MAGISTRATES COURTS OF QUEENSLAND

CITATION:	*R v Coaldrake* [2024] QMC 3
PARTIES:	The Crown (Complainant) **V** Lee Ann Coaldrake (Defendant)
FILE NO/S:	MAG-15226/23(4)
DIVISION:	Magistrates Court
PROCEEDING:	Hearing
ORIGINATING COURT:	Brisbane Magistrates Court
DELIVERED ON:	08/02/2024
DELIVERED AT:	Brisbane Magistrates Court
HEARING DATE:	17/04/2024
MAGISTRATE:	Pinder
ORDER:	That the charge is good at law and can proceed
CATCHWORDS:	Disturbing the Legislative Assembly – statutory interpretation – implicit repeal – *Criminal Code Act 1899* (Qld) s 56, s 717
COUNSEL:	SGT. M. Payne for the prosecution Mr A. Hoare & Ms S. Harburg for the defendant
SOLICITORS:	Qld Police Service for the prosecution Environmental Defenders Office for the defendant

[1] The defendant Ms Coaldrake is charged:

- *That on the 30 November 2022 at Brisbane City in the state of Queensland whilst the legislative assembly was in session she intentionally disturbed the assembly.*

[2] The provision under which the defendant is charged is *section 56 (1) (a)* of the *Criminal Code 1899 (QLD).*

[3] *Section 56* provides as follows:

56 Disturbing Legislative:

1. A person who, while the legislative assembly is in session, intentionally –

a) Disturbs the assembly…

Commits a misdemeanour

Maximum penalty – 3 years imprisonment.

[4] The defendant has entered a plea of not guilty to the charge which was listed for a summary hearing on the 23 October 2023.

[5] At the commencement of the hearing both the prosecution and defence raised a preliminary matter, which both contended needed to be decided by the court before the hearing commenced.

[6] The parties have both provided written outlines and have helpfully provided copies of authorities and other material including copies of explanatory notes and transcripts of parliament from Hansard.

[7] The issue jointly raised by the parties is that there appears to be conflicting provisions within the *Criminal Code Act* in relation to this offence provision.

[8] In addition to *s 56* (set out above) a further provision was inserted to the *Criminal Code* by the *Criminal Code Amendment Act 2006.*

[9] *Section 717* of the *Criminal Code Amendment Act* is as follows:

"717 Effect of repeal of ss 56, 57 and 58

(1) After the commencement of the Criminal Code Amendment Act 2006, a person can not be charged with, prosecuted for or further prosecuted for, or convicted of, an offence against section 56, 57 or 58 or punished for doing or omitting to do an act that constituted that offence.

(2) However, subsection (1) does not prevent a person being punished by the Legislative Assembly for contempt of the Legislative Assembly as defined under the Parliament of Queensland Act 2001".

[10] The issue to be determined, raised by the defence is that, *"on it's face s717 of the code prevents the prosecution of, or conviction of, Ms Coaldrake of the offence charged".* The defence contends that on the basis, there is no course available to the prosecution other than the summary dismissal of the charge.

[11] The prosecution seek to resist that conclusion and assert that;

- *Section 56* - "Disturbing the legislature" has been reinserted into the *Criminal code* by amendment.
- That as a consequence there is implicit repeal of *s.171* of the code.
- That the charge, as preferred, is good at law and can proceed.

[12] The parties written outlines both accept that the resolution of the issue requires the court to apply the rules of statutory interpretation.

The Legislative History:

[13] The parties written outlines both accept that relevant to the issue for determination, the legislative history of the two provision *s 56 and s 717* is as follows;

- *Section 56 in a previous form (although similarly providing for the offence of disturbing the legislature) was contained within the code from it's inception in 1899.*
- The section was repealed in 2006 by the *Criminal Code Amendment Act 2006* which both repealed *s 56* (and *s 57* and *s 58)* of the code and also introduced *s 717.*
- *Section 56* was subsequently reinserted, in it's present form, and by the *Criminal Law (False evidence before Parliament) Amendment Act 2012* it was reinserted into the *Criminal Code* using the original provision numbering.

[14] The *Criminal Law (False Evidence before Parliament) Act 2012* did not expressly repeal *s 717*.

[15] *Section 717* continues to exist and operate presently as part of the code.

The Parties Contentions:

[16] The prosecution contend that the impact of *s 717* should be restricted in application from the period 2006 until 2012 (effectively from the commencement of the *Criminal Code Amendment Act 2006* to the commencement of the *Criminal Law (False Evidence before Parliament) Amendment Act 2012*. The prosecution contend that the conclusion should be drawn to on the following basis;

i. *The history of s 56 and the complicating transitional period;*

ii. *The application of the principles contained in the decision of Uittenbosch v The Department of Corrective Services;*[1]

iii. *The continuing operation contained s 19A of the Acts Interpretation Act;*

iv. *Reading Act as a whole and;*

v. *The intention behind the Parliament of Queensland Act.*

[17] Upon that basis the prosecution contend that *s 56* creates an offence of disturbing the legislature in Queensland, and that the charge has been properly brought.

[18] The defence conversely, however, assert that;

- There has been not implied repeal of *s 717;*
- *Section 717* continues in operation;
- There is a clear legislative provision which prevents a prosecution and conviction in respect of *s 56.*

[1] (2006) 1 QdR 565

[19] Somewhat surprisingly the parties have approached the issue of statutory interpretation of the two provisions from markedly different positions.

[20] The prosecutions as noted, have adopted a complicated approach to the interpretation of *s 717* contending that it is necessary to consider exstringment material to correctly interrupt the statutory provision.

[21] The defences outline addresses the matter on the basis that, whilst it acknowledged there can be implicit repeal of a provision (here *s 717)* the relevant approach to statutory interpretation in respect of its implicit repeal fails in the present case and both provisions (*s 56* and *s 717)* continue, the affect of which is *s 717* prevents a prosecution and conviction for an offence under *s 56.*

[22] The authors of Halsbury's laws of Australia opined in respect to the law of repeal in the following terms;

- *Before a court comes to the conclusion that a later Act has impliedly repealed an earlier statue, it should be satisfied that the two enactments are so inconsistent or repugnant that they cannot stand together and thus the repeal must flow from a necessary implication. But if there is a reasonable construction of the earlier statute, that construction is to be adopted. Indeed, there will be a strong presumption that the legislature did not intend to contradict itself, and the onus is on the person asserting the implied repeal to prove that repeal. Consequently, the later statute must be clearly and indisputably contradictory and contrary to the former. It has also been suggested that a wholly absurd consequence resulting from allowing the two Acts to stand would also lead to the implication of repeal, as would the situation where the entire subject matter in the former Act was removed by the later.*

[23] The defence outline accepts that the law in relation to statutory interpretation in Queensland does provide for implied repeal of statutory provisions. The defence outline correctly identifies the law in relation to implied repeal, resulting from a combination of a number of authorities of the High Court of Australia.

[24] The High Court considered the issue in an earlier authority of *Goodwin v Philips [1908] (7 CLR 1).*

[25] In that decision Griffith's CJ said:

"...where the provisions of a particular Act of Parliament dealing with a particular subject matter are wholly inconsistent with the provisions of an earlier Act dealing with the same subject matter, then the earlier Act is repealed by implication…if the provisions are not wholly inconsistent, but may become inconsistent in their application to particular cases, then to that extent the provisions of the former Act are excepted or their operation is excluded with respect to cases falling within the provisions of the later Act.

[26] Barton J in that decision adopted the following statement from Hardcastle on Statutory Law:

"*The Court must...be satisfied that the two enactments are so inconsistent or repugnant that they cannot stand together, before they can from the language of the later imply the repeal of an express prior enactment, i.e., the repeal must, if not express, flow from necessary implication."*

[27] Implied repeal was subsequently considered by the High Court in *Mathieson v Burton [1971] (124 CLR 1)* where Windeyer J said:

"… the only way by which a statute which has come into operation can cease to operate is by repeal, express or implied …. An Act that excludes from the operation of a former Act some matter formerly within its purview thus repeals it pro tanto, that is to say, in part. Provisions of a later Act which are inconsistent and irreconcilable with the provisions of a former Act dealing with the same subject matter are thus an implied repeal of them."

[28] The authorities also make it clear that when it is contended that a subsequent provision implicitly repeals an earlier provision, applying the test from *Goodwin v Philips,* the actual contrariety must be clearly apparent and the later of the two provisions being not capable of sensible operation if the earlier provision still stands *(see Minister for Immigration and Multicultural and Indigenous Affairs v Nystorm [2006] (228 CLR 566).*

[29] It is accepted that the threshold in relation to determining that there has been implicit repeal is a high one including:

- *Repeal of provision is only to be implied whether there are strong grounds;*
- *Where such implication is necessary;*

- *That implied repeal should not lightly be concluded.*

[30] It is clear however, that a subsequent contradictory statutory provision can implicitly repeal an earlier provisions in an appropriate circumstances.

[31] Gummow and Hayne JJ enunciated the relevant principles in *Ferdinands v Commissioner of Public Employment* [2006] (225 CLR 130) when they said:

> "*It has long been recognised that even though one statute does not expressly repeal an earlier statute, the later statute must be read as impliedly repealing the earlier if the two are inconsistent. Inconsistency lies at the root of this principle. But, as Isaacs J pointed out in 1907, "[i]t is very hard to formulate a rule which will apply to every case of implied repeal". There are, however, two cardinal considerations. First, as Gaudron J said in Saraswati v The Queen, "[t]here must be very strong grounds to support [the] implication, for there is a general presumption that the legislature intended that both provisions should operate". Secondly, deciding whether there is such inconsistency ("contrariety" or "repugnancy") that the two cannot stand or live together (or cannot be "reconciled") requires the construction of, and close attention to, the particular provisions in question."*

[32] However, there must be a clear contradiction between the two competing statutory provisions their Honour's noting:

> "*No conclusion can be reached about whether a later statutory provision contradicts an earlier without first construing both provisions. If, upon their true construction, there is an "[e]xplicit or implicit contradiction" between the two, the later Act impliedly repeals the earlier."*

Consideration:

[33] In order to conclude that the reinsertion of *s56* by the enactment of the *Criminal Law (False Evidence before Parliament) Amendment Act 2012* implicitly repeals *s717* it is necessary upon the true construction of each provision to conclude, that they are "*so in inconsistent or repugnant that they cannot stand together"*. The *Criminal Code Amendment Act 2006 s*pecifically removed *s56* such that the offence of disturbing the legislature was no longer included in the *Criminal Code.*

[34] That amendment act also expressly repealed *s56* and provided a bar on a person being charged with prosecuted for or convicted of that offence.

[35] In 2012 the *Criminal Law (False Evidence before Parliament) (Amendment Act))* reinserted *s 56* with the clear intention of creating the offence of disturbing the legislature in the *Queensland Criminal Code.*

[36] On any plain reading of the two provisions as they currently stand, *s 717* is clearly so inconsistent and repugnant with the operation of *s56* that they cannot stand together.

[37] The parliament could not have intended to insert *s 56* and create the offence of Disturbing the Legislature and at the same time maintain within the code a provision which precluded a person being prosecuted for that very offence.

[38] There can be no suggestion that the parliament had intended both provisions should operate as they are so plainly inconsistent with each other.

[39] The proper construction of both provisions leads to the inevitable conclusion that by the reintroduction of an offence creating the offence of disturbing the legislature, there is such inconsistency that the two provisions cannot stand or live together.

[40] The effect of the introduction by the *Criminal Law (False Evidence before Parliament) (Amendment Act))* of *s 56* therefore, implicitly repeals *s 717* of the *Criminal Code.*

[41] The resulting conclusion is that *s 56* does create an offence good in law in Queensland as and from the day of assent of the *Criminal Law (False Evidence before Parliament Amendment Act 2012)* and the charge before the court can proceed.

Magistrate Pinder

08/02/24