# SUPREME COURT OF QUEENSLAND

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| CITATION: | *Cth DPP v Jo & Ors* [2007] QCA 251 |
| PARTIES: | **COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**<br>(applicant/respondent/applicant)<br>**v**<br>**TATSUO JO**<br>(tenth respondent/applicant/first respondent)<br>**MISAKO JO**<br>(eleventh respondent/applicant/second respondent)<br>**TEMIS PTY LTD** ACN 111 013 962<br>(twelfth respondent/applicant/third respondent) |
| FILE NO/S: | Appeal No 1286 of 2007<br>Appeal No 1474 of 2007<br>DC No 626 of 2006 |
| DIVISION: | Court of Appeal |
| PROCEEDING: | Application for Leave s 118 DCA (Civil) |
| ORIGINATING COURT: | District Court at Brisbane |
| DELIVERED ON: | 3 August 2007 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 10 April 2007 |
| JUDGES: | McMurdo P, Wilson J and Lyons J<br>Separate reasons for judgment of each member of the Court, each concurring as to the orders made |
| ORDER: | **1. That leave to appeal be granted**<br>**2. That the appeals be dismissed**<br>**3. That the applicant pay the respondents' costs of and incidental to the applications for leave to appeal and the appeals to be assessed on the standard basis** |
| CATCHWORDS: | CRIMINAL LAW – GENERAL MATTERS – OTHER MATTERS – STAY OF CIVIL PROCEEDINGS PENDING CRIMINAL PROCEEDINGS – where the Commonwealth DPP obtained orders restraining dealings with certain property against the respondents, under the *Proceeds of Crime Act 2002* (Cth) – where the Commonwealth DPP applied for forfeiture orders under the *Proceeds of Crime Act* – where the respondents applied successfully for a temporary stay of the forfeiture applications – where no criminal charges have yet been laid – whether the primary judge erred in granting the stay |

*Proceeds of Crime Act 2002* (Cth), s 18, s 47, s 319

*Accident Insurance Mutual Holdings Ltd v McFadden* (1993) 31 NSWLR 412, cited
*DPP (WA) v Mansfield* [2006] WASC 72, cited
*EPA v Caltex Refining Co Pty Ltd* (1993) 178 CLR 477, cited
*Pyneboard Pty Ltd v TPC* (1983) 152 CLR 328, cited
*R v Coote* (1873) LR 4 PC 599, cited
*Rank Film Distributors Ltd v Video Information Centre* [1982] AC 380, cited
*Reid v Howard* (1995) 184 CLR 1, cited
*Sorby v Commonwealth* (1983) 152 CLR 281, cited
*State of Queensland v Bush* [2003] QSC 375; SC No 6311 of 2003, 5 November 2003, cited
*State of Queensland v Henderson* (Unreported, Supreme Court of Queensland, Fryberg J, 16 May 2003), cited
*State of Queensland v O'Brien & Anor* (Unreported, Supreme Court of Queensland, Muir J, 22 June 2006), considered
*State of Queensland v Shaw* [2003] QSC 436; S5277 of 2003, 19 December 2003, considered

COUNSEL: P Callaghan SC for the applicant
N A Martin for the respondents

SOLICITORS: Commonwealth Director of Public Prosecutions for the applicant
Bernard Bradley and Associates for the respondents

[1] **MCMURDO P**: I agree with Wilson J's reasons for granting leave to appeal but dismissing the appeals with costs. In all the circumstances, which are referred to in the separate reasons for judgment of Wilson J and Lyons J, the primary judge's exercise of his inherent discretion to stay the proceedings was entirely orthodox.

[2] **WILSON J**: The applicant (the Commonwealth Director of Public Prosecutions (CDPP)) seeks leave to appeal against orders of a District Court Judge[1] staying applications for forfeiture orders under the *Proceeds of Crime Act 2002* (Cth).

[3] Because the challenged orders were interlocutory in nature, leave to appeal is required under s 118(3) of the *District Court of Queensland Act 1967* (Qld).

**The facts**

[4] The Australian Federal Police and the Australian Taxation Office have been conducting a joint investigation into tax avoidance schemes promoted by Ewan Alisdair Stoddart. Tatsuo Jo (the first respondent in this Court and the tenth respondent below) is alleged to have participated in such a tax avoidance scheme between March 2000 and June 2003 and is suspected of having committed offences against s 29D of the *Crimes Act 1914* (Cth)[2] and s 134.2(1) of the *Criminal Code Act 1995* (Cth).[3] The impugned conduct is alleged to have occurred between about three and a half and seven years before the determinations of the primary judge.

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1 Durward SC DCJ.
2 Fraud.
3 Dishonestly obtaining a financial advantage.

There is a paper trail on which the prosecution will rely, and the investigation is apparently complex.[4]

[5] Mr Jo has not yet been charged with any offence, the Australian Federal Police anticipating that a brief of evidence relating to him will be ready for submission to the applicant "towards the end of 2007".[5]

**The proceedings**

[6] On 6 March 2006 a Judge of the District Court[6] made an order under s 18 of the *Proceeds of Crime Act* restraining dealings with certain real property at Bundall that was the property of Mr Jo's wife, Misako Jo (the second named respondent in this Court and the eleventh respondent in the District Court).[7] On 4 April 2006 another Judge of the District Court[8] made orders under s 18 restraining dealings in a watercraft that was the property of Mr Jo and some motor vehicles that were the property of Temis Pty Ltd (the third named respondent in this Court and the twelfth respondent in the District Court) and that were subject to the effective control of Mr Jo.[9]

[7] On 3 April 2006 and 2 May 2006 the applicant filed applications for forfeiture pursuant to s 47(1) of the *Proceeds of Crime Act*.[10] At a directions hearing on 7 September 2006 Mr and Mrs Jo and Temis Pty Ltd filed an application to stay the proceedings.[11] An application for examination orders against Mr and Mrs Jo was adjourned pending the outcome of the stay application, and an order was made that any application for exclusion be filed and served on or before 24 October 2006.[12]

[8] The stay application was heard on 5 October 2006. On 17 January 2007 orders were made staying the proceedings and adjourning the length of the stay, the application for directions and examination orders and costs for further hearing.[13] Those orders are the subject of the first application for leave to appeal.[14] On 24 January 2007 orders were made staying the proceedings against Mr and Mrs Jo and Temis Pty Ltd until 5 November 2007 or further or earlier order and adjourning the application for directions and for examination orders until 2 November 2007.[15] Those orders are the subject of the second application for leave to appeal.[16]

**Grounds of proposed appeal**

[9] Senior counsel for the applicant submitted that the primary judge had erred in the exercise of his discretion in two respects –

(i) that the material before him did not afford a sufficient basis upon which to grant a stay; and

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4 See *CDPP v Tatsuo Jo, Misako Jo and Temis Pty Ltd and others* (Unreported, District Court of Queensland, Durward SC DCJ, 17 January 2007) [70] (Appeal Book, p A23).
5 Appeal Book, pp A99-A100.
6 Skoien SDCJ.
7 Appeal Book, pp A55-A59.
8 McGill SC DCJ.
9 Appeal Book, pp A64-A66.
10 Appeal Book, pp A60-A63; A67-A69.
11 Appeal Book, pp A72-A74.
12 Appeal Book, pp A70-A71.
13 Appeal Book, pp A5-A6.
14 Appeal Book, pp A1-A4.
15 Appeal Book, pp A33-A34.
16 Appeal Book, pp A29-A 32.

(ii) that he took into account an irrelevant consideration, namely the length of time it was taking for the criminal charges to crystallise.[17]

**The legislation**

[10] Among the principal objects of the *Proceeds of Crime Act* are –

> "(a) to deprive persons of the proceeds of offences, the instruments of offences, and benefits derived from offences, against the laws of the Commonwealth or the non-governing Territories; and
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> …
>
> (c) to punish and deter persons from breaching laws of the Commonwealth or the non-governing Territories; and
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> (d) to prevent the reinvestment of proceeds, instruments, benefits and literary proceeds in further criminal activities; and
>
> (e) to enable law enforcement authorities effectively to trace proceeds, instruments, benefits and literary proceeds; and
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> …
>
> (g) to provide for confiscation orders and restraining orders made in respect of offences against the laws of the States or the self-governing Territories to be enforced in the other Territories."[18]

The Act establishes a scheme to confiscate the proceeds of crime,[19] which includes restraining orders prohibiting disposal of or dealing with property and forfeiture orders under which property is forfeited to the Commonwealth.[20] Proceedings on an application for a restraining order or a forfeiture order are civil proceedings.[21]

[11] A restraining order may be made against persons convicted of or charged with indictable offences[22] and against persons reasonably suspected of committing "serious offences".[23] Here there were reasonable grounds for suspecting that Mr Jo had committed offences which were "serious offences" within the meaning of the legislation.

[12] There are provisions for orders excluding property from restraining orders[24] as well as from forfeiture orders.[25] An application to exclude specified property from a restraining order must not be heard if the restraining order is in force and the CDPP has not been given a reasonable opportunity to conduct an examination of the

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17 Proposed Notices of Appeal (Appeal Book pp A25-A28; A37-A40); Transcript of the appeal, pp 5, 19-20.

18 s 5 (cross-references omitted).

19 s 6.

20 See s 7.

21 s 315.

22 s 17.

23 s 18.

24 ss 29-32.

25 ss 73-76.

applicant.[26] At such an examination an approved examiner may require a person in the position of Mr Jo or that of Mrs Jo to answer a question that is relevant to his or her affairs.[27]

[13] By s 45(2) –

> "(2) A restraining order ceases to be in force if, within 28 days after the order was made:
>
> (a) the suspect has not been convicted of, or charged with, the offence, or at least one offence, to which the restraining order relates; and
>
> (b) there is no confiscation order or application for a confiscation order that relates to the offence."[28]

A forfeiture order is one form of "confiscation order".[29] By applying for forfeiture orders on 3 April 2006 and 2 May 2006, the applicant kept the restraining orders alive.

**Power to stay proceedings**

[14] The CDPP conceded that the District Court has power to stay the proceedings as an aspect of its power to prevent abuse of process, even where criminal proceedings have not been instituted.

**The argument in support of the stay**

[15] Counsel for Mr and Mrs Jo and Temis Pty Ltd submitted that the stay was warranted on the basis of prejudice in the foreshadowed criminal proceedings. Their counsel argued that in order to pursue applications for exclusion orders, and thereby resist the making of forfeiture orders, they would have to satisfy the Court that the restrained property was not the proceeds of unlawful activity. That would inevitably involve a dispute as to the quantum of the alleged frauds attributable to the acts or omissions of Mr Jo. The same issue would fall for determination in the criminal proceedings, but in circumstances where the prosecution bore the onus of proof beyond reasonable doubt. Thus Mr Jo's privilege against self-incrimination and his right to silence were at risk. She submitted further that by granting only a temporary stay the primary judge had erred on the side of caution and given the respondents an opportunity to particularise the exact prejudice in the criminal proceedings once the charges were known.

**Discussion**

[16] In considering whether a stay ought to have been granted some guidance may be found in cases decided on State legislation cognate with s 319 of the *Proceeds of Crime Act*. That section provides –

> "**Stay of proceedings**
>
> The fact that criminal proceedings have been instituted or have commenced (whether or not under this Act) is not a ground on which a court may stay proceedings under this Act that are not criminal proceedings."

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26 ss 32, 180.

27 s 187(5).

28 Cross-references removed.

29 See s 338.

It has been held that provisions like this in State legislation do not deprive a Court of power to grant a stay where it is in the interests of justice to do so despite criminal proceedings having been instituted.[30]

[17] In *Shaw*[31] the applicant was charged with two offences under s 10A of the *Drugs Misuse Act 1984* (Qld), one relating to the possession of $11,340 reasonably suspected of being proceeds of an offence and the other relating to possession of property reasonably suspected of having been acquired with the proceeds of an offence. He sought a stay of forfeiture proceedings under the *Criminal Proceeds Confiscation Act 2002* (Qld) until after the summary charges were finally determined. Under s 10A of the *Drugs Misuse Act* once evidence sufficient to establish that the property was reasonably suspected of being the proceeds of an offence or acquired with the proceeds of an offence was led, the onus was on the defendant to give positively, on the balance of probabilities, a satisfactory account of how he lawfully came by or had the property in his possession. Mackenzie J who heard the stay application observed that in the circumstances of the case it was almost inevitable that the applicant would have to go into evidence in the criminal proceedings either to attack the basis for the reasonable suspicion or to give a satisfactory explanation for his possession of the property. The applicant intended adducing evidence including a forensic accountant's opinion based on other evidence of the nature of transactions entered into. The precise contents of that evidence were not known, but the fact that it would present a different interpretation of the applicant's financial position had been expressly revealed. His Honour considered –

> "whether the fact that allowing the forfeiture proceedings to proceed first may allow the State to expose defects in [the] case relied on by the person who will be a defendant in s 10A proceedings and repair any deficiencies in its own evidence which are exposed in the forfeiture proceedings is a reason for requiring the s 10A proceedings to be heard first."[32]

His Honour considered that where the issues were identical in the forfeiture proceedings and the s 10A proceedings, the State should not be afforded the opportunity to use the civil proceedings to test and potentially improve the case it would rely on in the criminal proceedings. He went on –

> "… Firstly, as the law stands, the respondent is in a more favourable position in the s 10A proceedings with regard to disclosure of the material upon which his exculpatory explanation is based. Secondly, there are penal consequences flowing from a conviction.
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> The case is one where there is a well defined and real advantage available to a person in criminal proceedings in respect of revealing evidence in advance. Depriving a defendant of such an advantage by requiring him to undergo prior proceedings where the State may, in

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30 For example, *State of Queensland v Bush* [2003] QSC 375 ("*Bush*"); *State of Queensland v Shaw* [2003] QSC 436 ("*Shaw*"); *DPP (WA) v Mansfield* [2006] WASC 72; *State of Queensland v O'Brien & anor* (Unreported, Supreme Court of Queensland, Muir J, 22 June 2006) ("*O'Brien*"). See also *State of Queensland v Henderson* (Unreported, Supreme Court of Queensland, Fryberg J, 16 May 2003) ("*Henderson*").

31 [2003] QSC 436.

32 [2003] QSC 436, [21].

> effect, test-run the same case it proposes to lead in the prosecution proceeding and if necessary improve it if it can prior to that time is in my view sufficiently of the character of a demonstrated reason why the interests of justice would not be served by the forfeiture proceedings being heard in advance of the criminal proceedings. In my view the circumstances in which a stay is justified are established by the particular facts of the case."[33]

[18] *Shaw* illustrates the point earlier made by Mackenzie J in *Bush*[34] that an applicant for a stay must at least demonstrate why, in the circumstances of the particular case, the interests of justice would not be served by the forfeiture proceedings being heard in advance of the criminal proceedings, and that made by Fryberg J in *Henderson*[35] that an applicant must demonstrate that he had a matter which he wished to raise in defence of the forfeiture application which, if raised, would prejudice the criminal proceedings.

[19] In *O'Brien*[36] Muir J granted a stay of forfeiture proceedings against the applicant about five months before his trial on charges of trafficking in and producing methylamphetamine was expected to take place. The Crown case in the criminal proceedings was largely a circumstantial one, and it intended relying on an analysis of the applicant's financial position to show that his financial resources were explicable only by his having engaged in unlawful conduct such as that alleged against him. Counsel for the applicant relied principally on the protection of the right to silence and the maintenance of the privilege against self-incrimination. His Honour said –

> "It is plain to me, on the material, that there is a high potential for any evidence adduced on an exclusion application to effectively remove the applicant's privilege against self-incrimination and dispense with the right to silence. An application of exclusion, depending on how it is framed, may amount to an admission which can be used against the applicant.
>
> When one looks at this matter broadly, if the matter is stayed for some months until the criminal trial has been completed, the respondent will suffer little in the way of prejudice but, on the other hand, if a stay is not granted, the potential prejudice to the applicant is quite grave.
>
> I have taken into account the length of time that these proceedings have been on foot and also the applicant's conduct in relation thereto. It seems to me that the applicant has engaged in conduct calculated to delay and frustrate the respondent in its progression of the application. There is, however, an innocent explanation for some of that."[37]

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33 [2003] QSC 436, [24]-[25].

34 [2003] QSC 375.

35 *State of Queensland v Henderson* (Unreported, Supreme Court of Queensland, Fryberg J, 16 May 2003).

36 *State of Queensland v O'Brien & anor* (Unreported, Supreme Court of Queensland, Muir J, 22 June 2006).

37 *State of Queensland v O'Brien & anor* (Unreported, Supreme Court of Queensland, Muir J, 22 June 2006), 4.

[20] Of course in the present case no charges have yet been laid, despite protracted investigations. Further, on present indications it is only Mr Jo who is likely to be charged. It is true that confiscation and forfeiture proceedings are open where charges have not been brought and even where they are not expected to be brought. That said, Mr and Mrs Jo and Temis Pty Ltd are in an invidious position. They cannot be precise about how their defending forfeiture proceedings including by bringing exclusion applications – which would expose them to the likelihood of examinations in the course of which they would have to answer questions about their affairs – may prejudice his defence of criminal charges (on which the CDPP will most probably bear the onus of proof) when they do not know what those charges will be. By going into evidence in the forfeiture proceedings they may afford the CDPP an advantage in the criminal proceedings of the very type referred to by Mackenzie J in *Shaw*, and they may both waive their privilege against self-incrimination.[38] On present indications, the risk of waiving the privilege against self-incrimination is particularly acute in Mr Jo's case.

[21] The privilege against self-incrimination is a substantive right[39] which has been described as "a cardinal principle of our system of justice",[40] a "bulwark of liberty"[41] and "fundamental to a civilised legal system".[42] It affords protection against the risk of incrimination by both direct evidence and indirect (or "derivative") evidence.[43] But a person has to claim the privilege in order to be entitled to its protection, and it may be waived or excluded by statute.

[22] The primary judge was astute to the objects of the legislation and to the fundamental nature of the privilege against self-incrimination. His Honour said –

> "The legislation is drafted with the clear intent of compromising some fundamental privileges, such as the privilege against self-incrimination. The mere fact that criminal charges may have been laid and a hearing of these charges may be pending is not of itself a ground for staying the proceedings under the Act.
>
> However, the inherent jurisdiction of the courts to preserve those privileges, to protect the rights of an individual and to prevent an abuse of process remains paramount in spite of the intent of the Act."[44]

The inherent jurisdiction of the Courts to preserve the privilege against self-incrimination cannot remain paramount in the face of a clear legislative intent to

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38 *R v Coote* (1873) LR 4 PC 599; New Zealand Law Commission, Discussion Paper, *The Privilege against Self-Incrimination* (Preliminary Paper 25, September 1996) [21]; Queensland Law Reform Commission, Report, *The Abrogation of the Privilege against Self-Incrimination* (Report No 59, December 2004) [9.64]-[9.67].

39 *EPA v Caltex Refining Co Pty Ltd* (1993) 178 CLR 477, 508 (Mason CJ and Toohey J).

40 *Sorby v Commonwealth* (1983) 152 CLR 281, 294 (Gibbs CJ).

41 *Pyneboard Pty Ltd v TPC* (1983) 152 CLR 328, 340 (Mason ACJ, Wilson and Dawson JJ).

42 *Accident Insurance Mutual Holdings Ltd v McFadden* (1993) 31 NSWLR 412, 420 (Kirby P).

43 *Rank Film Distributors Ltd v Video Information Centre* [1982] AC 380, 443; *Sorby v Commonwealth* (1983) 152 CLR 281, 294-295, 310; *Reid v Howard* (1995) 184 CLR 1, 6-7. See also *Evidence Act 1995* (Cth) s 128 which provides a process by which a witness may give, or be required to give, evidence which may tend to incriminate him in return for a certificate granting him immunity from direct or indirect use of that evidence in an Australian court, other than in a criminal proceeding in respect of the falsity of the evidence.

44 *CDPP v Tatsuo Jo, Misako Jo and Temis Pty Ltd and others* (Unreported, District Court of Queensland, Durward SC DCJ, 17 January 2007) [66]-[67].

abrogate that privilege by requiring persons such as Mr and Mrs Jo to answer questions at an examination conducted under the Act.[45] But that point has not yet been reached, and the stay application was designed (at least in part) to stop it being reached. In that context, the Court clearly has inherent power to uphold the privilege by granting a stay. His Honour concluded –

> "In my view, to allow the proceedings to continue in the circumstance where the possibility of any criminal charges being laid is and remains – despite the effluxion of what seems to me to be an inordinate period of time – uncertain (or at least unknown) amounts to an abuse of process sufficient to grant a stay, at least temporarily.
>
> There are, of course, conflicting interests in matters such as this and in my view the interests of the applicants outweigh those of the CDPP in the particular circumstances of this matter. I do not think that the CDPP will suffer any demonstrated prejudice in the stay being granted. On the other hand, the applicants almost inevitably will suffer prejudice to an extent that warrants the protection of the court in these proceedings."[46]

[23] The material before him afforded a sufficient basis for his ultimate decision to grant only a temporary stay until 5 November 2007 or further or earlier order and to adjourn applications for directions and for examination orders to 2 November 2007 for review. If the charges have crystallised by then, Mr and Mrs Jo should be able to particularise the prejudice in the criminal proceedings, and unless they do so, they will be unlikely to obtain a further stay. If they have not crystallised, their case for a permanent stay may be stronger than at present. The length of time it was taking for the criminal charges to crystallise was clearly relevant to whether there had been an abuse of process justifying a stay, at least on a temporary basis, and the duration of a temporary stay. His Honour's decision was redolent of a proper and judicious exercise of his discretion in all the circumstances.

[24] These applications raised some important matters of principle, upon which there does not seem to be other appellate authority. I would grant leave to appeal, but dismiss the appeals. The applicant should pay the respondents' costs of and incidental to the applications for leave to appeal and the appeals to be assessed on the standard basis.

[25] **LYONS J**: I have had the advantage of reading the reasons of Wilson J and I agree with her reasons and the orders she proposes and will only add a few comments.

[26] Courts have an inherent power to uphold the privilege against self-incrimination where it is in the interests of justice to do so particularly to protect the rights of an individual and to prevent an abuse of process. There was clearly sufficient material before the primary judge in this case to grant the stay application on a temporary basis. In particular the circumstances of this case indicate that no criminal charges have yet been laid and the particulars of such criminal charges are in fact unknown. Restraining orders had however been made in relation to property of the second and third respondents and the CDPP wished to advance the civil proceedings and obtain

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45 ss 180, 196, 197.

46 *CDPP v Tatsuo Jo, Misako Jo and Temis Pty Ltd and others* (Unreported, District Court of Queensland, Durward SC DCJ, 17 January 2007) [75]-[76].

forfeiture orders in respect of the property which is the subject of the restraining orders.

[27] In his reasons the primary judge observed that the respondents would defend any criminal prosecutions brought and that the respondents' solicitor had instructions to bring exclusion applications. To pursue those exclusion applications however the respondents bear the onus of satisfying the court that the restrained property was not the proceeds of criminal activity. This process will inevitably involve some of the same questions which will have to be decided in the criminal proceedings, particularly in relation to the quantum of the alleged frauds, where the CDPP will bear the onus of proof beyond a reasonable doubt. Significantly evidence provided by the respondents in the civil matter in relation to quantum issues can be relied upon by the CDPP in a subsequent criminal trial.

[28] In coming to his decision the primary judge exhaustively reviewed the authorities and stated that the importance of the principle of the right to silence or the privilege against self-incrimination has been reiterated many times. Reliance was also placed on *Sorby v The Commonwealth*[47] where the High Court stated that "The privilege against self-incrimination is deeply ingrained in the common law."[48] In that case the Court considered that the privilege against self-incrimination protects an individual from making a disclosure that may lead to incrimination or the discovery of real evidence of an incriminating nature.

[29] His Honour concluded after a thorough consideration of the circumstances of the case that there was a real risk that the prosecution case may benefit from any evidence that may support a defence to any charges or from evidence that is adduced by the respondents on the exclusion proceeding. His Honour held that if the proceedings were not stayed it may lead to the respondents in this case being in the position of:[49]

> "…having to tender or adduce evidence in the proceeding that has the effect of setting "in train a process which may lead to incrimination or lead to the discovery of real evidence of an incriminating character" (in the sense described by Lord Wilberforce in the passage cited in paragraph 59 (*supra*), that may make out the prosecution case or bolster its success."

[30] His Honour held that even without specific evidence of prejudice the circumstances were such that the case for a measure of protection was made out and continued:[50]

> "In my view, to allow the proceedings to continue in the circumstance where the possibility of any criminal charges being laid is and remains - despite the effluxion of what seems to me to be an inordinate period of time - uncertain (or at least unknown) amounts to an abuse of process sufficient to grant a stay, at least temporarily."

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47 (1983) 152 CLR 281.

48 (1983) 152 CLR 281 at 309.

49 See *Commonwealth Director of Public Prosecutions v Tatsuo Jo, Misako Jo and Temis Pty Ltd and others* (Unreported, District Court of Queensland, Durward SC DCJ, 17 January 2007) at [73] (Appeal Book, p A23).

50 *Commonwealth Director of Public Prosecutions v Tatsuo Jo, Misako Jo and Temis Pty Ltd and others* (Unreported, District Court of Queensland, Durward SC DCJ, 17 January 2007) at [75] (Appeal Book, p A24).

[31] I agree that his Honour's decision was a proper exercise of the discretion in all the circumstances.