MR DELANY: But we haven't, we haven't brought this application on the basis the pleading is defective or that the cause of action - because Mr - it's actually the individual rather than the council if there was a misfeasance, he can't attack the council. We haven't really relied on that point. We've said in our outline that if you're going to plead misfeasance in public office, you've got to identify the public officer.

HIS HONOUR: Yes.

MR DELANY: And there would have to be an argument here that it was Mr Porter and not - - -

HIS HONOUR: That's what Mr Thompson's note seems to say.

MR DELANY: Yes.

HIS HONOUR: Mr Porter acted without any authority of the council or of - as I understand it.

MR DELANY: Yes. But the pleading is difficult Your Honour to - we've taken the view, we could have brought a pleading summons and had an argument about whether it discloses a cause of action and so on. We could have put a lot of energy into that and Your Honour we decided that wasn't the most expeditious way of dealing with the case.

HIS HONOUR: Yes.

MR DELANY: Now if the case were to proceed and we say it shouldn't but if it were to proceed then that's probably an argument that we'll have, we would have to have. Or it is an argument we'd have to have about the pleading but for the moment we haven't embarked on that.

HIS HONOUR: Well the only reason I raise it is if you're right, and  what has to be concealed is the existence of the cause of action, in a sense that begs the question, what the cause of action is - - -

MR DELANY: Well - - -

HIS HONOUR: But I may be - - -

MR DELANY: Well we've assumed that the cause of action is there.

HIS HONOUR: Yes. As pleaded.

MR DELANY: Well, as pleaded, or in the affidavits.

HIS HONOUR: Yes.

MR DELANY: So really taken the view - - -

HIS HONOUR: The complaint is that made in the affidavits?

MR DELANY: Yes.

HIS HONOUR: Yes, I understand.

MR DELANY: So we - so that's the way we've approached it. Now if we go to Paragraph 99 of the outline, where we refer to a decision in Hamilton - I think Your Honour has the folder of cases.

HIS HONOUR: Yes.

MR DELANY: I'm told that this case is at Tab 10 of the folder.

HIS HONOUR: Yes.

MR DELANY: And this is a decision of Justice McLelland and the case involved - arose in the context of directors concealing a contract from - former directors concealing a contract - the existence of a contract from the company, and at Point 2 of the headnote, "the postponement of the limitation bar under the Limitation Act 1969 s.51B ... (reads) ... or moral turpitude". And the - if I take Your Honour to p.385 at the foot of the page His Honour says, in the last paragraph, third lines, "It's forever contended the cause or causes of action were fraudulently concealed ... (reads) ... and so on of their breaches of duty". And then over to the next page, 386, Paragraph B, "It's been submitted on behalf of the