



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: B66/2022
File Title: Crime and Corruption Commission v. Carne
Registry: Brisbane
Document filed: Form 27F - Outline of oral argument
Filing party: Interveners
Date filed: 06 Jun 2023

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IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

NO B66 OF 2022

BETWEEN:

CRIME AND CORRUPTION COMMISSION

Appellant

and

10

PETER DAMIEN CARNE

Respondent

**INTERVENER'S OUTLINE OF ORAL SUBMISSIONS
(ATTORNEY-GENERAL OF THE COMMONWEALTH)**

Part I: Publication

1. This outline of oral submissions is in a form suitable for publication on the internet.

Part II: Outline of Propositions

2. Parliamentary privilege under ss 8 and 9 of the *Parliament of Queensland Act 2001 (Qld)* (**Parliament Act**) can extend to actions taken in purported, but invalid, performance of functions under the *Crime and Corruption Act 2001 (CC Act)*.

a. Statutory construction

- 10 3. **Principle of legality.** Parliamentary privilege is a “bulwark of representative government”: *Rowley v O’Chee* [2000] 1 Qd R 207 at 218 (McPherson JA) (**JBA, tab 59**). Express words or unambiguous language will be required to derogate from the privilege: **CS[14]**; *Hammond v Commonwealth* (1982) 152 CLR 188 at 200 (Murphy J) (**JBA, tab 31**); *Criminal Justice Commission v Parliamentary Criminal Justice Commissioner* (2002) 2 Qd R 8 at [26] (McPherson JA) (**JBA tab 48**).
4. **Text.** Sections 8 and 9 of the Parliament Act enact and extend the privilege. The statutory text does not support, but positively denies, the ways in which the respondent seeks to derogate from the privilege.
- 20 5. *First*, the provision does not excludes acts which are ‘beyond a statutory function’: **cf RS[95.a]**. The reference in s 9 to ‘all words spoken or acts done’ speaks against this. Words and acts remain a thing in fact, even if they are legally invalid.
6. The relevant limit on words and acts is a factual, not legal, one – they must be “in the course of, or for the purposes of or incidental to” parliamentary business. “Purposes” requires a factual inquiry into the subjective intention of the actor: **CS[18]**; *Rowley v O’Chee* [2000] 1 Qd R 207 at 220 (McPherson JA) (**JBA, tab 59**); *Carrigan v Cash* [2017] FCAFC 86 at [11]-[20] (Dowsett, Besanko and Robertson JJ) (**JBA, tab 46**).
7. *Second*, it is immaterial that the Parliamentary Crime and Corruption Committee (**PCCC**) was created under the CC Act: **cf RS[16]-[17]**. The “proceedings in the Assembly” are defined by s 9 so as to give the business of a committee the same
30 privilege as the business of the Assembly. And this is so regardless of the business transacted by the PCCC: Parliament Act, s 9(5).

8. *Third*, nothing in ss 8 or 9 requires the Assembly or committee, itself, to have done something to appropriate the relevant act for it to form part of its proceedings: **cf RS [81(b)]; CS[30]-[35]**.
 9. **Context and purpose.** Parliament did not intend to make the privilege subject to a “lawfulness” proviso; that would undermine its well-established purposes.
 10. *First*, this would be inconsistent with the fact that the privilege prevents legal challenge to proceedings in Parliament, even in relation to words or acts that would otherwise be found to be unlawful: **CS[19]; *Bradlaugh v Gossett* (1884) 12 QBD 271 (JBA, tab 44)**. Otherwise the privilege would be defeated by a bare allegation of unlawfulness: *British Railways Board v Pickin* [1974] AC 765 (**JBA, tab 45**).
 11. *Second*, this would reduce the Assembly's capacity to receive information that is relevant to the discharge of its constitutional function of holding the executive to account: **CS[21]; *Egan v Willis* (1998) 195 CLR 424 at 476 (JBA, tab 28)**.
 12. *Third*, this would undermine the certainty which the privilege secures for those involved in transacting parliamentary business: **CS[20]-[21]**. This comes from judicial restraint, to avoid conflicts with Parliament: **CS[38]; *Prebble v Television New Zealand Ltd* [1995] 1 AC 321 at 332 (Lord Browne-Wilkinson) (JBA, tab 55)**.
- b. QCA Judgment**
13. The Court of Appeal majority erred by assuming that compliance with the CC Act was a necessary precondition to the application of parliamentary privilege: **CAB 68[15] and 85 [81]**. That assumption was wrong: there was no such precondition and the facts accepted by the majority established the privilege: **CAB 85[80]-[81]**.
 14. In those circumstances, the report and its preparation formed part of proceedings in the Assembly and could not be questioned or impeached. Yet this is what the majority did by its findings. And by its declaration it impeached the future business of the PCCC and the Assembly: **cf RS[81(a)]**.

6 June 2023



TIM BEGBIE

PETER MELICAN

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