SUPREME COURT OF QUEENSLAND

CITATION:	*Scott v G* [2018] QSC 134
PARTIES:	**Michael John Scott as Presiding Officer of the Crime and Corruption Commission** (applicant) **v** **G** (respondent)
FILE NO:	BS No 4508 of 2018
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	8 May 2018 (*Ex tempore*)
DELIVERED AT:	Brisbane
HEARING DATE:	27 April 2018
JUDGE:	Brown J
ORDER:	**The order of the Court is that:** **1. The respondent is imprisoned for a period of six months to be served wholly within a Corrective Services Facility.** **2. The respondent pay the applicant's costs of the proceedings.**
CATCHWORDS:	CRIMINAL LAW – FEDERAL AND STATE INVESTIGATIVE AUTHORITIES – QUEENSLAND – where the applicant sought an order that the respondent be punished for contempt – where the Crime and Corruption Commission was authorised to hold an investigative hearing in relation to a major crime – where the respondent was required to attend the hearing – where the respondent failed to take an oath – where pursuant to section 199(2) of the *Crime and Corruption Act* 2001 (Qld) the contempt is certified – where the respondent contended that the applicant fell into jurisdictional error, because he did not hold the proper delegation to issue an attendance notice under section 82(1)(a) of the Act – where the respondent further contended that the applicant breached s 180 of the Act and denied natural justice – whether there was jurisdictional error – whether the applicant

was required to rule on whether the respondent had a "reasonable excuse" not to attend or not to answer questions – assessment of appropriate term of imprisonment

Acts Interpretation Act 1901 (Cth) s 27A
Crime and Corruption Act 2001 (Qld) s 57, s 82, s 167, s 180, s 183, s 190, s 194, s 198, s 199, s 270
Criminal Code 1899 (Qld) s 183
Penalties and Sentences Act 1992 (Qld) s 159A

O'Connor v Witness G [2013] QSC 281
O'Connor v Witness I [2014] QSC 82
Park Holdings Pty Ltd v Chief Executive Officer of Customs [2001] AATA 562
Perpetual Trustee Company (Canberra) Ltd v Commissioner for ACT Revenue (1994) 123 ACTR 17
Scott v FC [2016] QSC 178
Wood v Staunton (No 5) (1996) 86 A Crim R 183

COUNSEL:	D J Caughlin for the applicant J W Fenton for the respondent
SOLICITORS:	Crime and Corruption Commission for the applicant Hounsell Cunningham for the respondent

[1] This is an application to punish the respondent for contempt of the applicant, a presiding officer at a Crime and Corruption Commission hearing. The applicant has certified the contempt in writing to the Supreme Court, pursuant to section 199(2) of the *Crime and Corruption Act* 2001 (Qld), which I will hereinafter refer to as the Act. That certificate is evidence of the matters contained therein. The certificate alleges a failure by the respondent to take the oath when required by a presiding officer.

[2] Pursuant to section 198(1)(c) of the Act a person is in contempt of a presiding officer conducting a Crime and Corruption Commission hearing if the person at the hearing contravenes a provision of the Act in relation to the hearing.

[3] Section 183 of the Act provides that a witness at a CCC hearing must not fail to take an oath when required by the presiding officer. Section 198(4)(a) of the Act declares that a failure under section 183 to take an oath when required by the presiding officer may be certified as a contempt.

[4] Under section 199 of the Act, the Court must inquire into the alleged contempt. The Court must be satisfied beyond reasonable doubt that the respondent has committed a contempt and if so satisfied the Court may punish the person as if the person had committed the contempt in relation to a proceeding in the Court.

[5] The maximum punishment that the Court may impose for a contempt, which in this case is a failure by the respondent to take an oath under section 183 when required by the presiding

officer, is 10 years as it is the respondent's first contempt. A person subject to imprisonment may purge their contempt at any time.

[6] In the present case, the evidence shows that the CCC was investigating an unlawful killing, which was suspected as involving the partner of the respondent and another person or persons unknown. An attendance notice was issued on 12 March 2018 to the respondent under section 82(1)(a) of the Act, requiring the respondent's attendance at a hearing on 15 March 2018. The schedule of the notice set out in general terms the nature of the matters about which the respondent was to be questioned at the hearing.

[7] The respondent failed to attend the hearing and a warrant was subsequently obtained from the Magistrate under section 167 of the Act for her arrest. The respondent was arrested pursuant to the warrant on 22 March 2018 and brought before the presiding officer on 23 March 2018.

[8] The transcript of the CCC hearing reveals that the respondent indicated at the outset that she was not going to answer any questions. That indication had already been provided by a lawyer who had given her legal advice beforehand. At the hearing, when asked whether she had any objection to taking an oath, she stated:

> "Yeah, I'm not doing anything today."

[9] The respondent was informed by the presiding officer that it is an offence to refuse to take an oath or affirmation under section 183 of the Act and that section 183 of the Act provides that a person attending at a Commission to give sworn evidence must not fail to take the oath when required by the presiding officer. She was informed of the penalty that would flow and that it was a criminal offence of itself to refuse to take the oath. The presiding officer formally required her to take the oath, stating:

> "I am now going to formally require you to take an oath in compliance with section 183. I do require you to take an oath."

To which the respondent's reply was:

> "No."

She then said:

> "I'm not taking no oath. I'm not doing anything."

The presiding officer stated:

> "I am formally requiring you to do that."

To which the respondent said:

> "Not doing it."

To which the presiding officer said:

> "All right. You are refusing my requirement."

[10] The respondent then indicated that she was. He then asked her whether she did that in the knowledge that that has some consequences, to which the respondent said that she was doing it of her own choice and free will.

[11] The circumstances of the contempt are set out in the certificate of contempt of the presiding officer and the contempt has been certified. The affidavit of Mr Scott, filed on 27 April 2018, deposes to the fact that he made an error in the certificate of contempt insofar as he had issued the attendance notice at 12 March 2018 as the Director, Crime Hearings and Legal Services, and not the Senior Executive Officer of Crime of the CCC as had been stated. He attached the instruments of delegation to the Director, Crime Hearings and Legal Services and the Senior Executive Officer of Crime.

[12] The factual circumstances said to constitute the contempt are not in dispute, but the contempt is not admitted by the respondent on the basis that the respondent contends that the applicant fell into jurisdictional error, because he did not hold the proper delegation to issue an attendance notice under section 82(1)(a) of the Act and, further, on the basis that he had breached natural justice or, to use the more common parlance, denied procedural fairness, or had failed in his duty pursuant to section 180(1)(a) of the Act in failing to rule on whether the respondent had a "reasonable excuse" not to attend or not to answer questions within the meaning of section 82(5) and section 194(1) of the Act.

[13] The respondent contends that, if the notice to attend under section 82(1)(a) was issued as a result of an invalid delegation, then the notice could not have been valid, there was no attendance notices required for the exercise of the power to conduct a coercive hearing, the Magistrate would not have had power to issue the arrest warrant, and the applicant had no power to require the respondent to take an oath under the Act. The applicant conceded that, if the attendance notice was not issued pursuant to a valid delegation of power, the respondent's analysis was correct and there would be no contempt.

[14] It also appears to have been conceded by the applicant that, if the second ground of the alleged jurisdictional error is made out, namely, that there was a denial of procedural fairness or breach of duty under section 180 (1)(a), his actions were a nullity and there could be no contempt.

[15] Turning to the first ground of jurisdictional error.

[16] Pursuant to section 82 of the Act, a chairperson may issue an attendance notice requiring a person to attend at a Commission hearing at a stated time and place to give evidence about a crime investigation. Section 270(1) of the Act provides that the chairperson may delegate the chairperson's powers under the Act to an appropriately qualified Commission officer.

[17] On the 26th of February 2015, the Acting Chairman of the Commission delegated to "The Director, Crime Hearings and Legal Services, Crime", pursuant to section 270(1) of the Act, "my powers" under particular sections which included section 82(1). On 24 May 2017, the chairperson of the CCC delegated to the Senior Executive Officer, Crime, pursuant to section 270(1) of the Act, a number of his powers, which included section 82(1)(a) with respect to crime investigations only. At the end of the instrument of delegation it states that:

> "This instrument of delegation revokes all previous delegations and shall remain in force and effect until revoked either in whole or in part by the Chairperson."

[18] The evidence shows that the attendance notice was issued by the Director of Crime Hearings and Legal Services. There is no issue that Mr Scott is an appropriately qualified Commission officer as defined within the schedule of the Act. The applicant contends that he was authorised by the 2015 instrument of delegation to issue the attendance notice.

[19] The respondent contends that, on a plain and natural reading of the instrument of delegation to the Senior Executive Officer (Crime), dated 24 May 2017, the revocation at the end of the instrument of delegation is a general revocation of all delegations and the powers granted thereunder to any person by the chair, including the Director, Crime Hearings and Legal Services. The respondent's counsel submits that the revocation was in general terms and not specific to the Senior Executive Officer (Crime).

[20] On the respondent's argument, Mr Scott had had all his delegated powers revoked by the instrument of delegation to the Senior Executive Officer (Crime), dated 24 May 2017.

[21] The applicant contends that the revocation in the instrument of delegation should be construed as specific to the Senior Executive Officer (Crime). It contends that it is supported in that regard by section 27A of the *Acts Interpretation Act* 1954 (Qld).

[22] The respondent emphasises that section 270 of the Act provides for a delegation of "the Chairperson's powers". The respondent's counsel submits that it does not, for example, provide for the delegation of an office. As the delegation refers to a delegation of powers, the respondent's counsel submits that the revocation should be read as a revocation of powers.

[23] Section 270 provides for a delegation of the chairperson's powers "to an appropriately qualified Commission officer", not simply a delegation of powers. That is consistent with section 27A(1)(b) of the *Acts Interpretation Act*, which relevantly provides that if an Act authorises a person to delegate a function or power, the person may, in accordance with the Act and any other applicable law, delegate the function or power to a specified officer or the holder of a specified office by reference to the title of the office concerned. Pursuant to section 27A(2)(c) the delegation may be "revoked wholly or partly by the delegator". The delegation referred to in subsection (2) must refer to the delegation under subsection (1)(b).

[24] While the revocation of the delegation at the end of the May 2017 instrument of delegation is in general terms, and even accepting that the instrument of delegation is not to be construed loosely, as was suggested by Chief Justice Miles in *Perpetual Trustee Company (Canberra) Ltd v Commissioner for ACT Revenue* (1994) 123 ACTR 17, which was referred to in *Park Holdings Pty Ltd v Chief Executive Officer of Customs* [2001] AATA 562, the instrument must be construed as a whole. The revocation of all previous delegations at the end of the instrument must be construed by reference to the fact it is an instrument of delegation specific to the Senior Executive Officer (Crime).

[25] On its proper construction, the instrument of delegation relied upon by the respondent as revoking all previous delegations of all powers other than those delegated in the instrument in question is only a revocation of the previous delegations to that particular office-holder of the specified office who is the subject of the delegation, namely, the Senior Executive Officer

(Crime). That is supported by the terms of section 270 of the Act, as well as section 27A(1)(b) and 27A(2)(c) of the *Acts Interpretation Act*.

[26] The submission of the respondent that one reads the words in the instrument of the May 2017 delegation as shifting powers in relation to section 82(1)(a) of the Act from one office-holder to another suggests that the intention of section 270 of the Act is that only one appropriately qualified Commission officer be delegated the relevant powers at any one time. That does not accord with the wording of the provision and the use of "an".

[27] I do not find that the May 2017 delegation to the Senior Executive Officer (Crime) revoked all previous delegations, and specifically, the delegation to the Director of Crime Hearings and Legal Services in the instrument of delegation dated 26 February 2015 of the power to issue an attendance notice under section 82(1)(a), which is the power being exercised by the applicant when issuing an attendance notice. I find that the attendance notice issued to the respondent was properly issued pursuant to the powers delegated to the Director of Crime Hearings and Legal Services. There was no jurisdictional error by the applicant in this regard. Based on the above, I do not have to consider the alternative argument raised by the applicant in terms of construing the instrument by reference to extrinsic evidence, and particularly the affidavit of Mr Alan MacSporran.

[28] The second contention, that the applicant has committed jurisdictional error, turns on the following exchange recorded in the transcript deposed to by Ms Schmidt. In the course of giving introductory remarks to the respondent, the presiding officer when describing the carrying out by the Commission of its power of questioning stated that:

> "You see whilst witnesses must answer questions at Commission – at a Commission hearing there is one exception to that obligation. A witness need not answer a particular question if they're not – they can't just not give evidence, but they may not answer a particular question if they have a reasonable excuse for not doing so. The way that works is as follows, and I'm going to assume now that I can persuade you to a different course for the purposes of this. If you are asked a question today and firstly you think I don't want to answer that question and secondly you think to yourself that I might have a good reason that might let me get out of having to answer the question, you simply need let me know."

[29] Having described what happens if he rules against a witness in terms of reasonable excuse, he continued:

> "PO: … But if we do get to the point of uh you answering questions here today, just keep that in the back of your mind if you don't want to answer a particular question and think you've got good reason –
>
> Respondent: I've got a great reason –
>
> PO: Just let me know.
>
> Respondent: You're building a bullshit case against my man and I am not saying anything to help youse do that –
>
> PO: Alright.

Respondent: Today.

PO: Alright, so that's reasonable excuse still?

Respondent: That's – no that's – that's no excuse, that's just my reason.

PO: OK. I'm – I'm not taking – I'm not entertaining that claim now that's.

Respondent: That's OK

PO: This is simply – we haven't formally started yet if you like.

Respondent: OK."

[30] The presiding officer went on further to explain aspects of the protections and the process. He then stated:

"PO: Now we've reached the point of taking the oath, we ordinarily administer an oath to a witness with Christian beliefs on a Bible, of course there are other oaths for different religions. If on the other hand a witness tells me that they have an objection to taking an oath, for example because they're not religious, the affirmation is the proper course to take, it is a solemn promise under the law to tell the truth. Do you have any objections to taking an oath?

Respondent: Yeah, I'm not doing anythink today.

PO: You are obligated to either –

Respondent: I'm not.

PO: Take an oath or an affirmation.

Respondent: I'm not doing anythink today, youse can do whatever youse need to do. Okay.

PO: So, to be very clear –

Respondent: I don't.

PO: It's not that you're saying I – I want an affirmation rather than an oath?

Respondent: I want to go – out of here, I want to get out of here so can we hurry this up?"

[31] It is the contention of the respondent that the applicant should have ruled immediately on whether the respondent had a reasonable excuse when she said, "I've got a great reason. You're building a bullshit case against my man and I'm not saying anything to help youse do that."

[32] The respondent relies on section 57 and section 180 of the Act. In particular, section 180(1)(a) of the Act provides that when conducting a hearing, the presiding officer must act quickly and with as little formality and technicality as is consistent with a fair and proper consideration of the issues before the presiding officer.

[33] The respondent contends that section 57 and section 180 are the minimum content of natural justice that is required in the circumstances and required the applicant to rule immediately. The respondent contends that the applicant took an overly technical and formal approach contrary to section 180. According to the respondent, the applicant should have asked her why she did not want to answer questions and ruled upon it. It is suggested that that is supported by section 82(5), which provides for a reasonable excuse being raised in not responding to an attendance notice. On this basis, the respondent's counsel contended the process should not be confined as that provided for in section 190 and section 194 of the Act. The respondent's counsel also contended that the fact that the respondent was not legally represented supported the fact it was only fair to rule upon whether there was a reasonable excuse the first time the respondent raised the prospect she may have a reasonable excuse prior to her taking the oath.

[34] The applicant submitted that the argument was misconceived because the question of whether a ruling was available on the issue of whether the respondent had a reasonable excuse simply had not crystallised at the point at which the respondent raised the claim. According to the applicant, it was not until the respondent had taken the oath that the applicant would have to rule on whether the respondent had any reasonable excuse for not answering questions.

[35] There is no provision in section 183 of the Act for not taking the oath because of a reasonable excuse. Section 190 of the Act, however, provides that a witness at a Commission hearing must answer a question put to the person at the hearing by the presiding officer unless the person has reasonable excuse. Section 194 of the Act applies where a person claims to have a reasonable excuse, including a reasonable excuse based on a claim of legal professional privilege for not complying with a requirement made of a person at the Commission hearing, to answer questions put to the person or to produce a document or thing the person was required to produce under another section of the Act.

[36] Section 194(1A) provides that the presiding officer must decide whether or not there is a reasonable excuse. That must be decided after hearing the person's submissions. Under section 194(1A)(3), a presiding officer must give reasons if he or she decides that a person did not have reasonable excuse for not complying with a requirement, and also advise the person that the person may appeal the presiding officer's decision to the Supreme Court.

[37] The applicant contends that with respect to the reference to reasonable excuse in section 82(5) of the Act, it has no relevance to the obligation of the presiding officer in relation to the hearing. Section 198 of the Act does not provide for a person being in contempt for failing to attend pursuant to an attendance notice under section 82(5). The applicant contends that reasonable excuse in the context of section 82(5) provides for a statutory exemption from what is otherwise a simple offence. I consider that is the correct construction of the Act, particularly given the fact that section 198 of the Act does not refer to such conduct preceding the hearing being contempt. For that reason, I reject the suggestion of the respondent that section 82(5) supports the proposition that there is an overarching obligation to rule on

whether there is a reasonable excuse prior to the taking of the oath, and notwithstanding the terms of section 190 of the Act, which is confined relevantly in this case to a reasonable excuse in the context of a requirement to answer questions, and the procedure in section 194, which refers to the process to be adopted.

[38] The difficulty with the argument of the respondent is that it is inconsistent with the procedures provided for under the Act whereby a reasonable excuse can be raised and then ruled upon under the Act. Section 190(1) provides that a person must answer a question put to the person at the hearing by the presiding officer unless the person has a reasonable excuse. That requires that the person has taken the oath as is required by section 183 of the Act, and that a question has been put to that person. The Act does not provide for the raising of a reasonable excuse in answer to the requirement to give an oath.

[39] Section 194 outlines the procedure that is to be adopted where the person claims to have a reasonable excuse for not complying with a requirement, relevantly in this case, made of a person in a Commission hearing to answer a question put to that person. Section 194(1A) and (1B) provide that the presiding officer must decide whether or not there is a reasonable excuse and provide for what he must decide.

[40] The general duty in section 180(1)(a) does not usurp nor provide an additional obligation on a presiding officer over and above the specific and detailed procedure provided for in section 190 and 194 of the Act. It does not provide an additional obligation to decide what is or whether there is a reasonable excuse before the occasion for a reasonable excuse being able to be raised under the relevant provisions of the Act, namely, section 190. That is evident from the detailed procedure outlined in section 194 of the Act, which provides for an avenue of appeal, as well as the giving of reasons.

[41] Section 180(1)(a) does not impose an obligation on the presiding officer to rule whether the respondent has a reasonable excuse prior to the oath being taken and in the absence of a question being asked.

[42] The applicant outlined in detail to the respondent her rights and obligations and informed her that the time for raising a reasonable excuse was not until after she had taken the oath and in response to questioning. He explained to the respondent the implications of not taking the oath and gave her the opportunity to change her mind before requiring her to take the oath. Even after she had not complied with the requirement to take the oath, he again explained to her that she could raise a reasonable excuse for not answering questions and explained her rights in that regard and asked whether that changed her mind to the taking of the oath, stating that it was not too late for her to change her mind, although strictly speaking at that point she had committed the contempt. The respondent indicated that it did not alter her position.

[43] It was made clear to the respondent that she would have an opportunity to raise the fact that she had a reasonable excuse for not answering a question after she took the oath. I do not find that there was any breach of section 180(1)(a) of the Act, nor any denial of natural justice or procedural fairness by the applicant in the respects alleged by the respondent.

[44] I find that there was no jurisdictional error on either basis.

[45] The certificate provided, as well as the terms of the transcript, establish that the respondent failed to take the oath when required by the presiding officer. I am satisfied beyond reasonable doubt that the respondent was in contempt of the presiding officer in refusing to take the oath on 23 March 2018 in the circumstances set out in the certificate of contempt of the applicant as required by section 183 of the Act. The parties have made submissions to me in terms of the appropriate penalty.

[46] Once the Court is satisfied that a person has committed the contempt as alleged, a Court may punish the person as if the person had committed the contempt in relation to proceedings in Court. A number of matters are taken into consideration in the assessment of the proper punishment of contempt as has been set out by Justice Dunford in *Wood v Staunton (No. 5)* (1996) 86 A Crim R 183 at 185 which have been adopted by this Court in for example *O'Connor v Witness I* [2014] QSC 82 at [29] and *Scott v FC* [2016] QSC 178 at [9]-[10].

[47] It is contended by the applicant that the contempt in this instance is serious. The investigation is into a suspected homicide in which the deceased's body has not been yet located. The respondent is believed to have had knowledge or perhaps involvement in the concealment or disposal of evidence in relation to the deceased's body and death, and is believed to be one of the small group of people who know the whereabouts of the deceased's remains. The respondent, however, is not the main target of the operation. Her partner is one of the targets of the operation. The respondent was made aware that her evidence was sought in relation to an investigation into an unlawful killing.

[48] The respondent received legal advice prior to the hearing, as a result of which the solicitor who provided the advice informed counsel assisting that the respondent did not wish to answer any questions and that she understood that the result may be that she remains in custody and appearing in the Supreme Court for contempt. The consequences of her refusing to take the oath were also explained to her by the presiding officer. The respondent has not indicated any preparedness to purge the contempt. In fact, her conduct to date indicates that she has no such intention. However, as I indicated earlier, the respondent may purge the contempt at any time, even while serving a period of imprisonment.

[49] The presiding officer made a number of attempts to try and persuade the respondent to take the oath on the 23rd of March 2018. The respondent's unwillingness to participate in the CCC hearing was a deliberate decision. Prior to her being brought before the hearing on the 23rd of March 2018, she had a telephone conversation with her partner on 14 March 2018 after being served with the attendance notice by the CCC. That conversation was recorded on the Arunta system and was the subject of evidence. In that conversation, the respondent indicated to her partner that she was not going to go because she was not going to incriminate her man or anyone.

[50] In the conversation with her partner, she clearly stated that she was aware that she could be jailed if she did not go to the hearing. Following that conversation, she failed to attend the hearing in response to the attendance notice on 15 March 2018, and subsequently a warrant was issued. As set out earlier, she was subsequently arrested and obtained legal advice prior to the hearing, but still stated she was not willing to participate in the hearing or take the oath.

[51] The consequences of the respondent's failure to answer questions are to a certain extent unknown. However, the respondent is believed to possess information in relation to the homicide the subject of the investigation. The police officer involved in the investigation believes the respondent was involved in the concealment and disposal of evidence in relation to the suspected unlawful killing of the person in question. That is apparently supported by some telephone conversations supporting that suspicion. The police officer involved believes that she is one of the few people who knows the whereabouts of the person believed to have been murdered. There is no reason for me not to accept that evidence, given the officer is one of the senior investigating officers involved in the investigation.

[52] The respondent's reason for not participating in the hearing appears to be that she does not wish to incriminate anyone, and particularly her partner, or perhaps herself. At the hearing, she stated she did not wish to assist the CCC in "building a bullshit case against [her] man".

[53] As was submitted by the CCC, that could indicate that she has relevant information in order to build a case or, alternatively, has some information which may establish the belief that her partner was involved in the murder as being unfounded. In either case, the withholding of information, either to implicate or exculpate her partner, is of importance to the investigation. Her failure to participate in the hearing has impeded the investigation on either scenario.

[54] As was stated by Justice Applegarth in *O'Connor v Witness I*:

> "A wish not to incriminate himself or others may explain the respondent's contempt. It does not excuse it or make the contempt any less serious."

[55] As a result of the respondent's lack of cooperation, it is necessary for investigators to look to other means of investigating the unlawful killing.

[56] The respondent's counsel raised the fact that the Court may draw some sort of inference about the reason for the respondent's refusal by the fact that her partner is in jail as a result of domestic violence against her. Her partner is presently in jail and there is no evidence as to what the acts of domestic violence were or any evidence supporting the fact that she has any fear of retribution. In fact, the respondent's counsel stated that his instructions were not that she was in any fear of her partner. Without any proper evidence to support the submission, I can give it little weight. In any case, as was said by Justice Applegarth in *O'Connor v Witness I*, at paragraph 36, the fear of retribution does not necessarily attract much weight of mitigation. Giving weight to such a factor would undermine the public policy objective which underpins the conferral on the Commission of its exceptional powers.

[57] On the evidence before me, I consider that the most likely reason for the respondent's refusal to be sworn and answer questions is that she does not wish to assist the CCC to collect evidence which could be used to further the investigation in which her partner is a suspect and possibly to avoid incriminating herself insofar as it is suspected she may have participated in the concealment or disposal of evidence after the fact. I find that the lack of participation by the respondent adversely affects the investigation.

[58] The respondent has a relatively minor criminal history for crimes which have been dealt with in the Magistrates Court and has only spent a short time in custody. The most recent offences in which she was involved are drug-related and dishonesty offences.

[59] She is 39 years of age. She has presently spent 47 days in custody. That time is not declarable as pre-sentence custody pursuant to section 159A of the *Penalties and Sentences Act* 1992 (Qld), however, it is accepted that it should be taken off any sentence imposed, and I will take it off any sentence imposed.

[60] Notwithstanding the fact that contempt proceedings are held in a closed Court and decisions ordinarily conceal the identity of the contemnor, general deterrence is still regarded as an important aspect in determining an appropriate punishment for contempt. As the Senior Judge Administrator Justice Byrne observed in *Callanan v F*, if witnesses are unwilling to participate in investigative hearings in connection with the commission of serious crimes, then that is likely to greatly disadvantage the community.

[61] The applicant submitted, by reference to *Scott v M*, a decision of Justice Boddice, that the range for punishment in contempt cases such as the present, where the person is not the principal target of the Commission's investigation, is between six to nine months. Justice Applegarth, in *O'Connor v Witness I*, reviewed a number of the sentencing decisions which generally support the range identified by Justice Boddice in *Scott v M*, but of course, each case turns on its own facts. In *Witness I*, his Honour considered a greater sentence was appropriate.

[62] In that case, the respondent refused to give evidence in relation to an unlawful killing. The respondent was 28 years of age and had a criminal history, although he had been sentenced to short terms of actual imprisonment. A psychologist's report had been provided to the Court. His Honour considered that the contempt, like a contempt of Court, undermined aspects of the criminal justice system. It was said to involve calculated disregard of legal obligations to take an oath and answer questions at the hearing and, unless denounced by the imposition of a substantial punishment, undermined the criminal justice system by encouraging others to disregard their legal obligations. He considered that the most likely reason for the refusal to be sworn and answer questions by the respondent was that the respondent in that case did not wish to assist the authorities in collecting evidence which would be used to further investigate a matter in which he was a key suspect.

[63] The respondent in that case had indicated that he would cooperate and purge the contempt, but subsequently changed his mind. He had cooperated in the contempt hearing. His Honour considered that a term of imprisonment of 12 months was warranted before account was taken of the period of six months that the respondent had spent on remand.

[64] In that case, the respondent was not of peripheral interest to the investigation and the evidence before his Honour satisfied him that he knew about the circumstances of the crime. That case bears a number of similarities to the present in terms of the serious nature of the crime being investigated and the contempt arising from the refusal to take an oath.

[65] The respondent in this case, however, may be regarded as less central to the investigation than the respondent in *O'Connor and Witness I,* and as such, the contempt would be regarded as slightly less serious. She has a similar criminal history, but is older and has shown no willingness to cooperate or purge her contempt.

[66] In *Scott v FC*, Justice Douglas imposed a sentence of eight months' imprisonment. In that case, the defendant initially answered questions, but then, after being shown an audiovisual

recording of conversation which conflicted with his earlier evidence, refused to answer any further questions. The respondent was 28 years of age. The respondent had not served a custodial sentence previously.

[67] In the case of *O'Connor v Witness G* [2013] QSC 281, Justice Wilson imposed a sentence of seven months less the time spent in custody, which could not be declared, in respect of a witness who had refused to reveal the location of a large sum of money that had come into his possession after the murder of his brother-in-law. In that case, however, there had been some previous cooperation in answering questions prior to that refusal.

[68] The applicant has submitted that the circumstances of this case warrant a sentence at the heavier end of the range of Justice Boddice of six to nine months.

[69] It was submitted on behalf of the respondent that the respondent should be sentenced to the rising of the Court, when taking into account the time served, which cannot be declared, and also due to the failure of the applicant to make proper inquiries and rule on the respondent's reasonable excuse, which may have meant that she was not required to answer further such that the contempt may be of a technical nature only. Given my reasons above, I do not accept that that is an appropriate approach to adopt in this case, not that it would, in any event, have given rise to any reasonable excuse on its face, however, that cannot be determined without proper submissions having been made in that regard.

[70] In the alternative, the respondent's counsel submits that the respondent should be sentenced to five months' imprisonment, taking into account the one month that she has already served. In that regard, the factors said to be in the respondent's favour are that she was non-compliant with the requirement to give the oath because she was protecting a loved one. I have already referred to the submission made in relation to the possible link to domestic violence, that she was not deliberately misleading of the Commission, and that she is a peripheral witness in that it is not contended that she took part in the unlawful killing, but if anything was an accessory after the fact. While all of those factors may be accepted, the crime is a serious one and there is some evidence to suggest that she may have been involved in the concealing of evidence. The evidence does suggest that she has knowledge that could assist the investigation.

[71] The sentence proposed by the respondent does not reflect the seriousness of the contempt, particularly having regard to the decisions which I consider have the greatest comparability with the present, namely, *O'Connor v Witness I* and *O'Connor v Witness G*, and to a lesser extent, *Scott v FC*. In the present case, the crime being investigated is of the most serious nature, and her contempt adversely affects the investigation, the respondent is of a mature age and she has made a deliberate decision not to cooperate and has shown no willingness to purge the contempt.

[72] There is little that can be taken into account by way of mitigation. I have referred to those factors. In her favour, she did not dispute the facts giving rise to the contempt, even though she sought to challenge the contempt proceedings on the basis of jurisdictional error. I take into account that she has a relatively minor criminal history, and that she may be at least acting out of a misguided loyalty to her partner. She also has a good working history, according to submissions made to me. She has a 22 year old son and a 10 year old daughter, who is being looked after by her father.

[73] Taking into account all of those factors, I consider that the effective sentence should be seven and a-half months, from which the time spent in custody should be taken off, which would mean a period of six months.

[74] Being satisfied beyond reasonable doubt that the respondent was in content of the applicant on 23 March 2018, I order that the respondent be imprisoned for a period of six months, such imprisonment to be served wholly within a Corrective Services facility.

[75] The applicant has sought its costs. Pursuant to rule 932 of the *Uniform Civil Procedure Rules* 1999 (Qld), it is within the court's discretion whether to grant costs. Justice Boddice in *Scott v M* stated that there is no reason why the applicant should suffer a financial loss in respect of bringing such proceedings when it is a result of the respondent's refusal to answer questions that those proceedings are brought.

[76] In this case, the proceedings are the result of the respondent refusing to take an oath which she was required to take, and the respondent has also sought to challenge the contempt on the basis of jurisdictional error. In the circumstances, it is appropriate that the respondent pays the applicant's costs of the proceedings. I order that the respondent pay the applicant's costs of the proceedings.

[77] In light of the reasons which I have just given, I am satisfied that the orders that have been provided in the draft order by the applicant, including paragraph 2 regarding confidentiality, should be made and I sign that draft order accordingly.