



No right to silence at Crime and Corruption Commission unless reasonable excuse

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Persons who are directed to appear before the Crime and Corruption Commission ('CCC') to provide information have no right to silence. They must answer any and all questions put to them unless they have a 'reasonable excuse'.

The [CCC's compulsive powers](#), and the concept of having a reasonable excuse, have been the subject of extensive judicial scrutiny. Recently, however, the Supreme Court was faced with a more novel scenario – one where a person had refused to answer questions on the basis that to do so would endanger his health or safety.

This blog discusses the recent Supreme Court of Queensland decision of [Smith v PRQ \[2022\] QSC 123](#), which considered an application by the CCC to have the respondent, PRQ, punished for contempt.

Facts

PRQ was the victim of a shooting. The principal offenders ('the defendants') were apprehended and charged with his attempted murder, and others were charged with related offences.

Notably, the [objection to bail](#) affidavits recorded that PRQ's lack of cooperation with police was likely borne out of the defendant's propensity to commit acts of serious violence (including the fact that the defendants were extremely violent with no regard for human life). The affidavits even went so far as to say that police held grave concerns for PRQ's safety and that:

"if the defendant is released from custody and believes the victim was speaking with police, there [were] serious concerns that retribution [would] be sought".

The CCC subsequently commenced an investigation and compelled PRQ to testify at an investigative hearing about his own attempted murder.

Shortly after the commencement of the CCC hearing, PRQ was asked about the behaviour which led to his being shot. His barrister objected on the basis that PRQ had a reasonable excuse to not answer the Commission's question – the reasonable excuse being PRQ's fear for his life.

Upon resumption of the hearing some three weeks later, the presiding officer delivered his decision on the objection. He accepted PRQ's fear of harm but was not satisfied that this fear gave rise to a reasonable excuse.

Despite the decision, PRQ maintained his barrister's objection to the questioning and refused to answer questions out of fear for his life. The CCC found him in contempt.

What is contempt of commission?

Contempt of commission is a serious charge. It can be established by the following conduct:

- Failing to appear;
- Failing to produce evidence;
- Refusing to take an oath or affirmation;
- Wilfully threatening or insulting the Commission or parties involved;
- Misbehaving in, interrupting, or obstructing the Commission; and
- Publishing any evidence placed before a Commission.

For a first-time offender, the maximum penalty is 10 years imprisonment. A second contempt has a maximum penalty of 14 years imprisonment, and a third or subsequent contempt can result in life imprisonment.

What is the onus of proof for contempt of commission?

In *Smith v PRQ*, the onus of proof for contempt charges was discussed, with the parties agreeing that:

- the evidential onus lay with PRQ to raise the facts which he said gave rise to a reasonable excuse to refuse to answer the CCC's questions; and then
- the onus rested with the CCC to prove beyond reasonable doubt no reasonable excuse exists.

PRQ was found to have objectively fulfilled his end of the bargain. He indicated on both occasions to the CCC that he feared that the persons who attempted to murder him would retaliate if he provided information to the CCC.

What is a reasonable excuse?

The CCC Act is silent as to what constitutes a reasonable excuse. However, it is generally accepted that a fear of harm is sufficient.

The test as to reasonable excuse was said to be an objective one, involving consideration of the following:

- The circumstances in which the excuse is claimed;
- The consequence to the CCC of a refusal to answer; and
- Whether a refusal to answer is adverse to the public interest, in terms of the CCC's function to combat and reduce major crime.

The CCC's argument

The CCC submitted that, given the seriousness of the offending, the public interest outweighed PRQ's fears.

They argued that PRQ did no more than merely assert a subjective fear of physical harm and that the assumption that PRQ's assailants would find out about his evidence was merely speculative. In their submission, they asserted that the fact there was a non-publication order in place ought to have been enough to alleviate those fears.

The Supreme Court decision

Justice Dalton found that the affidavits proved there was an objective basis for PRQ's fears, both on account of the police officers' views as to likely retaliation and insofar as they prove that the defendants are dangerous and violent.

For that reason, Justice Dalton rejected the CCC's submission that PRQ did no more than "assert a subjective fear of physical harm".

Justice Dalton found that there was a:

"real and rational likelihood that these people might reach the conclusion that action against them was a result of information provided by [PQR]"

and consequently that there was:

"objective evidence of real danger to his life" had he answered the Commission's questions.

In making that finding, her Honour cited a number of Queensland and New South Wales judgments as authority for this proposition. Her Honour also noted that the Commission rarely, if ever, conducts examinations without significant public interest. Justice Dalton distinguished the defence of duress to the excuse of reasonable excuse. Justice Dalton was also critical of the Commission in their failure to act consistently with their duty of fairness in this prosecution.

The CCC's application was dismissed.

Get help from a professional misconduct lawyer

If you're required to appear before the Crime and Corruption Commission, it's important you seek legal representation about your rights, obligations and options.

Gilshenan &Luton has significant expertise and experience in CCC hearings. We will assist you to prepare for your hearing. Usually, we will be able to liaise with the counsel assisting the hearing in advance to find out more about what lies in store for you in the investigative hearing.

We will also take instructions from you as to your version of events and assist you in ensuring that you can give your evidence in the most compelling manner possible.

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