and fourth applicants]. The respondents seek orders that the [OC] discover emails and/or correspondence exchanged between members of the [OC] committee approving the entry into each deed, and minutes of any meeting of the applicant approving entry into the deed. The production of these documents is relevant to the respondents' allegation in their counterclaim that the applicant is being conducted in a dysfunctional manner. The documents are also relevant to test the validity of the entry into the deeds, and the validity of any resolution of the applicant to authorise entry into the deeds. In this respect, it is emphasised that the deeds of indemnity were not executed prior to the [OC's] application for a ratifying order that the deeds will not be declared void. It was at some time after that application was made that the deeds were

² Respondents Submissions dated 5 October 2020, paragraphs 14-17, references omitted.

executed, seemingly in circumstances where no valid resolution of the [OC] has been passed authorising the entry into the deeds.

Applicants submissions

- 10 The OC submits that the respondents are engaged in a “fishing” exercise.
- 11 In relation to the emails said to “constitute” the meetings of the owners corporation committee, the OC says
The emails are not the property of the Owners Corporation, but are the property of the individual committee members, and do not form part of the records of the Owners Corporation.
- 12 The OC agrees that the issuing of special levies, and of further special levies, and the issuing of notices for their payment are issues in this proceeding, but says
internal discussions as between members of the committee of the Owners Corporation cannot be relevant to the objective determination as to whether or not the alleged Special Levies and alleged Special Further Levies are due and owing in accordance with, inter alia, s24(2) of the [*Owners Corporations Act 2006*].³
- 13 In relation to the emails and correspondence relating to the entry into deeds of indemnity and minutes of meetings of the OC approving entry into the deed, the OC says
(insofar as personal emails are sought) these are not records of the Owners Corporation; and
The documents sought are not in any way relevant to an issue in dispute as defined by the pleadings (it is noted that the Respondents’ submissions do not even seek to identify a pleaded issue upon which these documents go to (sic)). The Respondent is, with respect, engaged in a fishing expedition.⁴
- 14 The OC seeks orders that the applications be dismissed and seeks to be heard on the question of costs.

PRINCIPLES

- 15 The established approach to discovery in civil proceedings in the High Court is that all documents that relate to the matters in question in the proceeding are discoverable. This is often referred to as the “train of enquiry test” or “*Peruvian Guano test*”, in reference to the comments of Bret LJ in *Compagnie Financière et Commerciale du Pacifique v Peruvian Guano Co (Peruvian Guano)*, where he said
every document relates to the matters in question in the action ... which, it is reasonable to suppose, contains information which may – not which must- either directly or indirectly - enable the party requiring

³ Applicants’ Submissions dated 16 October 2020, paragraphs 5 and 6.

⁴ Ibid.

the affidavit either to advance his own case or to damage the case of his adversary.⁵

- 16 In the Victorian courts, as Forrest J observed in *Liesfield v SPI Electricity Pty Ltd*:

[t]he approach to discovery has changed markedly in the past half-decade or so. The *Peruvian Guano* test has been consigned to the dustbin. The [*Civil Procedure Act 2010* (Vic) ('CPA')] now requires a court to cut through the layers of interminable argument and nit picking which had traditionally accompanied discovery contests.⁶

- 17 The effect of CPA and the Supreme Court Rules is, in the words of Forrest J, to “mandate that an order for discovery should be directed at finding the most efficient, effective and economical management of the discovery process, bearing in mind the nature and complexity of the trial.”⁷

- 18 In *Volunteer Fire Brigades Victoria Inc v Country Fire Authority*, Forrest J commented:

The overriding consideration of the CPA is to ensure that the parties receive a fair trial... However, a fair trial is not a perfect trial. It is, rather, the best trial that a court can provide to the parties within reason and in proportion to the issues in dispute and the court’s resources. Accordingly, demands for discovery of documents which are peripheral to the central issues cannot be entertained. The Court is obliged to focus on the central issues as best it can be determined at this point in the litigation.⁸

- 19 Although that change has been brought about by the provisions of the CPA and the Supreme Court Rules, the established rules of procedure that apply to “courts of record” do not apply in proceedings before VCAT.⁹ Nevertheless, when the Tribunal adopts the more formal approach of requiring pleadings, the general procedural rules that apply in the courts should be followed.¹⁰ Those general procedural rules are those that apply at common law.

- 20 The Tribunal is bound by the rules of natural justice, and obliged to ensure that all parties have a fair hearing.¹¹ The Tribunal must also allow a party a reasonable opportunity to call or give evidence, question witnesses and to make submissions to the Tribunal.¹² It is an essential requirement of a fair hearing that each party be given a reasonable opportunity of presenting its

⁵ (1882) 11 QBD 55.

⁶ [2016] VSC 573 at [33].

⁷ [2016] VSC 573 at [25].

⁸ [2016] VSC 573 at [34].

⁹ *Seachange Management Pty Ltd v Bevnol Constructions and Developments Pty Ltd* [2010] VCAT 269 at [193]; see also *Winn v Blueprint Instant Printing Pty Ltd* [2002] VSC 295.

¹⁰ *Cobaw Community Health Services Ltd v Christian Community Youth Camps Ltd* [2010] VCAT 1613 at [124].

¹¹ See sections 97 and 98 of the *Victorian Civil and Administrative Tribunal Act 1998* (VCAT Act).

¹² See section 102 of the VCAT Act.

case,¹³ and of knowing the case it must meet before the hearing commences.¹⁴

- 21 The Tribunal is also required to ensure that proceedings are conducted with as little formality and technicality, and determine each proceeding with as much speed, as the requirements of the relevant legislation, and a proper consideration of the matters before it permit.¹⁵ To that end, it is appropriate that orders for discovery, if required, should be focussed on documents that are directly relevant to the issues in dispute in the proceeding.
- 22 As the scope of the dispute is the key to determining relevance for the purposes of discovery, I will turn next to the scope of the dispute between the parties to determine whether the documents sought by the respondents are relevant to an issue in the proceeding.
- 23 Before doing so, it is convenient to note here, that the application by the respondents, and the submissions filed by all parties, were prepared with reference to the Second Further Amended Points of Claim in proceeding OC250/2019, and before the Tribunal made further orders giving leave to the OC and related parties to file and serve a Third Further Amended Points of Claim, and for the respondent parties to file and serve a further amended defence in response. Given the timing of the application, I have not had regard to the documents filed in accordance with the Directions Hearing held on 15 April 2021.

THE DISPUTE

Proceeding OC 250/2019

- 24 The applicants in proceeding OC250/219 are the Owners Corporation, and, pursuant to orders made by the Tribunal under section 165(1)(ba) of the OC Act,¹⁶ three individuals who are all members of the Owners Corporation Committee. The respondents are all associated with the operation of the short stay hotel.
- 25 The building is the subject of a building order under the *Building Act 1993* (**the Building Order**). The Building Order requires additional fire protection works to be carried out on the building (the Works), which, if upheld, the OC has estimated may cost up to \$2,500,000. The Building Order has been challenged in proceedings before the Building Appeals Board (**BAB**), and is not under consideration in this proceeding, however, the proceedings before the BAB have given rise to some of the claims in this proceeding. The dispute between the parties concerns the conduct of the BAB proceedings, liability for the cost of any works that may be required, and the raising of special levies intended to meet the costs of those proceedings, and other costs associated with the hotel.

¹³ *Roberts v Harkness* (2018) 57 VR 334; [2018] VSCA 215 at [48]-[49]

¹⁴ *Barbon v West Homes Australia Pty Ltd* [2001] VSC 405 at [16].

¹⁵ See s 98(1)(d) of the VCAT Act.

¹⁶ [2020] VCAT 1397.

- 26 The claims made in OC250/2019, as set out in the Applicant's Second Amended Particulars of Claim¹⁷ are, in summary, as follows.
- The OC seeks a declaration by the Tribunal “as to the validity of” an Indemnity and or Guarantee said to have been given, and partially performed, by [the eighth respondent, Livingspring Pty Ltd (**Livingspring**)] and or [the ninth respondent, Harbourlight (Aust) Pty Ltd (**Harbourlight**)] to the OC “with respect to the Works and associated costs that may be required as a result of the Building Order”. The OC relies on representations it says were made by Livingspring and or Harbourlight and or their agents, and conduct over many years in which Livingspring and or Harbourlight met the costs of solicitors, building consultants and other contractors that had been “notionally engaged by” the OC to deal with the issues that are the subject of the Building Order (**Indemnity Claim**).
 - The OC has sought to raise special levies to meet the cost of conducting the BAB proceedings. It has also sought to raise special levies to meet costs associated with the hotel, which the OC says should be paid by those lot owners whose properties are managed by Harbourlight. (together, **Special Levies Claim**). The Special Levies have not been paid by the respondent parties. The OC seeks declarations that the special levies are valid.
 - The OC also disputes its liability to pay for services charged to the OC by Harbourlight, under a Building Services/Supervision Contract (BSC). The OC seeks declaratory orders that it is not liable to pay invoices levied by Harbourlight under that contract (**BSC Claim**).
 - The OC seeks to restrain individual respondent parties from convening Special General Meetings (SGMs) seeking to appoint a new Committee to direct the conduct of the BAB proceedings. (**Restraint Claim**).¹⁸

Proceeding OC1490/2020

- 27 In proceeding OC1490/2020 the first applicant, Harbourlight, seeks payment of its invoices under the Building Services/Supervision Contract, interest and costs.¹⁹ This claim is effectively the corollary to the OC's BSC Claim in OC250/2019.²⁰
- 28 The second to fifth applicants in proceeding OC1490/2020 are lot owners in the OC, and their lots form part of the hotel. They seek a range of declaratory relief set out in 17 separate claims, and appointment of an Administrator. The claims for declaratory relief can be summarised as

¹⁷ The Owners Corporation's Second Amended Points of Claim were filed prior to the Tribunal's orders joining the three individual committee members as second, third and fourth applicant respectively, to the proceeding. In these reasons for decision I refer to the applicant in the singular.

¹⁸ This part of the claim has been partly addressed by orders made by consent by the Tribunal earlier in the proceeding.

¹⁹ Application dated 23 June 2020. Page 29 items A, B and C.

²⁰ Harbourlight is the ninth respondent to proceeding OC250/2019.

- a. claims relating to the OC's Special Levies Claim:
 - i. declarations that the fee notices, final fee notices, and Special Levies struck in respect of financial years 2012 to 2018 are invalid;²¹
 - ii. declarations that certain committee meetings, [at which the Special Levies were struck or confirmed], were invalidly held and resolutions passed at those meetings are void;²²
 - iii. a declaration that the OC has breached s 146 of the OC Act by refusing to produce records for inspection by a lot owner.²³ The records are described in the Points of Claim as "each email relied upon for the conduct of each of the Committee Meetings [referred to paragraph ii above];²⁴ and
 - iv. A declaration that a poll vote conducted after the AGM on 21 August 2018 [in relation to the proceedings before the BAB and the claims brought by the OC] is void and of no effect.²⁵
- b. A claim that the OC has breached s 69 of the OC Act by failing to hold an AGM within 15 months of its last AGM.²⁶
- c. A claim that the OC has breached s 103 of the OC Act by "refusing to permit [a director of the second and fourth applicants] to nominate and vote on election to the committee of the OC" at the AGM held on 21 August 2018.²⁷
- d. A claim that the OC has withdrawn money out of the maintenance fund in breach of s 44 of the OC Act.²⁸
- e. A claim that a resolution passed at the 13 September 2016 AGM [relating to tendering for caretaking services] is void and of no effect.²⁹
- f. An application for appointment of an administrator.³⁰

THE DOCUMENTS

The emails relating to the committee meetings at which the Special Levies were set

29 The OC says that the emails are not the property of the OC, but are the property of the individual committee members, and do not form part of the records of the OC. Further, the OC submits that "internal discussions as

²¹ Application dated 23 June 2020, page 30, items D to N.

²² Application dated 23 June 2020, page 31, item O.

²³ Ibid, item P.

²⁴ Application dated 23 June 2020, paragraphs [104] and [105].

²⁵ Application dated 23 June 2020, page 31, item Q.

²⁶ Application dated 23 June 2020, page 31, item N.

²⁷ Ibid, item R.

²⁸ Ibid, item S.

²⁹ Ibid, item T.

³⁰ Ibid, item U.

between members of the committee of the Owners Corporation cannot be relevant to the objective determination as to whether or not the alleged Special Levies and alleged Special Further Levies are due and owing in accordance with s24(2) of the OC Act”.

- 30 The respondents identify the question in the proceeding to which they say the emails are relevant as being “the Tribunal’s assessment of the Special Fee Claim”. They say
- the minutes by which the applicant resolved to approve and strike the special fees are highly relevant to the Tribunal’s assessment of the Special Fee Claim.
- 31 I agree that the minutes are relevant. I understand that the minutes have been discovered. However, the respondents have not made submissions about the relevance of the emails. In their submissions, they say only that they have requested discovery of the emails which has been refused. They do not say why they consider the emails constituting the meetings are required in addition to the minutes of the meeting. I must do the best I can with the material before me.
- 32 In proceeding OC 250/2019 the respondents dispute that the levies purportedly set at the committee meetings were validly set.
- 33 Further, in their application in proceeding OC1490/2020, the respondents assert that the OC was in breach of s 146 of the OC Act when it refused to produce the emails relating to the committee meetings for inspection by Dr KL Goh. I note that Dr KL Goh is not a party to proceeding OC 1490/2020.
- 34 The OC submits that the emails are “internal discussion” between the committee members.
- 35 It is axiomatic that, in general, the nature of the discussion and exchanges at a meeting held in person of the committee will not ordinarily form part of the records of an owners corporation. I agree that, generally, the course of the discussion at a committee meeting will not be relevant to the question of whether the resolutions passed at that meeting are valid or not. This is clear from s 112(8) of the OC Act, which provides that “[a] resolution of a committee is a resolution that a majority of the members participating in a meeting of the committee agree is a resolution of the committee”. That is, it is the vote of the members of the committee, and the fact that the vote is carried, that determines the status of any resolutions considered at the meeting.
- 36 I express no view on whether a committee meeting held by email would be validly conducted for the purposes of the OC Act. That is a matter for determination at the final hearing.
- 37 The minutes of a meeting, or meetings, of a committee will record whether a majority of the members participating agreed as required by s112(8). The minutes will also record whether there was a quorum, as required by s112(1). If there were not a quorum, the resolution, being an interim resolution, would

need to be confirmed at a subsequent meeting of the committee where there was a quorum, or by ballot, or otherwise in accordance with the rules, as provided for in s112(7). The minutes of any subsequent meeting, or the results of the ballot or other steps will give evidence of this. The discussion at the meeting, or, in this case, the emails between the members of the committee, are not relevant to determination of those questions.

38 I turn now to a further consideration relevant to the OC's submission that the emails are not the property of the OC. Section 144 of the OC Act prescribes the records that must be kept by an owners corporation, for the purposes of the OC Act. Section 144 provides

An owners corporation must keep the following records in respect of the owners corporation

- (a) the full name and address of each lot owner;
- (b) a consolidated copy of the rules;
- (c) minutes of meetings;
- (d) copies of resolutions;
- (e) records of the results of ballots;
- (f) proxies;
- (g) voting papers or ballots;
- (h) correspondence;
- (i) accounting records;
- (j) records of assets and liabilities;
- (k) financial statements;
- (l) income tax returns of the owners corporation and GST records (if any);
- (m) insurance policies;
- (n) maintenance plans;
- (o) notices and orders served on the owners corporation by a court or tribunal or under and Act;
- (p) notices served by the owners corporation, including notices under Part 10;
- (q) contracts and agreements entered into by the owners corporation;
- (r) leases and licences to the owners corporation;
- (s) leases and licences from the owners corporation.

39 I consider the requirements in s 144 to keep records of copies of resolutions, and copies of voting papers or ballots, in addition to the minutes of meetings, are relevant to the question of whether the emails sent in the course of the committee meetings are documents of the OC.

- 40 Without determining the issue of the validity of the particular meetings that are contested by the respondents, and without having examined the emails in question, I consider that, if such a meeting were to be validly conducted by email, the emails exchanged between committee members at such a meeting, to the extent that they contain the record of the resolutions passed and a record of voting at the meeting, would be records of the owners corporation. It follows, therefore, that to the extent that the emails sought within this category contain the record of resolutions passed and the record of voting at the meeting, they are documents “of the OC” and are documents that the OC is able to call for, and therefore, within their control for the purposes of discovery.
- 41 I turn now to the question of whether the emails are relevant to an issue in the dispute.
- 42 The OC says that the content of the emails between the committee members “cannot be relevant to the objective determination [of the issue in the proceeding] as to whether or not the alleged Special Levies and alleged Special Further Levies are due and owing in accordance with” s24(2) of the OC Act.
- 43 The respondents record, in their application in proceeding OC1490/2020, that the minutes for each committee meeting “stated that the meeting was conducted by exchange of emails on a particular date pursuant to the *Electronic Transactions Act 2000*.”³¹ The respondents assert that the committee meetings were conducted in breach of sections 109 and 112 of the OC Act.
- 44 The respondents also assert, in their application in proceeding OC1490/2020, that the OC was in breach of s 146 of the OC Act when it refused to permit Dr KL Goh to inspect the emails. The respondents rely on these alleged breaches as grounds demonstrating the dysfunctionality of the OC, so as to warrant appointment of an administrator.
- 45 The question of whether the committee meetings were conducted according to law is therefore, a threshold issue that is germane to the respondents’ defence of the owners corporations’ claim, in proceeding OC250/2019, for declarations that the Special Levies are payable by the respondents, and to the respondents’ claims, in proceeding OC1490/2020, for declarative relief to the effect that the Special Levies are invalid.
- 46 The question of whether the emails are “records” of the OC within the meaning of s 146 of the OC Act is also clearly relevant to determination of the respondents’ claim, in proceeding OC1490/2020, that there has been a breach of s 146 of the OC Act.
- 47 Accordingly, I find that the emails sent by the members of the committee of the owners corporation for the purposes of the meetings relating to the special levies referred to in items F to M, being the meetings specifically
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referred to in item O, of the respondents' application in proceeding OC1490/2020 are documents that should be discovered by the owners corporation.

Documents relating to entry into deeds of indemnity

- 48 For clarity, I note here that the documents sought by the respondents in this category do not relate to the claim made by the Owners Corporation referred to above as the Indemnity Claim. The documents the respondents seek relate to an indemnity said to have been given by the Owners Corporation to the second, third and fourth applicants. The respondents submit that these documents are relevant to the claim made by them, in their counterclaim, that the Owners Corporation is being conducted in a dysfunctional manner. The respondents give no further explanation of why they say the entry into the deeds would demonstrate dysfunctionality.
- 49 The respondents further submit that these documents are relevant "to test the validity of entry into the deeds, and the validity of any resolution of the [owners corporation] to authorise entry into the deeds".
- 50 The OC submits that the documents sought "are not in any way relevant to an issue in dispute as defined by the pleadings", and are not documents of the OC.
- 51 The substance of the respondents' application in OC1490/2020 is as I have summarised in paragraph 28 above.
- 52 I can find no reference to the OC having entered into deeds of indemnity in the respondents' application. Nor is there any such reference in the materials filed by the OC as at the date of the application for orders for discovery. Given this, I am unable to conclude that there is a proper basis for forming a belief that the emails relate to a question in the proceeding.
- 53 As the respondents have not established that emails relating to deeds of indemnity are relevant to a question in the proceeding, it is not necessary to make a finding as to whether such documents would or would not be documents of the OC.
- 54 The respondents' application for orders for discovery of the second category of documents must be refused.

Member L. Johnson