SUPREME COURT OF QUEENSLAND

CITATION:	*X v Callanan & Anor* [2016] QCA 335
PARTIES:	**X** (appellant) **v** **JOHN DAVID CALLANAN (as Presiding Officer of the Crime and Corruption Commision)** (respondent) **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND** (intervener)
FILE NO/S:	Appeal No 3491 of 2016 SC No 12844 of 2015
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane – [2016] QSC 42
DELIVERED ON:	13 December 2016
DELIVERED AT:	Brisbane
HEARING DATE:	9 September 2016
JUDGES:	Margaret McMurdo P and Gotterson JA and Atkinson J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal dismissed with costs.**
CATCHWORDS:	CRIMINAL LAW – EVIDENCE – CONFESSIONS AND ADMISSIONS – MISCELLANEOUS MATTERS – PRIVILEGES – where the respondent required the appellant to answer a question in a hearing conducted under the *Crime and Misconduct Act* 2001 (Qld) – where the appellant refused to answer on the ground that he had a reasonable excuse – where the appellant argues the respondent would make use of his answer to discover derivative evidence that could be used against him in a future trial – where the appellant contends the reasonable excuse was the privilege against self-incrimination and the companion principle – where the appellant contends the primary judge erred in his construction of the companion principle – where the High Court in *R v Independent Broad-based Anti-corruption Commissioner* (2016) 256 CLR 459 found that the companion principle protected someone "charged with, but not yet tried for", a criminal office – where the respondent is an investigative authority without the power to charge or prosecute the appellant – whether the companion principle

provided a reasonable excuse to refuse to answer the respondent's question

CONSTITUTIONAL LAW – JUDICIAL POWER – where the appellant contends the institutional integrity of the Supreme Court is impaired by s 190 and s 197 *Crime and Corruption Act* 2001 (Qld) – where the appellant submits a judge would be unlikely to exclude derivative evidence obtained as a result of compulsory questioning on the ground of fairness – where the appellant argues this is tantamount to Parliament directing the court as to the manner and outcome of the exercise of its jurisdiction and infringes both Ch III of the *Constitution* and the principle in *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51 – where the Act does not direct the courts as to the exercise of its jurisdiction and judges retain the discretion to exclude evidence when necessary – whether s 190 and s 197 of the Act are unconstitutional

Crime and Corruption Act 2001 (Qld), s 82, s 180, s 190, s 197
Evidence Act 1977 (Qld), s 130

Ambrose v Harris [2011] 1 WLR 2435; [2011] UKSC 43, cited
Beghal v Director of Public Prosecutions [2016] AC 88; [2015] UKSC 49, cited
Environment Protection Authority v Caltex Refining Co Pty Ltd (1993) 178 CLR 477; [1993] HCA 74, cited
Fardon v Attorney-General (Qld) (2004) 223 CLR 575; [2004] HCA 46, cited
Kable v Director of Public Prosecutions (NSW) (1996) 189 CLR 51; [1996] HCA 24, cited
R v Independent Broad-based Anti-corruption Commissioner (2016) 256 CLR 459, [2016] HCA 8, discussed
Saunders v United Kingdom (1996) 23 EHRR 313; [1996] ECHR 65, cited
X7 v Australian Crime Commission (2013) 248 CLR 92; [2013] HCA 29, cited
Zanon v Western Australia (2016) 50 WAR 1; [2016] WASCA 91, cited

COUNSEL:	A Boe, with B P Dighton, for the appellant M J Copley QC, with E J Longbottom, for the respondent P Dunning QC, with P Mott, for the intervener
SOLICITORS:	Nyman Gibson Miralis for the appellant Crime and Corruption Commission for the respondent Crown Solicitor for the intervener

[1] **MARGARET McMURDO P:** Z was shot and killed at the Gold Coast in 2009. On 11 October 2011, the Crime and Misconduct Commission[1] issued a notice to the appellant under s 82 *Crime and Misconduct Act* 2001 (Qld)[2] to appear at a hearing.

---

1 Now the Crime and Corruption Commission: see *Crime and Misconduct and Other Legislation Amendment Act* 2014 (Qld).

2 Now the *Crime and Corruption Act* 2001 (Qld): see above.

The appellant unsuccessfully challenged the validity of that notice. On 10 December 2015, the presiding officer of the Commission, the respondent, prohibited, under s 180(3) of the Act, the publication of any answer given or document or thing produced at the hearing or anything about any such answer, document or thing; and any information that might enable the existence or identity of the appellant to be ascertained, to any officer of any prosecuting agency with carriage of, or involvement in, any prosecution of the appellant for any charges, whether arising from the investigation or any other investigation. The respondent also ordered under s 197(5) of the Act that all answers given by the appellant in the proceedings were to be taken to be answers given under objection on the grounds of privilege against self-incrimination.[3]

[2] At the hearing, the respondent asked the appellant the whereabouts of the firearm used in Z's shooting.[4] The appellant declined to answer on the ground of reasonable excuse under s 190(1) of the Act. He claimed that the purpose of the question was to make derivative use of his answer; the whereabouts of the firearm could be used to further investigate Z's killing and as evidence against him in a future criminal trial. The respondent determined the appellant had no reasonable excuse to decline to answer. The appellant applied for leave to appeal to a trial judge of this Court, seeking an order that the respondent's decision be set aside and declaratory relief that the appellant was entitled to refuse to answer questions insofar as those questions asked anything of his knowledge of the circumstances surrounding Z's murder.[5] This appeal is from the primary judge's order dismissing that application.[6]

[3] His co-dependent grounds of appeal are that the primary judge erred in finding:

> "1. ... that the companion principle to the accusatorial nature of the criminal trial, that the prosecution cannot compel the accused to assist it to discharge its onus, did not begin at the point where a person is reasonably suspected to have committed the crime about which he or she is to be questioned.
>
> 2. ... that the principle enunciated in *Kable v Director of Public Prosecution (NSW)* (1996) 189 CLR 51 was not engaged by ss 190 and 197 of [the Act] to the extent they permit derivative use of evidence given under compulsion in the investigation and prosecution of alleged criminal offences, on the basis that those provisions did not purport to confer any jurisdiction or power on a State Court that exercises federal jurisdiction or affect the institutional integrity of such courts."

[4] The appellant seeks orders allowing the appeal; a declaration that s 190 and s 197 of the Act are invalid in that they impose upon a State court a jurisdiction incompatible with the exercise of power under Ch III of the Constitution; and costs.

[5] For the following reasons, I would dismiss the appeal.

The relevant statutory provisions

[6] The key provisions in this appeal are s 190 and s 197 of the Act. Section 190 relevantly provides:

---

3 Transcript of Hearing (12 December 2015), p 3, Exhibit A to Affidavit of David John Caughlin, AB 51.
4 Above, p 9, AB 57.
5 AB 74 – 75.
6 *X v Callanan* [2016] QSC 42.

"**190 Refusal to answer question**

(1) 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 a reasonable excuse.

Maximum penalty—200 penalty units or 5 years imprisonment.

(2) The person is not entitled—

(a) to remain silent; or

(b) to refuse to answer the question on a ground of privilege, other than legal professional privilege.

…"

[7] Section 197 of the Act provides:

"197 Restriction on use of privileged answers, documents, things or statements disclosed or produced under compulsion

(1) This section applies if—

(a) before an individual answers a question put to the individual by the commission or a commission officer or produces a document or thing or a written statement of information to the commission or a commission officer, the individual claims self-incrimination privilege in relation to the answer or production; and

(b) apart from this Act, the individual would not be required to answer the question or produce the document, thing or statement in a proceeding if the individual claimed self-incrimination privilege in relation to the answer or production; and

(c) the individual is required to answer the question or produce the document, thing or statement.

(2) The answer, document, thing or statement given or produced is not admissible in evidence against the individual in any civil, criminal or administrative proceeding.

(3) However, the answer, document, thing or statement is admissible in a civil, criminal or administrative proceeding—

(a) with the individual's consent; or

(b) if the proceeding is about—

(i) the falsity or misleading nature of an answer, document, thing or statement mentioned in subsection (1) and given or produced by the individual; or

(ii) an offence against this Act; or

(iii) a contempt of a person conducting the hearing; or

(c) if the proceeding is a proceeding, other than a proceeding for the prosecution of an offence, under the Confiscation Act and the answer, document, thing or statement is admissible under section 265 of that Act.

(4) Also, the document is admissible in a civil proceeding about a right or liability conferred or imposed by the document.

(5) In a commission hearing, the presiding officer may order that all answers or a class of answer given by an individual or that all documents or things or a class of document or thing produced by an individual is to be regarded as having been given or produced on objection by the individual.

(6) If the presiding officer makes an order under subsection (5), the individual is taken to have objected to the giving of each answer, or to the producing of each document or thing, the subject of the order."

The primary judge's approach

[8] The primary judge's analysis of the scheme under the Act is uncontroversial:

"[21] One of the main purposes of the ... Act is to combat and reduce the incidents of "major crime". Major crime includes criminal activity involving an indictable offence punishable by a term of imprisonment not less than 14 years. The Crime and Corruption Commission ("commission") has investigative powers, not ordinarily available to the police service that will enable the commission to affectively investigate major crime.

[22] The commission's "crime function" entails investigating major crime referred to it. The ways by which the commission performs this function includes gathering evidence for the prosecution of persons for offences and liaising with, including providing information to, other law enforcement agencies and prosecuting authorities.

[23] The Commission may authorise the holding of a hearing in relation to any matter relevant to the performance of its functions. The chairperson may issue an attendance notice requiring a person to attend to, *inter alia*, give evidence or produce stated documents or things at the hearing. A person served with an attendance notice must not, without reasonable excuse, fail to attend at the hearing. A person attending at a commission hearing to give sworn evidence must not fail to take an oath when required by the presiding officer.

[24] The presiding officer at the hearing may prohibit the publication of an answer given to a question or anything about the answer.

[25] The person must answer questions put to him or her and is not entitled to refuse to answer questions by claiming privilege against self-incrimination. If a claim of self-incrimination is made, although the question must be answered, the answer given is not

> admissible in evidence against the person in any proceeding. In some of the case law concerned with this subject matter, such a prohibition is described as a prohibition against "direct use", as opposed to "indirect or derivative use".
>
> [26] It is an offence to publish an answer given at an investigative hearing without the commission's written consent or contrary to an order made by the commission. However, there is no offence if, *inter alia*, the hearing was a public one and no order prohibiting disclosure was made. The commission may require a person to answer a question that is relevant to a criminal charge or proceeding already faced by the person."[7]

[9] The primary judge ultimately found that the *Kable* principle was not engaged by s 190 or s 197 of the Act. Neither section, his Honour stated, purported to confer jurisdictional power on a State court exercising federal jurisdiction. His Honour found that the companion principle to the accusatorial nature of a criminal trial (that the prosecution cannot compel an accused person to assist it to discharge its onus) does not begin at the time a person is reasonably suspected by the investigating authority. A reasonable suspicion held by an investigating authority is not part of the trial. This is so notwithstanding that, at common law, the courts developed rules as to the admissibility of answers given by accused persons to police questioning in some situations and, even before Federation, the admissibility of confessional evidence was regulated by statute.[8] Those sections, the primary judge found, do not have any direct legal effect on the functions of a State court whose jurisdiction is invoked to hear criminal trials. His Honour noted that views may differ as to whether it may be unfair for a prosecuting authority to use derivative evidence obtained through the investigating authority's compulsory powers under s 190 and the surrounding sections.[9] For those reasons, his Honour concluded that the implied constitutional prohibition identified in *Kable* was not engaged and dismissed the application.[10]

The first ground of appeal

R v Independent Broad-based Anti-corruption Commissioner

[10] The first ground of appeal concerns the companion principle, recently discussed by the High Court in *R v Independent Broad-based Anti-corruption Commissioner*,[11] a decision which postdates that of the primary judge. The companion principle provides that an accused person cannot be required to testify to the commission of the offence charged against him or her. It sits alongside the fundamental principle of the common law that the onus of proof of a criminal charge rests upon the prosecution.[12]

[11] In *IBAC*, the questions for determination were whether the power of the Independent Broad-based Anti-corruption Commission (IBAC) to hold an examination under Part 6, *Independent Broad-based Anti-corruption Commission Act* 2001 (Vic) (IBAC Act) was exercisable in relation to those who have not been, but might subsequently be,

---

7 Above.
8 Above, [54].
9 Above, [55].
10 Above, [57].
11 (2016) 256 CLR 459.
12 Above, [42] (French CJ, Kiefel, Bell, Keane, Nettle and Gordon JJ) citing with approval *X7 v Australian Crime Commission* (2013) 248 CLR 92, [159] (Kiefel J).

charged and put on trial for an offence relating to the subject matter of the examination; and whether s 144 of the IBAC Act[13] was effective to abrogate such a person's privilege against self-incrimination.[14] The court unanimously found that the application of the companion principle depended upon the judicial process having been engaged, as the principle protected someone "charged with, but not yet tried for", a criminal office.[15] The court considered that s 144 abrogated the privilege against self-incrimination.[16]

[12] The plurality, however, stated:

> "[48] In the present case, the companion principle is not engaged because the appellants have not been charged; and there is no prosecution pending. The appellants urge the Court to extend the principle. For a number of reasons, that suggestion should not be accepted. First, to reformulate the principle as the appellants urge would be to extend its operation beyond the rationale identified in the authorities, namely, the protection of the forensic balance between prosecution and accused in the judicial process as it has evolved in the common law.
>
> [49] Secondly, the appellants' formulation of the terms of the extension for which they argued varied over the course of their submissions: the variety of expression is eloquent of uncertainty as to the basis for, and operation of, the extension. In this regard, the appellants' formulation shifted from "persons reasonably believed to have committed a criminal offence", to "a person the specific subject of an investigation", to "a person reasonably suspected of having committed a criminal offence".
>
> [50] A third difficulty, related to the second, is that to urge that the companion principle be extended to terminate the examination of a person reasonably suspected of an offence invites a query as to the person by whom the requisite suspicion is to be held, whether an officer of the IBAC, or an officer of Victoria Police, or some other executive functionary, or a court before which the issue arises. Different functionaries, having access to different bodies of information, may have different views upon the issue. The practical operation of the principle so extended would be unstable, in that the quality of suspicion could be expected to

---

13 "**144 Privilege against self-incrimination abrogated—witness summons**

(1) A person is not excused from answering a question or giving information or from producing a document or other thing in accordance with a witness summons, on the ground that the answer to the question, the information, or the production of the document or other thing, might tend to incriminate the person or make the person liable to a penalty.

(2) Any answer, information, document or thing that might tend to incriminate the person or make the person liable to a penalty is not admissible in evidence against the person before any court or person acting judicially, except in proceedings for—

(a) perjury or giving false information; or
(b) an offence against this Act; or
(c) an offence against the Victorian Inspectorate Act 2011; or
(d) an offence against section 72 or 73 of the Protected Disclosure Act 2012; or
(e) contempt of the IBAC under this Act; or
(f) a disciplinary process or action."

14 (2016) 256 CLR 459, [1].

15 Above, [43] citing with approval *X7* (2013) 248 CLR 92, [70] – [71] (Hayne and Bell JJ).

16 Above, [53] – [55].

> vary over the stages of consideration of the information relevant to the issue as more information becomes available to whichever functionary is called upon to address the issue.
>
> [51] Fourthly, to apply the companion principle in anticipation of the commencement of criminal proceedings would be to fetter the pursuit and exposure of a lack of probity within the police force, which is the object of the IBAC Act. The subject matter of the IBAC's investigations covers a range of conduct, only some of which may constitute a criminal offence. Upon the appellants' construction, the IBAC, while investigating conduct of an examinee, might uncover information that makes a certain person a suspect in relation to a criminal offence, at which point the examination would have to cease, leaving issues which may affect the public interest unexplored."

[13] *IBAC* has recently been applied by the Western Australian Court of Appeal in *Zanon v Western Australia*[17] which considered the companion principle in the context of a compulsory examination under the *Criminal Property Confiscation Act* 2000 (WA). The court, relying on *IBAC*, found that the critical time for the application of the companion principle was when the prosecution commenced so that it had no application to the compulsory examination.[18]

The appellant's contentions on this ground of appeal

[14] In arguing this ground of appeal, the appellant raises contentions focussed on *IBAC* which, understandably, were not put before the primary judge. He submits *IBAC* is not decisive of the present appeal; the plurality's reasoning at [48] – [51][19] demonstrate that it should be limited to its own facts and statutory context, which involved a special relationship between the IBAC and the police officers it was questioning. The case did not determine whether the removal under the IBAC Act of derivative use immunity offended the companion principle. He emphasises the following statements of Gageler J in *IBAC*:

> "[71] How the companion rule, operating as a common law principle of interpretation in Victoria, might relate to the human right recognised under the *Charter of Human Rights and Responsibilities Act* 2006 (Vic) of a person charged with a criminal offence "not to be compelled to testify against himself or herself or to confess guilt" was not explored in argument and is best left to another day. Questions of legislative compliance with a human right are, of course, concerned with the substantive operation of the applicable legislation as distinct from being focused merely on the form or manner of expression of that legislation. And a human right is not absolute; it is subject to such reasonable limits imposed by law as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.
>
> [72] Nor was any attention given in argument to how the detailed statement of compatibility, laid before the Houses of the Victorian

---

17 (2016) 50 WAR 1; [2016] WASCA 91.

18 Above, [135] – [144].

19 Set out at [12] of these reasons.

> Parliament in respect of the Bill for the IBAC Act as required by the *Charter of Human Rights and Responsibilities Act*, might bear on the construction of the IBAC Act in light of the common law principle. The statement of compatibility appears to have drawn on concepts familiar within European human rights jurisprudence in recognising that the IBAC Act would have imposed an unjustified limit on the exercise of the human right of a person charged with a criminal offence not to be compelled to testify against himself or herself or to confess guilt were the IBAC Act to have permitted the tendering in evidence in a subsequent prosecution of answers obtained under compulsion before the commencement of the prosecution." (Footnotes omitted).

[15] In support of the last sentence extracted above, Gageler J footnoted "eg, *Beghal v Director of Public Prosecutions* [2016] AC 88 at [68] explaining *Saunders v United Kingdom* (1996) 23 EHRR 313." The appellant also places reliance on *Beghal* at [68] which considered art 6 of the *European Convention on Human Rights* (ECHR).

[16] The appellant acknowledges that the ECHR is of limited relevance to the construction of the provisions of the Act as in Queensland there is no comparable human rights legislation. He nevertheless submits that Gageler J's reliance on *Beghal* is support for the companion rule as a common law principle applying to the questioning of people from the time they are charged, that is, the point at which they are no longer considered potential witnesses but suspects.[20] Nothing in *X7*, the appellant contends, confines the companion rule to persons actually charged and facing trial and the plurality in *IBAC* wrongly relied on it in that way. The appellant also emphasises Brennan J's observation in *Environment Protection Authority v Caltex Refining Co Pty Ltd*[21] that the privilege against self-incrimination is a human right under the common law.[22]

[17] The appellant contends that the companion rule has application as soon as a person is suspected of having been involved in the commission of an offence. It is common ground, the appellant submits, that the respondent held a reasonable suspicion that the appellant had committed an offence.[23] He argues that therefore the common law's companion principle provided a reasonable excuse under s 190(1) to refuse to answer the respondent's question.

Conclusion on this ground of appeal

[18] It should be kept in mind that the appellant receives significant protection in any possible future trial from the respondent's orders under s 180(3) of the Act and s 197(2), so that his concern is limited to derivative evidence from his testimony before the respondent. I do not accept his contention that *IBAC* has no binding application to the present case. The legal principles set out by the plurality in *IBAC* at [48] – [51][24] are apposite to the present factual and statutory scenario. And for the following reasons, the appellant's reliance on Gageler J's observations in *IBAC* is also misguided.

[19] First, *IBAC* involved the construction of a Victorian statute. Unlike Victoria, Queensland has no human rights legislation so that art 6 of the ECHR is of limited relevance.

[20] Second, Gageler J's footnoted reference in *IBAC* to *Beghal* does not assist the appellant.

---

20 *Ambrose v Harris* [2011] 1 WLR 2435, [63]; *Beghal v Director of Public Prosecutions* [2016] AC 88, [68].
21 (1993) 178 CLR 477.
22 Above, 545.
23 Appeal Transcript 1-12.
24 Set out in these reasons at [12].

[21] In *Beghal*, the United Kingdom Supreme Court considered the powers under sch 7 *Terrorism Act* 2000 (UK) to search and question Ms Beghal at a UK airport on her return from France after visiting her husband who was in custody in relation to terrorist offences. The court analysed the effect of art 6 of the ECHR which relevantly provides:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

[22] The majority held that, although the challenged legislation did not in terms prevent reliance on the privilege against self-incrimination, whether at common law or as part of the art 6 right, such reliance was precluded by necessary implication to prevent the powers under the *Terrorism Act* being rendered nugatory. Ms Beghal' s search and questioning did not give rise to any real or appreciable risk of subsequent prosecution, as the use of her answers in any such prosecution would, in practice, be excluded either under s 78 *Police and Criminal Evidence Act* 1984 (UK) or by art 6. As her questioning and search was not part of a criminal investigation, she had not been questioned as a defendant to a criminal charge. No question of breach of a right to a fair trial arose. There had been no unlawful denial of her common law privilege against self-incrimination or of art 6.[25] Lord Neuberger of Abbotsbury PSC, Lord Dyson MR, Lord Hughes and Lord Hodge JJSC noted the desirability for Parliament to enact a provision to make anything said or information obtained in an interview under sch 7 *Terrorism Act* generally inadmissible in any subsequent criminal trial.[26]

[23] Gageler J's footnoted reference to *Beghal* was to the following statement of Lord Hughes JSC:

> "68 Article 6 of the Convention does not contain an explicit privilege against self-incrimination, but it is well established that such is implicit in it. The trigger for the privilege is, however, that a person is "charged" with a criminal offence, in the special sense in which that word is used in the jurisprudence of the Strasbourg court, that is to say that his position has been substantially affected by an allegation against him and he has become, in effect, a suspect: see Lord Hope of Craighead DPSC's summary of the rule in *Ambrose v Harris* [2011] 1 WLR 2435, paras 62 – 63. If a person is charged in this sense, then the effect of article 6 will be to confer the privilege against self-incrimination and any abrogation by statute of the common law privilege will accordingly be ineffective; moreover the use in a subsequent criminal trial of answers obtained under compulsion before the defendant was charged will be an infringement of the right to a fair trial. See for example *Saunders v United Kingdom* 23 EHRR 313 where section 434(5) of the Companies Act 1985 had abrogated the privilege. In that case the answers given under compulsion to DTI inspectors were adduced in a criminal prosecution of the subject and it was that which constituted the breach of article 6. The court made it clear at para 67 that the asking of the questions, at a stage when the defendant (as he

---

25 [2016] AC 88, [63] – [66], [68] – [71], [72].

26 Above, [67], [72].

> later became) had not been charged and the purpose of the questioning was an administrative investigation quite different from a criminal one, did not amount to a breach of article 6."

[24] This Court must construe the common law privilege against self-incrimination and the companion principle in light of the plurality's binding decision in *IBAC*. But in any case, although the respondent suspected the appellant had committed an offence when he questioned him under the Act, the Commission is an investigative, evidence gathering body without general powers to itself charge suspects or prosecute criminal offences. Neither Lord Hughes's statements in *Beghal* nor anything else to which the appellant has referred us suggest that in the present case there has been a breach of the common law companion principle, or, indeed, of art 6, if it be relevant.

[25] Third, nothing said in *X7* supports the appellant's contention that the companion principle is engaged prior to the actual charging of the person claiming its protection, at least where "charging" is broadly construed as including the point at which those with the power to charge a person, suspect he or she has committed an offence. That wider construction of "charging" does not assist the appellant as the respondent had no power to charge him for the matters the Commission was investigating.

[26] Fourth, while it is true that Brennan J uncontentiously referred in *EPA v Caltex* to the common law privilege against self-incrimination as a human right,[27] his Honour also noted that this right could be removed by clear and unequivocal legislative provisions.[28] Section 190 is such a provision.

[27] The companion principle was not engaged in this case. When the respondent required the appellant to answer his question as to the whereabouts of the firearm used in Z's shooting, the appellant had not been charged and no prosecution had commenced. It did not matter that the respondent had formed a suspicion that the appellant had committed a criminal offence as the respondent could not charge him and was not an officer of a prosecuting authority.[29] The appellant's first ground of appeal must fail.

The second ground of appeal

The appellant's contentions on this ground of appeal

[28] The appellant concedes that he cannot succeed on the second ground of appeal unless successful on the first. In case I am wrong as to the first ground, I will also deal with the second.

[29] Assuming the appellant established that s 190 and s 197 are part of a legislative scheme which impinges the companion principle, he contends that his answers to the respondent's question would likely result in charges against him before the Supreme Court of Queensland. The prosecution case would likely include derivative evidence received from his compulsory questioning. Whilst he could apply to have the derivative evidence excluded on fairness grounds, either under the common law or s 130 *Evidence Act* 1977 (Qld), he contends that, as he could not submit the evidence was unlawfully obtained, a judge would be most unlikely to exclude it. He then argues that for Parliament to direct courts exercising a judicial jurisdiction as to the manner and outcome of the exercise of that jurisdiction is to infringe Ch III of the *Constitution* and the *Kable* principle.

---

27 (1993) 178 CLR 477, 543 – 548.
28 Above, 545.
29 *IBAC* (2016) 256 CLR 459, [48].

Conclusion on this ground of appeal

[30] The *Kable* principle in essence is that the *Constitution* establishes an integrated Australian court system with State courts exercising federal jurisdiction. State legislation which purports to confer upon such a State court a function which substantially impairs its constitutional integrity is incompatible with the court's role as a repository of federal jurisdiction and is invalid.[30]

[31] The appellant's contentions raise a great many hypotheticals which is itself a sound reason for this Court to reject his arguments. If his contention is that a judge determining the admissibility of possible derivative evidence arising from the respondent's future questioning of the appellant, at a possible future trial of the appellant, would or might not exercise the discretion in accordance with the judicial oath or affirmation, it is highly offensive and must be rejected. If that is not his contention, then the judge would exclude the evidence if that was required in the circumstances then existing. The impugned provisions of the Act are clear and unequivocal and within the powers of the Queensland Parliament. They do not purport to direct Queensland courts as to the manner and outcome of the exercise of their jurisdiction. They do not impair the institutional integrity of Queensland courts. They are not incompatible with the role of Queensland courts as a repository of federal jurisdiction. It follows that they are not offensive to Ch III of the *Constitution* or the *Kable* principle. Even if the appellant made out the first ground of appeal, the second ground of appeal would fail.

Conclusion and orders

[32] As the appellant has not made out his co-dependent grounds of appeal, the appeal must be dismissed with costs.

Order:

Appeal dismissed with costs.

[33] **GOTTERSON JA:** I agree with the order proposed by McMurdo P and with the reasons given by her Honour.

[34] **ATKINSON J:** I have had the advantage of reading the reasons for judgment of the President. I agree that the appeal should be dismissed with costs for the reasons given by her Honour.

---

30 *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575, [15] (Gleeson CJ).