



## 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: Respondent  
Date filed: 06 Jun 2023

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IN THE HIGH COURT OF AUSTRALIA  
BRISBANE REGISTRY

BETWEEN:

**CRIME AND CORRUPTION COMMISSION**  
Appellant

and

**PETER DAMIEN CARNE**  
Respondent

### RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS

#### **Part I: Publication**

This outline is in a form suitable for publication on the internet.

#### **Part II: Argument**

1. **Section 69 of the *Crime and Corruption Act* addresses publishability. It sets legal limits prior to Parliament's assessment of that question.**
  - a. It is to be read in light of two important precepts:
    - (i) expression of findings or opinions by public bodies about individuals having a distinct legal character;
    - (ii) special significance attaching to findings or opinions being made public.
  - b. Section 69 is not just procedural: it sets a legal criterion.
  - c. It is about making what is otherwise private, public (to Table is to publish: *Parliament of Queensland Act s 53(c)*).
  - d. Thus the role of the Courts is preserved: to interpret statutes, and in doing so to give effect to the limits of the statutory authority and manner of its performance.
  - e. To approach the section in this way accords with principle:
    - (i) in the publication of 'dealing with' a complaint of corrupt conduct, the individual has protections that can be vindicated in the Courts (here the only real protection);
    - (ii) the power to make findings and express opinions ought be vested in persons other than those charged with investigative or policing functions which precede that function: *Balog v ICAC*;

- (iii) compelling reasons underpin the principle, including that generalist investigative bodies:
    - A. have ‘extraordinary coercive powers’ which may be exercised in disregard of basic protections afforded by the common law (hence the pressing need for Court scrutiny);
    - B. are not confined to admissible evidence.
  - f. Thus a distinction exists between generalist investigative or policing bodies and administrative decision-makers.
  - g. Section 69 brings together the roles of the respective Branches, each doing what it is best placed to assess, and preserving the fundamental role of the Court.
  - h. It is to uphold Parliamentary Sovereignty that Parliament (not the CCC) retains control of the point of conferral of its privilege and its application, and that this occurs after satisfaction of the statutory criterion for that occasion.
2. **Privilege does not answer the question of publishability. The statutory criterion is prior to the discretion to give the Direction that invokes privilege.**
- a. The Document here is not subject to privilege of the kind claimed: there has (and can be) no Direction.
  - b. Crucial here is that this Document comes from outside Parliament.
  - c. That privilege might attach for one purpose (eg presenting and submitting) does not automatically attract it for all:
    - (i) privilege arises in connection with the particular purpose that fits the way in which the core or essential business of Parliament might be adversely impacted;
    - (ii) parliament has made the criterion of the character of the document a legal limit, properly the function of the Courts to determine;
    - (iii) all that the CCC does is not to be attributed to Parliament: the gateway which s 69 states is the means to know when privilege can attach.
  - d. The CCC’s case would mean that:
    - (i) all documents within the possession of the Committee are privileged and publishable for all purposes (if given to it by the CCC);
    - (ii) all work of the CCC would be privileged, provided it later gave the relevant report to the Committee, (or perhaps just had the intention of doing so).
  - e. The Certificate cannot make something true which is not objectively so, and the objective circumstances here contradict it: what the CCC did in preparing this document cannot sensibly be

described as a proceeding in the Assembly: eg RFM p37[10]; p71, p115 [9] and [14(d)] and note 9; p 139[12], [16], [27(a)].

- f. To declare as the Court did below is not to encroach upon any privilege that might attach: **The Courts have a duty to rule on a criterion upon which the existence of privilege depends (ie to enforce the statutory prescription): *Ainsworth* at 585 Brennan J.**
  - g. In allocating to each Branch these respective functions, there is an integrated system of protections against Executive overreach, at the same time protecting the individual and preserving for Parliament its privileged discretion.
3. **There was a denial of procedural fairness below and to declare that is not to infringe any privilege that might attach.**
- a. Preparation of the Document was affected by a denial of procedural fairness.
  - b. This can be the subject of a Declaration even if privileged: *Ainsworth*.
  - c. Sections 8 and 9 of the *Parliament of Queensland Act*, when it comes to actions outside Parliament, need to be read in terms of whether they are likely to impact adversely on the core or essential business of Parliament.
  - d. No part of the Declaration sought does so: it concerns work which was the CCC's alone, and quite independently of Parliament.
  - e. Giving the Declaration is part of the Courts ensuring statutory prescriptions are performed within the limits and in the manner prescribed by the statute conferring the function.

5 June 2023



**Jonathan Horton**