

## Prosecution case update for government agencies

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### **Prosecution's obligation to exclude any reasonable hypothesis consistent with innocence in a circumstantial case**

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In late 2018 the Court of Appeal delivered its decision in *R v Doyle* [2018] QCA 303. The decision provides a helpful illustration of the limits of the prosecution's obligation, in circumstantial cases, to exclude each reasonable hypothesis consistent with innocence.

#### ***R v Doyle***

##### The facts

Mr Doyle was charged with various offences following a vicious road range attack. There was no dispute that the attack had in fact occurred, and that Mr Doyle was the registered owner of the car that was used in the attack.

The only issue to be determined was the identity of the attacker. The prosecution case against Mr Doyle was entirely circumstantial. It is well settled that in a circumstantial case, if there is any reasonable hypothesis consistent with innocence that arises on the evidence, and which is not excluded beyond reasonable doubt by the prosecution, the defendant is entitled to be found not guilty (see *Shepherd v The Queen* (1990) 170 CLR 573, 578).

The defence in *Doyle* argued that the prosecution had not excluded the following hypotheses, said to be consistent with innocence, namely that Mr Doyle had:

- Lent his vehicle to a family member immediately before the attack; and/or
- Sold his vehicle, and the new owner did not register the vehicle before the attack.

Mr Doyle was convicted and an issue on appeal was whether the prosecution was required to exclude the two defence hypotheses.

##### Was it necessary for the prosecution to exclude every possible hypothesis?

The Court of Appeal held there was no requirement upon the prosecution to exclude the asserted defence hypotheses. It was noted that there was no evidence of those matters before the Court. President Sofronoff, who delivered the lead judgment, said at paragraph [29] that the defence submission:

*... misunderstands the well-established proposition that, in a circumstantial case, in order to secure a conviction the Crown only has to exclude every reasonable hypothesis consistent with innocence. It is important to appreciate that the word "reasonable" does not mean "logically open in theory". Many inferences might be open as a matter of theoretical logic but which, in truth, are entirely unrealistic.... An alternative hypothesis must be a reasonable one in the sense that it rests on something more than a theoretical possibility or, if one prefers, upon "something more than mere conjecture". It must be based upon evidence.*

### **Application to government agencies**

When determining whether to commence a prosecution, proper regard must be had to any avenues of defence which are plainly open on the evidence. Doyle's case reminds prosecutors though that it is only *reasonable* hypotheses, supported by evidence, which the prosecution is obliged to exclude at trial. If there is no supporting evidence to provide an evidentiary basis for the prospective line of defence, it is not a matter the prosecution needs to exclude at trial.

Offering prospective defendants a record of interview will often prove to be a useful means of ascertaining whether potential lines of defence are in fact relied upon, and further, whether issues requiring exclusion by the prosecution are likely to arise at trial.

### **For further inquiries or assistance, please contact:**

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