

SUPREME COURT OF QUEENSLAND

CITATION: *PRS v Crime and Corruption Commission* [2019] QSC 83

PARTIES: **PRS**
(applicant)
v
CRIME AND CORRUPTION COMMISSION
(respondent)

FILE NO/S: BS No 9644 of 2018

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 21 March, 2019

DELIVERED AT: Brisbane

HEARING DATE: 21 March, 2019

JUDGE: Davis J

ORDERS: **Delivered ex tempore on 21 March, 2019:**

- 1. The application is dismissed**
- 2. The parties are to be heard on the question of costs**
- 3. The parties are to be heard on the release of the undertaking**

CATCHWORDS: PROCEDURE – STATE AND TERRITORY COURTS: JURISDICTION, POWERS AND GENERALLY – JURISDICTION – GENERALLY – where the applicant sought an order suspending the investigative powers of the Crime and Corruption Commission (‘the CCC’) – whether it was appropriate for the court to make an order suspending the powers of the CCC – whether the court should enjoin police from charging the applicant

STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – INTERPRETATION ACTS AND PROVISIONS – EXERCISE OF POWERS AND DUTIES – GENERALLY – where the applicant sought an order directing the CCC to reopen investigations and direct seconded police officers not to charge the applicant – whether the *Crime and Corruption Act 2001* (Qld) vested jurisdiction in the court to

make such orders – whether the court should exercise its discretion in order to make such orders

Crime and Corruption Act 2001 (Qld),

Criminal Justice Act 1989

Judicial Review Act 1991

Justices Act 1886

Police Powers and Responsibilities Act 2000 (Qld)

Police Service Administration Act 1990

Uniform Civil Procedure Rules 1999 (Qld)

Ainsworth v Criminal Justice Commission (1992) 175 CLR 564, cited

Annetts v McCann (1990) 170 CLR 596, cited

Barton v R (1980) 147 CLR 75, cited

Bunning v Cross (1978) 141 CLR 54, cited

Chief Executive Administering Environmental Protection Act 1994 v

Linc Energy Ltd [2016] 2 Qd R 66, cited

Coco v The Queen (1994) 179 CLR 427, cited

Coleman v Power (2004) 220 CLR 1, cited

George v Rockett (1990) 170 CLR 104, cited

Hope v Bathurst City Council (1980) 144 CLR 1, cited

Hussien v Chong Fook Kam [1970] AC 942, cited

Jago v District Court of New South Wales (1989) 168 CLR 23, cited

Le Grand v Criminal Justice Commission [2001] QCA 383, followed

Likiardopoulos v The Queen (2012) 247 CLR 265, cited

Maxwell v The Queen (1996) 184 CLR 501, cited

Police v Dunstall (2015) 256 CLR 403, cited

Project Blue Sky v Australian Broadcasting Authority (1998) 194 CLR 335, cited

Queensland Bacon Proprietary Limited v Rees (1966) 115 CLR 266, cited

R v Ferguson [1991] 1 Qd R 35, cited

R v Jell ex parte Attorney-General [1991] 1 Qd R 48, cited

Strickland v DPP (Cth) (2018) 361 ALR 23, cited

Williams v Spautz (1992) 174 CLR 509, cited

COUNSEL: C Stevenson solicitor for the Applicant
L Reece for the Respondent

SOLICITORS: Ace Solicitors for the Applicant
The Crime and Corruption Commission for the Respondent

[1] The applicant applies, under s 332 of the *Crime and Corruption Act 2001 (Qld)*, which I will call the *CCC Act*, for injunctive relief against the Crime and Corruption Commission, which I will call the CCC. The application arises out of an investigation into alleged corrupt conduct of a person who held an appointment in a unit of public administration – see ss 14 and 20 of the *CCC Act*. I

will refer to that person as AB. The investigation concerned, amongst other things, dealings between the applicant and AB. There is no need to go into great detail about those dealings.

- [2] In the course of the investigation, the CCC utilised various statutory powers, including powers of compulsory examination of the applicant. The present proceeding was commenced by an originating application – see Chapter 2 Part 4 of the *Uniform Civil Procedure Rules 1999* (Qld), which I will call the UCPR. As a consequence, there were no pleadings and there were no disclosure obligations under Chapter 7 of the UCPR – see r 209.
- [3] An application was made by the applicant in the proceedings for an order for disclosure under r 223 of the UCPR. I heard that application on 22 February 2019. On that day I, firstly, dismissed the application for disclosure; secondly, reserved my reasons for so doing; thirdly, I ordered the applicant to file an amended application and points of claim; and fourthly, reserved the costs.
- [4] An amended application and points of claim headed “Statement of Claim” was filed pursuant to the orders made on 22 February. The amended application, relevantly, is in these terms

“TAKE NOTICE that [the applicant] is applying to the Court for the following orders:

1. That the matter be heard in closed court.
2. That, pursuant to section 332, the Crime and Corruption Commission be restrained from proceeding further in the prosecution of any charges against [the applicant], until such time as:
 - a. The current application has been finally determined.
 - ...
3. That, pursuant to section 332, the commissioner, Allan McSporran, is restrained from chairing the corruption hearing in relation to [the applicant].
 - a. That the Crime and Corruption Commission execute a directive to all police officers seconded to the commission that they not issue a notice to appear or a complaint and summons to [the applicant] in relation to any corruption charges arising of [sic] [a named CCC operation].
 - b. That the Crime and Corruption Commission execute a directive to all police officers seconded to the commission that they not refer any matter involving [the applicant] to any other police officer, for the purposes of that police officer commencing charges against [the applicant] in relation to any corruption charges arising out of [the named CCC operation].

- c. That the Crime and Corruption Commission be restrained from exercising any power, either directly or indirectly, to perform any action which is outside their powers specifically identified in the Crime and Corruption Commission Act.
- d. That the commission close the investigation into the corruption hearing of AB, known as [the CCC operation].
- e. Alternatively, That the Crime and Corruption Commission open the corruption hearing of AB to the public, with the exception of the parts of the hearing where it would be unfair to any person to open those hearings to the public.
- f. That the Crime and Corruption Commission take all steps required to ensure that the investigation is conducted in a manner that is fair to all the parties.
- g. That all witnesses called at the corruption hearing of AB be recalled and that [the applicant's] legal representatives be entitled to cross examine those witnesses.
- h. That [the applicant's] legal representatives be provided with copies of all evidence gathered in the corruption hearing of AB.
- i. That [the applicant's] legal representatives be entitled to call witnesses at the corruption hearing of AB for the purposes of rebutting any evidence heard against [the applicant]."

[5] The points of claim filed in support of the amended application relevantly are as follows:

"Points of Claim

1. The Crime and Corruption Commission does not have jurisdiction to Charge any person with corruption offences.
 - a. The Act gives the Crime and Corruption Commission the power to prosecute certain offences, but this does not include prosecuting [the applicant] for Corruption charges as is being proposed by [the police officer who issued the notice to appear].
 - b. The Crime and Corruption Commission issued a directive to [the police officer who issued the notice to appear] to Charge [the applicant] with the offence of Criminal corruption.
 - c. [The police officer who issued the notice to appear] did not form a reasonable suspicion that [the applicant] committed the crime of official corruption.
 - d. No facts exist which would create a reasonable suspicion that [the applicant] committed the crime of official corruption.
2. The investigation was not handled in a manner which is fair and just to [the applicant].
 - a. The investigation was handled in a manner which shows apprehended bias

- i. The investigation was handled by investigators whose actions suggested that they had a preconceived notion of guilt against [the applicant] and [CD], and by extension, [AB].
 - ii. The investigation was handled in a manner which was designed to promote and prove the guilt of [CD] and [the applicant] and by extension, [AB] by only testing evidence which tended to prove their innocence and not testing evidence which tended to prove their guilt.
 - iii. By consistently drawing conclusions favourable to the guilt of these person's [sic] before the hearing was finished.
 - iv. By prosecuting and/or threatening to prosecute all witnesses for various criminal offences where those witness [sic] gave or might be capable of giving evidence favourable to [AB] or [CD].
 - v. By not prosecuting or referring to the DPP or other bodies any witnesses who committed offences but gave evidence which was unfavourable to [AB] or [CD].
 - vi. By refusing to refer matters to the DPP or other appropriate bodies to make the decision whether or not to charge.
 - vii. By Seeking and/or obtaining over exuberant bail conditions in relation to [AB] and [CD].
 - viii. By failing to investigate media leaks, particularly those which tended to be disparaging or scandalous towards witnesses who might give evidence favourable to [AB].
 - ix. The questioning of witnesses at the hearing of [AB] was conducted in a manner such that witnesses were told (and assumed) that facts which tended to support an unfavourable conclusion against [AB] or [CD] existed, when in fact no such conclusions could be obtained from the evidence which existed.
 - x. This line of questioning confused the person giving evidence and tainted the evidence.
 - xi. By instructing seconded police officers to institute charges in relation to the subject matter of the corruption hearing, instead of referring the matters on to appropriate bodies to make this decision.
 - xii. By instructing seconded police officers to commence proceedings or to instruct other police officers to commence proceedings in relation to various offences committed by various people, which are not the subject of the corruption hearing, rather than referring those matters on to the relevant bodies.
- b. The investigation was handled in a manner which shows actual bias.
- i. The Crime and Corruption Commission Chairperson, Mr Macsporrán, advised [the applicant] that he would have

complete protection from past criminal behaviour provided he told the truth in his coercive hearing.

- ii. Mr Macsporrán told [the applicant] that he would give [the applicant] notice when any witnesses were called in the coercive hearings which might affect the interests of [the applicant]. Despite this, the Crime and Corruption Commission failed to advise that [named witnesses] had given evidence relevant to events that [the applicant] was asked about during the giving of [the applicant's] evidence.
 - iii. By commencing actions for Perjury against [CD] and [AB], for matters which could only succeed if facts existed which showed that [AB] was guilty of Corruption.
- c. The investigation was handled in a manner which was otherwise unfair within the meaning of Section 332 of the Act to [the applicant].
- i. [The applicant] was denied Natural Justice.
 - ii. The full particulars or scope of evidence against [the applicant] was never put to [the applicant].
 - iii. [The applicant] was not provided with an opportunity to respond to or provide evidence supportive of his position."

[6] The points of claim then make a number of allegations said to support the more general allegations in paragraphs 1 and 2 and the relief claimed in the amended application.

[7] It is common ground that over a period of time the CCC conducted an investigation into the activities of AB. The investigation has involved the use of coercive powers, including the power of compulsory examination of witnesses. The applicant has been summoned and examined in the exercise of those coercive powers. The investigation of AB is at an advanced stage, if not completed. He has been charged with criminal offences, as have other persons.

[8] A police officer has sworn that he has formed a reasonable suspicion that the applicant has committed the offence of official corruption. He intends to charge the applicant by issue of a notice to appear. The only reason he has not done so is because these proceedings have not been resolved. There are no further investigations planned into the activities of the applicant. The investigation of him is completed.

[9] It is necessary to consider some provisions of the *CCC Act*. Section 4 of the *CCC Act* expresses the purposes of the legislation and s 5 explains how those purposes are to be achieved. Those sections provide:

“4 Act’s purposes

- (1) The main purposes of this Act are—
 - (a) to combat and reduce the incidence of major crime; and
 - (b) to continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector.
- (2) The Act also has as the purpose to facilitate the commission’s involvement in a confiscation related investigation.

5 How Act’s purposes are to be achieved

- (1) The Act’s purposes are to be achieved primarily by establishing a permanent commission to be called the Crime and Corruption Commission.
- (2) The commission is to have investigative powers, not ordinarily available to the police service, that will enable the commission to effectively investigate major crime and criminal organisations and their participants.
- (3) Also, the commission is to—
 - (a) investigate cases of corrupt conduct, particularly more serious cases of corrupt conduct; and
 - (b) help units of public administration to deal effectively and appropriately with corruption by increasing their capacity to do so.
- (4) Further, the commission has particular powers for confiscation related investigations for supporting its role under the Confiscation Act.”

[10] As can be seen, the CCC’s functions and powers relate to the investigation of both major crime and corruption. The CCC Act distinguishes between the CCC’s crime function and its corruption function. Sections 25 and 26 concern the CCC’s crime function. These sections provide:

“25 Commission’s crime function

The commission has a function (its ‘crime function’)—

- (a) to investigate major crime referred to it, under division 2 , by the reference committee; and
- (b) to investigate, under an authorisation under section 55D, incidents that threaten, have threatened or may threaten public safety that criminal organisations or participants in criminal organisations have engaged in, are engaging in, or are planning to engage in.

26 How commission performs its crime function

Without limiting the ways the commission may perform its crime function, the commission performs its crime function by—

- (a) investigating major crime referred to it, under division 2 , by the reference committee; and
- (b) when conducting investigations under paragraph (a), gathering evidence for—
 - (i) the prosecution of persons for offences; and
 - (ii) the recovery of the proceeds of major crime; and
 - (iii) the recovery of other property liable to forfeiture, or a person’s unexplained wealth, under the Confiscation Act; and
- (c) liaising with, providing information to, and receiving information from, other law enforcement agencies and prosecuting authorities, including agencies and authorities outside the State or Australia, about major crime.”

[11] The investigation here was a corruption investigation, that is, an investigation pursuant to the CCC’s corruption function. As to the CCC’s corruption function, ss 33 and 35 of the *CCC Act* provide as follows:

“33 Commission’s corruption functions

- (1) The commission has the following functions for corruption (the *corruption functions*)—
 - (a) to raise standards of integrity and conduct in units of public administration;
 - (b) to ensure a complaint about, or information or matter involving, corruption is dealt with in an appropriate way, having regard to the principles set out in section 34.
- (2) The commission’s *corruption functions* also include—
 - (a) investigating and otherwise dealing with—
 - (i) conduct liable to allow, encourage or cause corrupt conduct; and
 - (ii) conduct connected with corrupt conduct; and
 - (b) investigating whether corrupt conduct or conduct mentioned in paragraph (a)(i) or (ii) may have happened, may be happening or may happen.

...

35 How commission performs its corruption functions

- (1) Without limiting how the commission may perform its corruption functions, it performs its corruption functions by doing 1 or more of the following—

- (a) expeditiously assessing complaints about, or information or matters (also complaints) involving, corruption made or notified to it;
 - (b) referring complaints about corruption within a unit of public administration to a relevant public official to be dealt with by the public official;
 - (c) performing its monitoring role for police misconduct as provided for under section 47(1);
 - (d) performing its monitoring role for corrupt conduct as provided for under section 48(1);
 - (e) dealing with complaints about corrupt conduct, by itself or in cooperation with a unit of public administration;
 - (f) investigating and otherwise dealing with, on its own initiative, the incidence, or particular cases, of corruption throughout the State;
 - (g) assuming responsibility for, and completing, an investigation, by itself or in cooperation with a unit of public administration, if the commission considers that action to be appropriate having regard to the principles set out in section 34;
 - (h) when conducting or monitoring investigations, gathering evidence for or ensuring evidence is gathered for—
 - (i) the prosecution of persons for offences; or (ii) disciplinary proceedings against persons; (i) assessing the appropriateness of systems and procedures adopted by a unit of public administration for dealing with complaints about corruption;
 - (j) providing advice and recommendations to a unit of public administration about dealing with complaints about corruption in an appropriate way.
- (2) In performing its corruption functions in a way mentioned in subsection (1), the commission should, whenever possible, liaise with a relevant public official.
- (3) In performing its corruption function under section 33(b), the commission must focus on more serious cases of corrupt conduct and cases of systemic corrupt conduct within a unit of public administration.”

[12] Section 34 headed “Principles for Performing Corruption Function” sets out general considerations as to how the CCC should approach the exercise of its corruption function. There is no need here to explore the effect of s 34.

[13] Chapter 3 of the *CCC Act* bestows various powers upon the CCC. Chapter 3 both vests and regulates investigative powers which include searches pursuant to warrant, (see s 86 and following); searches in emergency situations without warrant (see s 96 and following) searches of persons (see s 100 and following); searching property (s 109 and following); monitoring and supervision orders directed to financial institutions to enable the monitoring of financial activities of persons suspected of criminal activity (see ss 119A and following); surveillance warrants (see s 121); and controlled operations, (see s 132). Various of these powers require judicial authorisation. Some powers relate to criminal investigations, some concern corruption investigations, some concern both.

[14] Chapter 4 authorises the CCC to conduct hearings. Section 176 provides relevantly:

“176 Commission may hold hearings

(1) The commission may authorise the holding of a hearing in relation to any matter relevant to the performance of its functions.

...”

[15] There are certain limitations upon the power to conduct hearings. See s176(2); but these restrictions are not relevant here. Various provisions regulate how the power to conduct hearings are to be exercised. Again, there is a distinction drawn between hearings in criminal investigations and hearings in corruption investigations. Again, there are provisions which render the powers subject to judicial control. For example, see s 195.

[16] Chapter 7 of the *CCC Act* contains various miscellaneous provisions, including s 332 which is the section pursuant to which the present application is brought. Section 332 is an example of one of the sections which provide for judicial supervision of the exercise of the CCC’s powers. It provides relevantly here:

“332 Judicial review of commission’s activities in relation to corrupt conduct

(1) A person who claims—

- (a) that a commission investigation into corrupt conduct is being conducted unfairly; or
- (b) that the complaint or information on which a commission investigation into corrupt conduct is being, or is about to be, conducted does not warrant an investigation;

may apply to a Supreme Court judge for an order in the nature of a mandatory or restrictive injunction addressed to the commission.

...

- (8) An application under this section is to be heard in closed court.
- (9) In this section—

commission investigation into corrupt conduct includes an investigation of a matter mentioned in section 33(2).

injunction proceeding means an application under subsection (1) and a proceeding on the application.”

[17] While the application is made under s 332, the jurisdiction to make orders is vested by s 334 to which I will later refer. Relevant to the applicant’s arguments are ss 49, 50 and 51 of the CCC Act. These provisions are contained in Division 5 of Part 3 of Chapter 2 headed “Action Following Investigation” and provide:

“49 Reports about complaints dealt with by the commission

- (1) This section applies if the commission investigates (either by itself or in cooperation with a public official), or assumes responsibility for the investigation of, a complaint about, or information or matter involving, corruption and decides that prosecution proceedings or disciplinary action should be considered.
- (2) The commission may report on the investigation to any of the following as appropriate—
 - (a) a prosecuting authority, for the purposes of any prosecution proceedings the authority considers warranted;
 - (b) the Chief Justice, if the report relates to conduct of a judge of, or other person holding judicial office in, the Supreme Court;
 - (c) the Chief Judge of the District Court, if the report relates to conduct of a District Court judge;
 - (d) the President of the Childrens Court, if the report relates to conduct of a person holding judicial office in the Childrens Court;
 - (e) the Chief Magistrate, if the report relates to conduct of a magistrate;
 - (f) the chief executive officer of a relevant unit of public administration, for the purpose of taking disciplinary action, if the report does not relate to the conduct of a judge, magistrate or other holder of judicial office.
- (3) If the commission decides that prosecution proceedings for an offence under the Criminal Code, section 57 should be considered,

the commission must report on the investigation to the Attorney-General.

- (4) A report made under subsection (2) or (3) must contain, or be accompanied by, all relevant information known to the commission that—
- (a) supports a charge that may be brought against any person as a result of the report; or
 - (b) supports a defence that may be available to any person liable to be charged as a result of the report; or
 - (c) supports the start of a proceeding under section 219F or 219G against any person as a result of the report; or
 - (d) supports a defence that may be available to any person subject to a proceeding under section 219F or 219G as a result of the report.
- (5) In this section—
- prosecuting authority*** does not include the director of public prosecutions.

50 Commission may prosecute corrupt conduct

- (1) This section applies if the commission reports to the chief executive officer of a unit of public administration under section 49 that—
- (a) a complaint, matter or information involves, or may involve, corrupt conduct by a prescribed person in the unit; and
 - (b) there is evidence supporting the start of a disciplinary proceeding for corrupt conduct against the prescribed person.
- (2) The commission may apply, as provided under the QCAT Act, to QCAT for an order under section 219I against the prescribed person.
- (3) In this section—
- prescribed person*** means—
- (a) a person—
 - (i) who is a member of the police service; or
 - (ii) being a member of the police service, whose employment as a member of the police service ends after the corrupt conduct happens, regardless of whether the employment ends before or after the start of a disciplinary proceeding for the corrupt conduct; or
 - (b) a person (other than a judge or holder of judicial office, or a member of the police service)—

- (i) who holds an appointment in a unit of public administration; or
- (ii) who held an appointment in a unit of public administration that ended after the corrupt conduct happened, regardless of whether the appointment ended before or after the start of a disciplinary proceeding for the conduct.

51 Other action for corruption

- (1) Nothing in this part limits the action that may lawfully be taken by the commission or a unit of public administration to discipline or otherwise deal with a person for corruption.

Example—

The commissioner of police may bring a disciplinary charge against a police officer under the *Police Service Administration Act 1990*.

- (2) Subsection (1) is subject to sections 47 and 48.”

[18] Also of some importance are ss 255 and 174 which are in these terms:

“255 Secondment of officers

- (1) The chief executive officer may arrange with the chief executive of a department, or with another unit of public administration, for the services of officers or employees of the department or other unit to be made available (seconded) to the commission.
- (2) The arrangement is not effective unless it has been approved by—
 - (a) for a secondment of an officer or employee of the parliamentary service—the Speaker; or
 - (b) for a secondment of a member of the police service— the Minister and the Minister administering the Police Service Administration Act 1990; or
 - (c) for a secondment of another officer or employee—
 - (i) if the secondment is to a position at a level equivalent to or above the level of a senior officer under the Public Service Act 2008—the Minister and the Minister responsible for the unit of public administration from which the person is to be seconded; or
 - (ii) if the secondment is to a position at another level— the chief executive of the unit of public administration from which the person is to be seconded.

- (3) An officer or employee seconded to the commission under this section is subject to the direction and control of the chief executive officer.
- (4) However, if police officers are seconded to the commission, their efficient deployment is to be the joint responsibility of the chief executive officer and the most senior police officer seconded to the commission
- (5) Without limiting section 174(2), a police officer seconded to the commission under this section continues to be a police officer for all purposes and to have the functions and powers of a police officer without being limited to the performance of the commission's functions.

Example for subsection (5)—

A police officer seconded to the commission may exercise the powers of a police officer under the *Police Powers and Responsibilities Act 2000* for an investigation of alleged corruption involving a relevant offence as defined in section 323 of that Act.

- (6) This section does not apply to the establishment of a police task force or to police officers who are part of a police task force.

174 Commission's powers generally

- (1) Without limiting the commission's specific powers under this or another Act, the commission has power to do all things necessary or convenient to be done for or in connection with, or reasonably incidental to, the performance of its functions.

Note—

See, for example, the *Police Powers and Responsibilities Act 2000*, chapter 11 (Controlled operations).

- (2) A person who is a member of a relevant office whose services are seconded to the commission under section 255 retains, and may exercise, all powers had by the person as a member of the office."
- (3) In this section—

relevant office means a unit of public administration or an office within a unit of public administration."

[19] One way or another, the applicant seeks various relief that can be placed into one of two categories:

1. Orders which regulate or stop the investigation into AB and the applicant – see paragraphs 3(c), (d), (e), (f), (g), (h) and (i) of the amended application and the opening

sentence of paragraph 3 which seeks an order restraining the CCC's chairman from undertaking further hearings and;

2. Orders which prevent the prosecution of the applicant being commenced (see paragraphs 3(a) and (b) of the amended application).

[20] There are many allegations and submissions which are made by the applicant which are said to support the granting of relief. These include allegations of actual bias against the chairman of the CCC and a series of criticisms of the way in which the hearings were conducted. It is alleged that there was selective calling of witnesses, biased questioning and other allegations. For reasons which will become apparent, it is not only unnecessary to consider those matters, it is undesirable that I express views about them.

[21] The respondent, in defence of the application, submits that:

1. section 332 of the *CCC Act* concerns the regulation of the use of the investigative powers bestowed by the *CCC Act*. The investigation here, at least as it relates to the applicant, is completed. Therefore, it is submitted that there are no proper orders that can be made under the section;
2. any other power of the court to grant injunctive relief is discretionary, and here where a criminal proceeding is about to be commenced, the discretion ought to be exercised against the granting of relief;
3. section 332 does not grant jurisdiction to prevent the commencement of criminal proceedings;
4. any power to make an order preventing the commencement of criminal proceedings ought not be exercised as a matter of discretion.

[22] There are really four broad issues in relation to each of the two categories of claims for relief, namely:

1. does s 332 give jurisdiction to make the orders sought?

2. does the general jurisdiction of the court give a basis for the making of the orders sought?
3. all relief clearly being discretionary, should the court embark upon a consideration of the various complaints and allegations made by the applicant?

If the answer to (1) or (2) and (3) above is in the affirmative, then:

4. is there substance in the complaints?

[23] The parties were content at my suggestion to argue points (1), (2) and (3) and defer argument on point (4) until determination of points (1), (2) and (3). The hearing proceeded on that basis.

[24] I will now deal with the question concerning the orders to regulate or stop the investigation, which is the first category. The policy behind s 332 is, with respect, obvious. The legislature has determined a need to establish a body such as the CCC and then to vest upon it very significant powers which impinge upon recognised rights – the right to silence, for instance. As a balance, the exercise of the powers is regulated judicially. There is power to stop an investigation where the exercise of the invasive powers is not warranted (see s 332(1)(b)), and a power to regulate the exercise of the CCC’s powers to ensure they are exercised fairly (see s 332(1)(a)).

[25] Section 332 seeks to regulate the use of investigative powers which are being or are to be exercised. The section does not contemplate a review of the past exercise of powers where no further exercise of the powers is contemplated. This is made clear not only by s 332 itself but also by s 334, which relevantly here provides:

“334 Application under s 332

- (1) If the judge who hears an application under section 332 is satisfied as to the matter claimed by the applicant, the judge may, by order—
 - (a) require the senior executive officer (corruption) to conduct the investigation in question in accordance with guidelines specified in the order; or
 - (b) direct the senior executive officer (corruption) to stop or not proceed with an investigation on the complaint or information to which the application relates.

...”

[26] Both ss 332 and 334 assume the existence of an ongoing investigation. Similar provisions were considered in *Le Grand v Criminal Justice Commission*.¹ The legislation being considered there was the *Criminal Justice Act 1989* which established the Criminal Justice Commission, the forerunner of the CCC. The relevant provision was s 34(1)(a) which was in these terms:

“(1) A person who claims -

(a) that an investigation by the official misconduct division is being conducted unfairly; ...

may make application to a judge of the Supreme Court for an order in the nature of a mandatory or restrictive injunction addressed to the Commission.”

[27] The Court of Appeal held that the section operated to regulate an investigation which was being conducted, not one that had been concluded. What the applicant here really seeks is a review of the completed investigation, its reopening, and the making of orders directing that the reopened investigation be conducted in a particular way. Section 332 does not authorise such orders.

[28] Mr Stevenson, the solicitor for the applicant, argued that notwithstanding the uncontested evidence of the police officer that the investigation was concluded, that it was, in fact, ongoing. Even the current application, he submitted, was part of an investigation which was continuing. Mr Stevenson’s submission was based upon s 35 of the *CCC Act*, in particular s 35(e) and the definition of “deal with.” I have previously set out s 35. The term “deal with” is defined in the dictionary to the *CCC Act*. . The definition is:

“**deal with**, a complaint about corruption or information or matter involving corruption, includes—

- (a) investigate the complaint, information or matter; and
- (b) gather evidence for—
 - (i) prosecutions for offences; or
 - (ii) disciplinary proceedings; and
- (c) refer the complaint, information or matter to an appropriate authority to start a prosecution or disciplinary proceeding; and

¹ [2001] QCA 383.

- (d) start a disciplinary proceeding; and
- (e) take other action, including managerial action, to address the complaint in an appropriate way.”

- [29] Mr Stevenson’s submission seems to be that the CCC is still dealing with the complaint of corruption and s 332 therefore has some operation. That submission must be rejected.
- [30] Sections 332 and 334 concern “investigations” of complaints. It may be that the CCC has power to “deal with” the complaint and it may be that the CCC “deals with” the complaint by taking action both before, during and after it undertakes an investigation; but ss 332 and 334 assume a current investigation. Here there is not one.
- [31] Even though an investigation under the *CCC Act* does not result in an alteration of the applicant’s rights, the Court may have jurisdiction to regulate the exercise of the CCC’s statutory powers independently of s 332. See: *Ainsworth v Criminal Justice*² and *Annetts v McCann*.³
- [32] The Court, generally, has jurisdiction to review decisions made in the course of a criminal investigation. See, for instance, the cases where the decision to issue search warrants, which is an exercise of executive power, has been reviewed: *Chief Executive Administering Environmental Protection Act 1994 v Linc Energy Ltd*⁴ and *Hope v Bathurst City Council*.⁵ See also *Coco v The Queen*,⁶ which was a case about a listening device. However, all such relief is discretionary.
- [33] Here, discretionary considerations point inevitably towards the refusal of relief. The further exercise of coercive investigative powers against the applicant is not contemplated. The investigation is complete. Any court exercising criminal jurisdiction, once the applicant is

² (1992) 175 CLR 564.

³ (1990) 170 CLR 596.

⁴ [2016] 2 Qd R 66.

⁵ (1980) 144 CLR 1.

⁶ (1994) 179 CLR 427.

charged, has power to exclude evidence improperly obtained (see: *Bunning v Cross*⁷ and *Police v Dunstall*⁸) and to regulate any prosecution, even to the point of ordering a permanent stay if that is necessary in the interests of justice (*Jago v District Court of New South Wales*⁹). For an example of a case where the conduct of coercive examinations led to a permanent stay of subsequent criminal proceedings, see: *Strickland v DPP (Cth)*.¹⁰

- [34] Any impact of the conduct of the investigation under the *CCC Act* upon criminal proceedings brought against the applicant, is a matter for the assessment of the court in which those criminal proceedings are brought. It is for that court to fashion any relief which might be thought to be necessary. No purpose is served by me on an application such as the present, reviewing the various complaints made by the application and then expressing views. Indeed, any views that I might express now might influence any decision made in the criminal court. That is inappropriate. For these reasons it is undesirable that I review the material and express views. Review of the complaints is unnecessary and inappropriate as I have concluded that there is no current investigation and no basis, whether under s 332 of the *CCC Act* or otherwise, to grant injunctive relief concerning the exercise of the CCC's investigative powers.
- [35] I turn now to the second category of relief, which are orders which prevent the prosecution of the applicant. The applicant's submission is based on the assumption that the CCC will charge the applicant with criminal offences and seek to do that by directing a police officer to do so. The submissions misunderstand not only the *CCC Act* but also the effect of legislation which governs criminal procedure.
- [36] The applicant points to ss 49, 50 and 51 of the *CCC Act* and submits that those sections do not authorise the CCC to charge the applicant. As already observed, ss 49, 50 and 51 of the *CCC Act* are contained in Division 5 of Part 3 of Chapter 2. As already observed, Division 5 is headed "Action Following Investigation." Section 49 (2) vests a discretion upon the CCC to report findings about corruption to the relevant authority. That report is made where the CCC "decides that prosecution proceedings or disciplinary action should be considered."

⁷ (1978) 141 CLR 54.

⁸ (2015) 256 CLR 403.

⁹ (1989) 168 CLR 23.

¹⁰ (2018) 361 ALR 23.

- [37] Section 49 clearly contemplates that action taken upon a report by the CCC is to be taken not by the CCC but by the person to whom the CCC reports the conduct.
- [38] Section 50 does not concern criminal prosecution. It empowers the CCC not to prosecute criminal, but disciplinary proceedings. This is clear from the mention in s 50 of s 219I. Section 219I is contained within Chapter 5. That chapter is headed “Offences and Disciplinary Proceedings Related to Corruption.” Part 1 of chapter 5 creates various offences, Part 2 is headed “Disciplinary Proceedings Relating to Corruption,” and by s 219C, jurisdiction to conduct disciplinary proceedings is vested in the Queensland Civil and Administrative Tribunal, which I will call QCAT.
- [39] Section 219I mentioned in s 50, vests powers in QCAT to make orders against a “prescribed person.” The *CCC Act* defines a “prescribed person” and the definition does not include the applicant. Section 51 makes it clear that the grant of powers in the *CCC Act* does not operate so as to restrict other powers which might be possessed by the CCC or the relevant unit of public administration.
- [40] It is true, as the applicant seems to submit, that there is nothing in ss 49 to 51 or in other provisions of the *CCC Act* which authorises the CCC to charge the applicant with an offence of corruption; but it is not contemplated that the CCC will charge the applicant. What is contemplated is that a police officer will.
- [41] There are three different procedures whereby criminal proceedings can be commenced. The first is by arrest. That is primarily authorised and regulated by Chapter 14 of the *Police Powers and Responsibilities Act 2000 (Qld)*, which I will call the *PPRA*. Part 1 of Chapter 14 of the *PPRA* concerns arrest without warrant and Part 2 concerns arrest pursuant to a warrant. Section 365 of the *PPRA*, authorises arrest without warrant. It provides:

“365 Arrest without warrant

- (1) It is lawful for a police officer, without warrant, to arrest an adult the police officer reasonably suspects has committed or is committing an offence if it is reasonably necessary for 1 or more of the following reasons—
- (a) to prevent the continuation or repetition of an offence or the commission of another offence;
 - (b) to make inquiries to establish the person’s identity;

- (c) to ensure the person's appearance before a court;
 - (d) to obtain or preserve evidence relating to the offence;
 - (e) to prevent the harassment of, or interference with, a person who may be required to give evidence relating to the offence;
 - (f) to prevent the fabrication of evidence;
 - (g) to preserve the safety or welfare of any person, including the person arrested;
 - (h) to prevent a person fleeing from a police officer or the location of an offence;
 - (i) because the offence is an offence against section 790 or 791;
 - (j) because the offence is an offence against the *Domestic and Family Violence Protection Act 2012*, section 177, 178 or 179;
 - (k) because of the nature and seriousness of the offence;
 - (l) because the offence is—
 - (i) an offence against the *Corrective Services Act 2006*, section 135 (4); or
 - (ii) an offence to which the *Corrective Services Act 2006*, section 136 applies.
- (2) Also, it is lawful for a police officer, without warrant, to arrest a person the police officer reasonably suspects has committed or is committing an indictable offence, for questioning the person about the offence, or investigating the offence, under chapter 15.
- (3) Subject to the *Youth Justice Act 1992*, section 13, it is lawful for a police officer to arrest a child without warrant if the police officer reasonably suspects the child is committing or has committed an offence.

Example: Under the youth justice principles in the *Youth Justice Act 1992*, schedule 1, it is a principle of that Act that a child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances."

[42] In order to arrest without a warrant a police officer must "reasonably suspect" that the alleged offender "has committed or is committing an offence" in the circumstances identified in ss 326

(1) (i) to (l). There are other provisions which allow arrest without warrant but there is no need to go to those.

- [43] Sections 370 and 371 of the *PPRA* concern the issue of an arrest warrant by a Justice of the Peace (see s 371), upon the application of a police officer, (see s 370). The police officer must make written application, which must be sworn on oath. One of the matters which the police officer must swear are the grounds upon which the warrant is sought. The Justice of the Peace must be satisfied, amongst other things, that “there are reasonable grounds for suspecting that the person has committed an offence”.
- [44] There are also provisions in the *Justices Act 1886*, for the issue of an arrest warrant: see ss 371 and 372.
- [45] As an alternative to arrest, the *Justices Act* provides that a Justice of the Peace may issue a summons requiring a citizen to attend before a Magistrates Court and answer a charge: see s 53. The justice’s summons is issued upon a complaint: see ss 42 and 43. The complaint must be in writing: see s 42(1). The complaint may be made by any citizen who suspects that a defendant has committed an offence. However, there are ramifications if the complaint is made by a person other than a “public officer” or persons acting in execution of duty or pursuant to legislation, see Part 5, Division 2.
- [46] A further alternative to the commencement of criminal proceedings by arrest of the accused is provided by the *PPRA* by a device known as a notice to appear. Section 382 of the *PPSA* provides as follows:

“382 Notice to appear may be issued for offence

- (1) The object of this section is to provide an alternative way for a police officer to start or continue a proceeding against a person that reduces the need for custody associated with arrest and does not involve the delay associated with issuing a complaint and summons under the *Justices Act 1886*.

Note—

For starting proceedings against children by notices to appear, see the *Youth Justice Act 1992*.

- (2) A police officer may issue and serve a notice (***notice to appear***) on a person if the police officer—

- (a) reasonably suspects the person has committed or is committing an offence; or
 - (b) is asked by another police officer who has the suspicion mentioned in paragraph (a) to issue and serve the notice to appear.
- (3) A notice to appear must be personally served on a person.
 - (4) However, a notice to appear for an offence against the Road Use Management Act or the Heavy Vehicle National Law (Queensland) may be served on a person by registered post if it is served as in the way provided for under the *Justices Act* 1886, section 56(2)(a), (b) or (c).

Note—

The *Justices Act* 1886, section 56(2)(a) to (c) authorise service at an address stated in a driver licence or a current certificate of registration for a motor vehicle.

- (5) If a person is alleged to have committed offences as a child and as an adult, a separate notice to appear must be issued for the offences committed as a child.”

[47] It can be seen that a notice to appear may be issued by a police officer, once the officer “reasonably suspects” the commission of an offence.

[48] The CCC is an investigative body with extensive statutory powers which investigates serious criminal activity and corruption. It is hardly surprising then, that police officers are seconded to the CCC, and that is provided for by s 255 of the *CCC Act*. It is true that by s 255(3), a police officer who is seconded is subject to the “direction and control of the CCC”. It does not, though, follow, as the applicant submits, that a police officer seconded to the CCC must, under the direction of the CCC, charge a person, and it certainly does not follow that a police officer who receives such a direction must or could charge such a person without forming the requisite state of mind to lawfully swear a complaint or an application for an arrest warrant or arrest a person without a warrant or issue a notice to appear.

[49] Section 255 must, like any statutory provision, be considered in the context of the legislation as a whole and with respect to its objects and purpose, see *Project Blue Sky v Australian Broadcasting Authority*.¹¹ Section 255 is contained within Chapter 6, dealing with

¹¹ (1998) 194 CLR 335 at [60] – [69].

“Administration”. This chapter is about the CCC’s staffing. By s 4.9 of the *Police Service Administration Act 1990*, the Commissioner of Police may give lawful directions to a police officer. Once the police officer is seconded to the CCC, the CCC may give lawful directions to the officer while he or she is seconded.

- [50] By s 174 of the *CCC Act*, the police officer who is seconded to the CCC retains the powers held by him or her as a police officer. He or she maintains the status of a police officer, notwithstanding the secondment; see s 255(5) of the *CCC Act*. The policy behind having police officers, with full powers as police officers, working in a body such as the CCC is obvious.
- [51] A police officer who is seconded to the CCC and is working on a particular investigation will, no doubt, work collaboratively with CCC investigators and also, no doubt, members of the CCC, including perhaps the chairman. Decisions might therefore be made collaboratively and tactically as to who should be charged and when. This reality is reflected in the fact that the CCC, earlier in the proceedings, offered an undertaking to the court, the effect of which was to maintain the status quo by not having the applicant charged before the current proceedings were concluded.
- [52] However, a police officer seconded to the CCC but retaining his or her powers, vested by the *PPRA*, retains the responsibility of exercising those powers lawfully; just as if he or she were not seconded to the CCC. It is the police officer who must form the “reasonable suspicion” before issuing a notice to appear. The CCC cannot direct any police officer to act unlawfully. In particular, the CCC could not direct a seconded police officer to issue a notice to appear without him forming the requisite suspicion. If the police officer, though, forms the requisite suspicion, the police officer exercises the powers given to him or her under the *PPRA* to issue a notice to appear and it is therefore the police officer, not the CCC, who will charge the applicant.
- [53] The applicant will, it seems, be charged by a police officer seconded to the CCC, exercising powers bestowed upon him under the *PPRA* as a sworn police officer. What the applicant seeks are orders preventing the exercise of these powers. The applicant seeks orders requiring the CCC to direct all officers seconded to it not to charge the applicant and for the CCC to be ordered to direct the police officers seconded to the CCC to not refer the applicant’s case to any other police officer for the purpose of that police officer exercising his or her powers under the *PPRA* against the applicant. Whether the CCC can, as a matter of law, lawfully direct

police officers not to exercise powers specifically vested in them by the legislature need not be determined because there are overwhelming discretionary reasons why the court would not direct the CCC in those or similar terms.

- [54] What is contemplated by the applicant is for the court to consider the material which is available to the police officer who intends to issue the notice to appear and then determine what evidence is admissible in any trial and then determine whether the police officer has formed a “reasonable suspicion of guilt” from admissible evidence. What the applicant seeks is, in effect, a judicial review of a decision which has not yet been made.
- [55] It might be that a decision to issue a notice to appear under the provisions of the *PPRA* is amenable to judicial review. For instance, a decision to arrest a person can be reviewed for the purposes of determining whether the arrest was lawful or otherwise. See the cases considered by McHugh J in *Colman v Power*.¹²
- [56] However, the state of mind which must be formed by the police officer is only one of “reasonable suspicion”. It is well-established that suspicion is a relatively low level of intellectual conviction; lower, for instance, than the holding of a belief. See *George v Rockett*,¹³ *Hussien v Chong Fook Kam*¹⁴ and *Queensland Bacon Proprietary Limited v Rees*.¹⁵
- [57] The issue in any prosecution of the applicant will be whether the Crown can prove guilt beyond reasonable doubt. A preliminary investigation at this stage as to whether a police officer has a reasonable suspicion as to guilt is an investigation which might be necessary in some circumstances, for example, where the reasonable suspicion caused the exercise of a power to arrest and an issue in the proceedings was the lawfulness or otherwise of the arrest. Here, however, where prosecution is contemplated and a court will be called upon to finally determine guilt or otherwise, an inquiry as to whether the police officer, at this point, holds a reasonable suspicion of guilt is simply not warranted. It is also not desirable for the court to be

¹² (2004) 220 CLR 1 at [118] – [124].

¹³ (1990) 170 CLR 104.

¹⁴ [1970] AC 942 at 948.

¹⁵ (1966) 115 CLR 266.

called upon to make some preliminary finding before the criminal proceedings are commenced and then determined.

[58] Further, a criminal prosecution demonstrates clearly the operation of the doctrine of the separation of powers. It is the executive in whom the prosecutorial discretion vests. The executive decides who is to be prosecuted and on what charges. Once the criminal process has been commenced, judicial power is exercised to hear and determine the proceedings – see *Likiardopoulos v The Queen*,¹⁶ *Jago v District Court of New South Wales*.¹⁷

[59] Decisions taken by the executive to prosecute are generally not reviewable – see *Barton v R*.¹⁸ These principles manifest themselves in various ways. For example:

1. a decision to present an ex officio indictment is not reviewable (*Barton v The Queen*¹⁹);
2. a decision to accept a plea to a lesser charge in discharge of the indictment is not reviewable (*Maxwell v The Queen*²⁰);
3. a decision to enter a *nolle prosequi* is not reviewable (*R v Jell ex parte Attorney-General*²¹; *R v Ferguson*²²);
4. a decision whether or not to present particular evidence in a case is not reviewable (*Maxwell v The Queen*²³); and

¹⁶ (2012) 247 CLR 265 at [2].

¹⁷ (1989) 168 CLR 23 at [28].

¹⁸ (1980) 147 CLR 75 at [94]

¹⁹ (1980) 147 CLR 75.

²⁰ (1996) 184 CLR 501 at 534.

²¹ (1991) 1 Qd R 48.

²² (1991) 1 Qd R 35.

²³ (1996) 184 CLR 501 at 534.

5. a decision whether to accept a lesser plea from co-offenders is not reviewable (*Likiardopoulos v The Queen*²⁴).

[60] While the executive determines whether proceedings should be commenced, the court, in exercise of judicial power, will prevent abuse of the court's process. In an appropriate case then, the court will stay a proceeding or make other orders to ensure that any trial is fair to the accused, (*Jago v District Court (NSW)*²⁵ and *Williams v Spautz*²⁶). Similarly, a court may refuse to return an indictment to enable a *nolle prosequi* to be entered if the discontinuation of the proceeding in that way is an abuse of process, see *R v Jell ex parte Attorney-General*;²⁷ *R v Ferguson*.²⁸ That step is not taken by way of review of the decision to enter the *nolle prosequi* but is a step taken to prevent the abuse of the court's process.

[61] If the applicant is charged, then he may seek various remedies in the criminal proceedings and, as already observed, in an extreme case, the proceedings may be stayed where unfairness has resulted from the exercise of coercive investigative powers, see *Strickland v Commonwealth Director of Public Prosecutions*.²⁹

[62] In a relevant but separate submission, Mr Stevenson submitted that the CCC utilised the police officer who wishes to charge the applicant in the investigation. He submits that the CCC is now effectively utilising him to charge the applicant. Mr Stevenson submits that passing of material obtained in the investigation to a police officer is not contemplated by the *CCC Act*; so it is contended that the power of the officer to issue a notice to appear is undermined.

[63] In support of that submission, Mr Stevenson relies upon s 49 of the *CCC Act* which I have set out earlier. By s 49(2), the CCC may make a report about its corruption investigations to various named bodies. The Queensland Police Service is not named. Therefore, Mr Stevenson

²⁴ (2012) 247 CLR 265.

²⁵ (1989) 168 CLR 23.

²⁶ (1992) 174 CLR 509

²⁷ [1991] 1 Qd R 48.

²⁸ [1991] 1 Qd R 35.

²⁹ (2018) 361 ALR 23.

submits, providing information to a police officer who might then charge a defendant is not contemplated.

[64] I reject that submission. Section 255 allows secondment of persons, including, of course, police officers, to the CCC. Section 174 provides that persons seconded retain all powers of his or her office. Police seconded to the CCC retain their powers vested under the *PPRA*, including the power to arrest and including the power to issue notices to appear. There is nothing in the *CCC Act* which suggests that a police officer who, whilst seconded to the CCC, becomes privy to information which gives him or her reasonable suspicion that an offence has been committed cannot exercise the *PPRA* given powers to issue a notice to appear.

[65] Here, the applicant is seeking an order of the court requiring a body exercising executive powers to give directions to police officers effectively suspending powers the exercise of which may lead to the prosecution of the applicant. Such a jurisdiction is not vested in the court by s 332 of the *CCC Act*. That section concerns regulation of investigations, not prosecutions. To the extent there is jurisdiction vested otherwise in the court to make such orders, then for the reasons explained, I would, as a matter of discretion, not make the orders.

[66] I will turn now to the question of the disclosure application. As already observed, when the application for disclosure came before me on 22 February 2019, it appeared that the principal application was hopelessly misconceived and s 332 of the *CCC Act* upon which it was based appeared not to authorise the making of the orders sought. It also appeared highly unlikely, as the case was then framed, that the orders would be made in the exercise of the court's general jurisdiction. It was not possible then to identify any real issues which could warrant an order for disclosure of documents. For that reason, I dismissed the application and made directions for the delivery of points of claim so that a case could be identified if there was one. For the reasons I have given on the principal application, there is not.

[67] I make the following orders:

1. The application is dismissed
2. The parties are to be heard on the question of costs
3. The parties are to be heard on the release of the undertaking