THE DISTRICT COURT OF

WESTERN AUSTRALIA

157 of 2020

THE STATE OF WESTERN AUSTRALIA

and

BARRY URBAN

STAVRIANOU DCJ

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON FRIDAY, 12 MARCH 2021 AT 10.00 AM

MS Z.M. BURGESS represented the State of Western Australia

MR E.W.L. GREAVES appeared for the Accused

THE CLERK OF ARRAIGNS: Calling Perth indictment 157 of 2020, the State of Western Australia v Barry Urban.

Barry Urban, is that your name?

ACCUSED: Yes.

THE CLERK OF ARRAIGNS: Thank you.

STAVRIANOU DCJ: Take a seat. Thank you.

Yes. Between 11 March 2017 and 8 May 2018, the accused, Mr Barry Urban, was a member of the Legislative Assembly of the Parliament of Western Australia. In 2017, a Procedure and Privileges Committee was established by the Legislative Assembly to inquire into whether there had been any breaches of privilege by Mr Urban.

On 15 January 2018, Mr Urban appeared before the committee and answered a number of questions put to him by it. On 8 May 2018, the committee tabled a report in Parliament concerning its inquiry and made recommendations in relation to the evidence Mr Urban had given. It also recommended that he be expelled from the Parliament.

The recommendations were accepted by the Legislative Assembly, however, before the necessary motion could be put, Mr Urban resigned from the Parliament. The consequence of Mr Urban's resignation was a loss of some entitlements. Subsequently, Mr Urban was charged with 14 offences alleging contraventions of section 57 of the Criminal Code of this state by knowingly giving false answers to the committee.

By application dated 26 August 2020, Mr Urban seeks a judgment of acquittal, alternatively, a stay of the prosecution, in relation to each of the charges. There are three grounds. First, that the words uttered by him are absolutely protected by Parliamentary Privilege and, therefore, inadmissible in any criminal prosecution.

Secondly, that the prosecution constitutes an abuse of process because Mr Urban has already been dealt with by the Parliament for giving false testimony. The counts on the indictment rely upon the same conduct and, therefore, it is said that it is an abuse of process to now prosecute him.

Thirdly, section 57 of the Criminal Code has no application to Members of Parliament and, accordingly, there can be no basis in the submission of Mr Urban for the charges. The State opposes the application.

Mr Urban faces 21 counts on an indictment dated 31 July 2020. Counts 1 to 7 concern conduct alleged to have been engaged in by Mr Urban between June 2001 and May 2007. There are six counts of forgery and uttering and one count of fraud. Counts 8 to 21 are the subject of the application. Each count alleges that Mr Urban knowingly gave a false answer to a lawful and relevant question put to him in the course of examination before a committee of the Legislative Council.

The pleaded questions and answers relied upon in relation to each count are outlined in the summary of the State's case which I will refer to later in these reasons. The relevant background is essentially not in dispute. What follows is taken largely from the accused's submissions dated 2 October 2020.

On 11 March 2017, Mr Urban was elected to the Legislative Assembly of the Parliament of Western Australia at a general election as the member for Darling Range. On 17 May 2017, Mr Urban delivered his inaugural speech in the house. In that speech, he referred to having served in the Balkans.

Mr Urban provided the Parliament with some biographical information. It referred to having attended Leeds University from 1990 to 1993 and the Portsmouth University from 1993 to 1994. It referred to Mr Urban holding a BA (Hons) Physical Education and Applied Social Science, Post-Grad - Police Studies Diploma, Local Government.

In November 2017, there were media reports expressing concerns about claims which Mr Urban had made, specifically about his claim to be entitled to a United Nations Service Medal for serving as a British Police Officer in Bosnia-Herzegovina in the late-1990s.

On 30 November 2017, Mr Urban responded to the issue by making a personal explanation to the House. On that same day, the House passed a resolution requesting the Procedure and Privileges Committee of the house to consider and report back to it as to whether there had been any breaches of privilege in relation to any statements made to the house by the member for Darling Range.

By letter dated 18 December 2017, Mr Urban was asked to attend the closed hearing before the committee on 15 January 2018 to provide an explanation about statements previously made by him to the House that were the subject of the inquiry. He was also requested to provide all relevant documents to the committee.

On 15 January 2018, Mr Urban appeared before the committee and gave evidence. Part of what he said are the subject of counts 8 to 21 inclusive. The speaker commenced the hearing by stating:

> This is a closed hearing and Hansard will be making a transcript of today's session. The transcript will not be publicly available, unless the committee or the Legislative Assembly resolve to authorise its release. It is important that you understand that any misunderstanding of this committee may be regarded as a contempt of Parliament. Your evidence is protected by Parliamentary Privilege, however, this privilege does not apply to anything you might say outside of today's proceedings.

The subjects covered in evidence included Mr Urban's claimed educational qualifications, his service in the Balkans as a War Crime's investigator and the wearing of a medal honouring that service.

On 18 May 2018, the committee's report entitled:

> Misleading the house, statements made by the member for Darling Range -

- was tabled in the house by the speaker. The report contained recommendations which were read by the speaker. The report also contained adverse findings as follows:

> First, Mr Urban had committed a sustained a gross contempt of Parliament. Report finding 11.
>
> Mr Urban deliberately sought, in testimony, to mislead the committee. Report finding 12.
>
> Mr Urban was guilty of a contempt of the Legislative Assembly by deliberately misleading that house in his biographical information, his inaugural speech and his personal explanation. Report recommendation 1.
>
> Mr Urban gave deliberately misleading testimony to the committee. Report recommendation 3.
>
> Mr Urban committed an aggravated contempt of Parliament by inter alia giving that deliberately misleading testimony to the committee. Report recommendation 5.

> The house expel Mr Urban and declare his seat vacant. Report recommendation 7.
>
> The house revoke any and all privileges the member would otherwise have as a former member. Report recommendation 7.

Immediately following the tabling of the report, Mr Urban was given leave to and then made a personal explanation. It included:

> It is clear that I am unable to represent the members of Darling Range. For those reasons I have gone through, I must today resign as the member for Darling Range.

Mr Urban then left the House for the last time.

The speaker immediately read a letter of resignation from Mr Urban. Immediately, thereafter, the premier of this state and the House resolved:

> That the seat for the electoral district of Darling Range be and is hereby declared vacant by reason of the resignation of Mr Urban.

The report was debated by the house. Ultimately, it was resolved to stand debate on the report over to 9 May 2018.

On 9 May 2018, the Leader of the House moved, and I quote:

> That this House accepts the second report of the Procedure and Privileges Committee titled 'Misleading the House' statements made by the Member for Darling Range and endorses all eight of the committee's recommendations and hereby revokes any and all privileges the Member for Darling Range would otherwise have as a former member of the Parliament.

Following debate on the motion, the question was put, and passed by the House. On 9 May 2018, Police Commissioner Dawson, wrote to the Honourable Peter Watson, Speak of the Legislative Assembly.

The Commissioner relevantly noted, and I quote:

> The findings of the report also include possible criminal acts that extend beyond the scope of misleading Parliament. This includes the finding that the Member for Darling Range provided a forgery of a Degree from the University of Leeds, as well as

> the finding that he wore a Commemorative International Policing Service Medal when he was not entitled to do so.

And concluded:

> I would be grateful if you would provide any documentation and evidence in relation to the committee's determination.

The letter of 9 May 2018 made no reference to investigating Mr Urban for a suspected offence contrary to section 57 of the Criminal Code.

A series of letters were exchanged between Mr Dawson and the Speaker in relation to the matter of Parliamentary Privilege.

On 23 May 2018, on the advice of Mr Tannin SC, the Commissioner declined to advise the Speaker of the potential offences that the WA Police were considering in their investigations of Mr Urban.

On 31 May 2018, the Commissioner forwarded to the Speaker, on advice from Mr Tannin SC, dated 30 May 2018, which relevantly summarised at dot point 3, Mr Tannin's earlier advice that if the Legislative Assembly chose to disclose to police evidence and materials provided by witnesses appearing before the Committee, then provided proper procedure is followed, the evidence given by witnesses will attract the privilege of free speech and the witnesses will enjoy absolute immunity from criminal and civil proceedings in respect of the evidence they gave before the Committee.

That same advice concluded at 19, and I quote:

> No one appears to dispute that provided proper procedure is followed, the Committee witnesses will be immune from a criminal or civil action in respect of evidence they provided to the Committee.

It is acknowledged that Mr Tannin was speaking about witnesses called before the Committee other than Mr Urban.

Whilst the Clerk of the Legislative Assembly whose advice is incorporated into some of the Speaker's letters and Mr Tannin SC drew distinctions between Mr Urban and Committee witnesses, the final resolution of the House drew no such distinction.

Following the request from the Commissioner on 14 June 2018, the Legislative Assembly passed the following motion, and I quote:

> That this House in response to a request of the Commissioner of Police to the Speaker dated 9 May 2018, directs the Procedure and Privileges Committee to confer with the Commissioner of Police and provide to the Commissioner, the evidence and documentation the Committee considers is (a), relevant to the Commissioner's investigations, (b) does not breach Parliamentary Privilege, and (c) is consistent with the House's obligation to protect witnesses provided to the Committee in relation to the inquiry referred to the Committee concerning statements made to the Legislative Assembly by the former Member for Darling Range.

The final motion was moved by the Leader of the House. Earlier notices of motion had been tabled by the opposition and the government respectively.

The inclusion of paragraph (b) in the final motion, that is that the document that the Committee considers the documentation does not breach Parliamentary Privilege, preserving privilege was the matter of substantial debate.

The Committee was directed to only disclose material that it considered did not breach Parliamentary Privilege. The resolution drew no distinction between Mr Urban and other witnesses who gave evidence to the Committee.

The terms of the motion which resulted in the referral to the Committee were, I quote:

> That this House requests the Procedure and Privileges Committee to consider and report back to the House, by a date to be determined by the Committee itself, whether there had been any breaches of privilege in relation to any statements made to the House by the Member for Darling Range.
>
> At the hearing before the Committee on 15 January 2018, Mr Urban was represented by Queen's Counsel and by junior counsel.
>
> Prior to Mr Urban answering questions, the chairperson announced that answers given would be the subject of Parliamentary Privilege.

> No reliance is placed by Mr Urban upon that particular statement in grounding a separate basis for exclusion of the evidence of what he said.
>
> The report from the Committee is dated 8 May 2018. The report notes that there are five principal statements or representations made by Mr Urban to the House that are in contention, and the Committee has focussed on these statements in its inquiry.

Pausing there, as noted by the Committee, its focus was upon the representations Mr Urban had made. In contrast, the proceedings on indictment will focus upon what he said to the Committee.

In the report, the focus - in the report, the Committee has stated that it has relied upon statements made by Mr Urban to the Committee as part of its inquiry.

It observes that such statements, and I quote:

> - include Mr Urban's written submissions to the Committee and his oral testimony at his hearing.

The Committee further notes that Mr Urban had referred at length during the inquiry, to his own statements made outside the Committee.

The Committee notes that it informed - and I quote:

> That it informed itself of statements which Mr Urban has made outside of the House.

As to the burden of proof which the Committee adopted in determining the matter, the Committee stated, and I quote:

> The burden of proof to establish whether a Member is guilty of contempt is the civil standard of the balance of probabilities. This means that the Committee must be satisfied that it is more probable than not that Mr Urban intended to deliberately mislead the House.
>
> The Committee notes however, that Parliamentary Practice calls for a higher standard of proof than the balance of probabilities in serious contempt cases, which involve serious consequences.
>
> Erskine May cautions that in determining a Member's guilt or innocence, the criterion applied at all stages should be at least that the allegation is

> proved on the balance of probabilities. In the case of more serious charges, a higher standard of proof may be appropriate.
>
> McGee similarly underlines that the serious nature of the allegation demands that it be properly established.

Now, just pausing there in relation to that quote. McGee is the New Zealand text in relation to Parliamentary Practice and Erskine May is the United Kingdom text.

The requirement for - I continue with the quote:

> The requirement for Parliament to establish proof of a high order where the issue and consequences are serious, is consistent with the test applied by courts at common law.
>
> In the leading High Court case on the matter, Briginshaw v Briginshaw, Latham CJ articulated the principle and the Committee then quotes, 'The standard of proof required by cautious and responsible tribunal, will naturally vary in accordance with the seriousness or importance of the issue.'

Close quote, and close the quote from the report.

The Committee, as well as hearing evidence from Mr Urban, also conducted a number of inquiries and, quote:

> Sought evidence from relevant individuals and institutions.

In the report, the Committee noted that it has sought written submissions from a number of persons and organisation. These are identified in the report as including the Premier of the State and Leader of the Opposition for the State.

The five contested representations referred to in the report are as follows. That Mr - first, that Mr Urban holds a BA (Hons) in Physical Education, Applied Social Sciences, awarded by the University of Leeds.

(2) That Mr Urban holds a Certificate of Higher Education in Policing awarded by the University of Portsmouth.

(3) That Mr Urban achieved a Diploma of Local Government, a statement later retracted and amended to, and I quote:

> Completed nine out of the 10 modules -

- for the Diploma of Local Government, awarded by the Western Australian Local Government Association.

(4) that in late 1998, Mr Urban served in the Balkans, and,

(5) when he was wearing the replica Australian Police Overseas Service Medal, Mr Urban was "under the genuine but mistaken belief that it was the correct medal which he 'was entitled to wear'".

In chapter 2 of the report, the Committee states its approach to the inquiry in the following terms:

> The Committee's approach to the inquiry was, in practical terms, to investigate each of the five defined statements of contention as a separate and self-contained matter. The Committee's conclusions regarding the evidence gathered for each matter have been discussed above.
>
> In summary the Committee concludes that in all five matters there was overwhelming and compelling evidence to refute the Member's statements and, conversely, there was no evidence positively supporting the Member's statements.

And the Committee continues:

> When the Committee surveys all five statements of contention as a totality and the mass of evidence which refutes these statements it is satisfied to the highest level that there has been a pattern of unrelenting deception and obfuscation on Mr Urban's part regarding his statements that Mr Urban has deliberately misled the House and the Committee and the Member has therefore committed a sustained and gross contempt of Parliament.

Before delivery of the report Mr Urban was given an opportunity to respond to what were described as "significant adverse draft findings". Mr Urban's lawyers responded by stating that without disclosure of the Committee's reasoning Mr Urban was unable respond. Accordingly there was no response by Mr Urban in relation to the draft, what I have already referred to as "significant draft", adverse findings.

It's necessary to examine the findings and recommendations made by the Committee, given the issues which arise in relation to the case. Finding number 1 was as follows:

> The Committee finds that the Member for Darling Range was not awarded a BA(Hons) in Physical Education, Applied Social Sciences from the University of Leeds. That finding is one that he did not have certain qualifications.
>
> Finding number 2. The Committee is satisfied that (1) the Member for Darling Range's statement on his biographical information form that he had attended Leeds University in 1990-1993 and achieved a BA(Hons) Physical Education, Applied Social Science and his statement during his inaugural speech that, 'The Police Force supported me twice through university' are misleading, secondly, at the time the Member for Darling Range made the statements he knew they were inaccurate, and third, in making the inaccurate statements the Member for Darling Range intended to mislead the House.
>
> Accordingly, the Committee finds the Member for Darling Range deliberately misled the House and has thereby committed a contempt of Parliament.

Pausing there, the finding made was one of deliberately misleading the House.

> Finding number 3. The Committee finds that the Member for Darling Range was not awarded a Certificate of Higher Education in Policing from the University of Portsmouth. The finding is that Mr Urban did not have a particular qualification.
>
> Finding 4. The Committee is satisfied that the Member for Darling Range's statement on his biographical information form that he had attended Portsmouth University 1993-1994 and had achieved a postgrad-Police Studies and his statement during his inaugural speech that, 'The Police supported me twice through university' is misleading.
>
> At the time the Member for Darling Range made the statements he knew they were inaccurate. In making the inaccurate statements the Member for Darling Range intended to mislead the House. Accordingly the Committee finds that the Member for Darling Range deliberately misled the House and has thereby

committed a contempt of Parliament. The finding made there is of deliberately misleading the House.

Finding 5. The Committee finds that the Member for Darling Range was not awarded a Diploma of Local Government, nor did he complete nine out of the 10 modules of the Diploma of Local Government. The finding there is as to a lack of a particular qualification.

Finding 6. The Committee is satisfied that (1) the Member for Darling Range's statement on his biographical information form that he had achieved a Diploma of Local Government and his statement in his personal explanation that he completed nine out of 10 modules of the Diploma of Local Government are misleading, (2) at the time the Member for Darling Range made the statements he knew they were inaccurate, and (3) in making the inaccurate statements the Member for Darling Range intended to mislead the House.

The Committee accordingly finds that the Member for Darling Range deliberately misled the House and has thereby committed a contempt of Parliament. The finding is of deliberately misleading the House, coupled with the finding as to the commission of the contempt.

Finding 7. The Committee finds that the Member for Darling Range did not serve in the Balkans in late 1998. The finding is as to Mr Urban's service.

Finding 8. The Committee is satisfied that (1) the Member for Darling Range's statement in his inaugural speech that in late 1998, following a period investigating atrocities that humans do to each other in the Balkans - was misleading. At the time the Member for Darling Range made the statement he knew it was inaccurate.

(3) in making the inaccurate statement the Member for Darling Range intended to mislead the Parliament. Accordingly, the Committee finds that the Member for Darling Range has deliberately misled the House and has thereby committed a contempt of Parliament. The finding is as to deliberately misleading the House.

Finding 9. The Committee finds the Member for Darling Range did not serve in an international capacity while serving with West Midlands Police and

hence was not entitled to wear any form of commemorative International Police Service Medal.

Accordingly, the Member for Darling Range could not have mistakenly believed he was entitled to wear any form of International Police Service Medal and, as a corollary, could also not have been under a genuine but mistaken believe that the replica Australian Police Overseas Service Medal he had been wearing was a correct medal for him to wear. The finding made is that Mr Urban did not serve in a particular capacity.

Finding 10. The Committee is satisfied that the Member for Darling Range's statements in his personal explanation that, 'In the early 2000s I ordered a commemorative International Police Service Medal from a recognised military supplier in Western Australia. What I received instead was an Australian Police Overseas Service Medal which I mistakenly believed I was entitled to wear but which I now recognise I was not eligible to wear. When I was first asked about the medal by the media and the Premier I was under the genuine but mistaken belief that it was the correct medal' are misleading.

At the time the Member for Darling Range made the statements he knew they were inaccurate. In making the inaccurate statements the Member for Darling Range intended to mislead the House. Accordingly the Committee finds that the Member for Darling Range deliberately misled the House and has thereby committed a contempt of the Parliament. So the finding in relation to number 10 is one as to deliberately misleading the House.

Finding 11. The Committee finds that the Member for Darling Range has deliberately misled the House with respect to all five statements in contention and has thereby committed a sustained and gross contempt of Parliament. The finding there is as to deliberately misleading the House.

Finding 12. The Committee finds that the Member for Darling Range, in both his written submissions to the Committee and in his testimony before the Committee, deliberately sought to mislead the Committee by asserting (1) he had a degree from the University of Leeds, (2) he had a Certificate of Higher Education in policing from the University of Portsmouth, (3) he had completed nine out of the 10 modules of a Diploma of Local Government, (4) he was in the second half of

> 1998 seconded from West Midlands Police and served with the United Nations mission in Bosnia, where he had provided security for a team investigating war crimes, (5) he was posted a Service Medal by UK authorities, (6) he subsequently lost such a medal, (7) he was entitled to wear such a medal, (8) he was under a genuine but mistaken belief that he was entitled to wear a replica Police Overseas Service Medal.

The finding there is that in both his written submissions to the committee and in his testimony before the committee, he'd deliberately sought to mislead the committee.

> Finding 13. The committee further finds that the member for Darling Range deliberately sought to mislead the committee by providing to it a forgery of a degree from the University of Leeds. The finding is Mr Urban deliberate sought to deceive the committee.
>
> Finding 14. Accordingly, the committee finds that the member for Darling Range, in providing deliberately misleading testimony and submissions including the provision of a forged document to an inquiry specifically constituted to establish the veracity or otherwise of his statements, has committed a gross and aggravated contempt of Parliament. The finding there is that he has committed, as I've said, a gross and aggravated contempt of Parliament by engaging in the conduct particularised in finding 14.
>
> Finding 15. The committee finds that the member for Darling Range has deliberately misrepresented his educational qualifications and work history over an extended period. The finding is there that Mr Urban deliberately misrepresented his educational qualifications.

The committee then detailed 15 recommendations which it says flow from its findings. Whilst many of the findings which I've already outlined refer to deliberately misleading the house, in the body of the report, what Mr Urban said to the committee has been the subject of analysis.

For example, the Degree from the University of Leeds. The committee noted that it is also of the view that it's highly unlikely that Mr Urban could not remember the name

of a single unit he studied during his degree or the name of one lecturer. See page 22 of the report.

The Diploma of Local Government. Committee's finding:

> Mr Urban's evidence was inconsistent and unreliable. The member's testimony was implausible and, essentially, a prevarication. See page 39 of the report.

Investigating atrocities in the Balkans. Committee said:

> The committee is left with no doubt that Mr Urban did not investigate atrocities. See page 56 of the report.

Replica Australian Police overseas service medals. And the committee stated:

> Mr Urban has proffered different versions to the house and to the committee.

The recommendations which were made by in the report are as follows. Recommendation 1. The Legislative Assembly finds the member for Darling Range guilty of the following contempt's of the Legislative Assembly:

(a) He deliberately misled the house when he represented, on his biographical information, that (1) he had attended Leeds University 1990-1993 and had achieved a BA (Hons) Physical Education and Applied Social Science.

(2) He'd attended Portsmouth University 1993-1994 and had achieved a Post-Grad Police Studies.

And (3) he'd achieved a Diploma Local Government.

(b) He just deliberately misled the house in his inaugural speech when he said:

> (1) The Police Force supported me twice through university.

And (2) in late 1998, following a period investigating atrocities that humans do to each other in the Balkans.

And (c) he deliberately mislead the house in his personal explanation when he said:

> In the early 2000s, I ordered the commemorative international police service Medal from a recognised

> military supplier in Western Australia. What I received instead was an Australian Police overseas service medal which I mistakenly believed I was entitled to wear, but which I now recognise I was not eligible to wear. When I was first asked about the medal by the media and the premier, I was under the genuine but mistaken belief that it was the correct medal.

And (2):

> I completed nine out of the 10 modules.

Recommendation 2. The Legislative Assembly finds that the member for Darling Range, in committing the contempts above has committed a sustained and gross contempt of Parliament and has abused the privilege of freedom of speech.

Recommendation 3. The Legislative Assembly finds the member for Darling Range in both his written submissions to the Procedure and Privileges Committee and in his testimony before the committee deliberately sought to mislead the committee by asserting that:

(a) He had a Degree from the University of Leeds.

(b) He had a Certificate of Higher Education in Policing from the University of Portsmouth.

(c) He had completed nine out of the 10 modules of a Diploma of Local Government.

(d) He was in the second-half of 1998 seconded from West Midlands Police and served with the United Nations mission in Bosnia, where he provided security for a team investigating war crimes.

(e) He was posted a medal from UK authorities.

(f) He subsequently lost such a medal.

(g) He was entitled to wear such a medal.

And (h) he was under a genuine but mistaken belief that he was entitled to wear a replica police overseas service medal.

Recommendation 4. The Legislative Assembly finds the member for Darling Range deliberately sought to deceive the committee by providing to it a forgery of a degree from the University of Lees.

Recommendation 5. The Legislative Assembly finds that the member for Darling Range in providing deliberately misleading testimony and submissions, including the provision of a forge document to an inquiry specifically constituted to establish the veracity or otherwise of his statements has committed a gross and aggravated contempt of Parliament and has abused the privilege of freedom of speech.

Recommendation 6. The Legislative Assembly finds the member for Darling Range has deliberately misrepresented his educational qualifications and work history over an extended period.

Recommendation 7. The Legislative Assembly expels the member for Darling Range as a member of the Legislative Assembly and declares the seat of Darling Range vacant by reason of such expulsion.

Recommendation 8. The Legislative Assembly resolves to revoke any and all privileges the member for Darling Range would otherwise have as a former member of the Parliament.

I turn to the State's case. An amended statement of the material facts dated 3 August 2018 has been delivered by the State. It reads as follows:

In 2017, the accused was elected to the Legislative Assembly of the West Australia Parliament as the member for Darling Range. Later that same year, he was questioned by the Legislative Assembly as to claims of him having served as part of an international police taskforce in the Balkans while a member of the West Midlands Police and about a medal he claimed to have been awarded for that service.

He was also questioned in relation to tertiary and formal qualifications he claimed to hold. A motion was successfully moved in the house to have the matter examined by the Procedure and Privileges Committee on 15 January 2018. The accused is the member for Darling Range in the Legislative Assembly for Western Australia. Appeared before the committee and gave oral testimony and produced physical material in support of his claims. During the course of that examination, the accused was asked a range of lawful and relevant questions. On each occasion set out below, he knowingly gave a false answer.

Count 8. The accused was asked about whether he'd obtained the degree. In answer to the question:

> And do you maintain that you obtained the degree in 1994 from the College of Ripon and York St John?

Mr Urban answered:

> I do, yes.

The accused never obtained any tertiary qualifications from that institution.

Count 9. In answer to the question:

> Where did you attend the lectures for this degree?

Mr Urban answered:

> In Ripon, at the college campus.

The accused never attended any lectures for any degree at that institution.

Count 10. The accused was asked about whether he had obtained the certificate. In answer to the question:

> Do you maintain you complied with all the requirements in order to obtain that certificate?

Mr Urban answered:

> Yes.

The accused never obtained a certificate and did nothing to comply with any requirements in order to obtain it.

Count 11. In answer to the question:

> Mr Urban, so all you did to acquire the certificate was to submit your police probation file for assessment to the university and pay the relevant fee?

Mr Urban answered:

> That is correct.

The university did not have any such system for the conferral of the certificate and the accused has never acquired the certificate by that or any other means.

Count 12. The accused was asked questions about a Diploma of Local Government he'd also claimed to hold, but

had retracted in a statement to Parliament in which he said he did not complete all the assessment. In answer to the question:

> Mr Urban, how did you send those nine assessments to WALGA?

Mr Urban answered:

> I would have sent the assessment which I did, via envelope, mail, post.

The accused had emailed - had enrolled to undertake the diploma and had attended the theoretical component of the course, but he'd failed to submit any assessments.

Count 13. The accused was asked about completing assessments for the diploma with a man named, Bruce Moore, who was then the President of the Shire of Jarrahdale and enrolled in the same course.

In answer to the question:

> Did you do those individually, or was it done as a group?

Mr Urban answered:

> We put them in separate envelopes. We did the assessments as in sitting around and then we put the assessments in individual envelopes and then posted.

Moore did not complete any assessments together with the accused and did no more than discuss them with him.

Court 14. The accused was asked questions about his claimed service history in the Balkans. In answer to the question:

> So were you ever physically deployed to the Balkans?

Mr Urban answered:

> Yes, I was.

The accused was never deployed to the Balkans.

Count 15. In answer to the question:

> Were you investigating atrocities when you were in the Balkans?

Mr Urban answered:

> I was working with a team that did that. Yes.

The accused was never deployed to the Balkans and did not investigate atrocities.

Count 16. Were you seconded to the - in answer to the question:

> Were you seconded to the Balkans when you were stationed at West Midlands Police?

Mr Urban answered:

> Was I seconded there? Yes, I was.

The accused was never deployed to the Balkans and was not seconded there from West Midlands Police.

Count 17. In answer to the question:

> On what date were you deployed to the Balkans?

Mr Urban answered:

> July 1998. I cannot give you any day - date.

The accused was never deployed to the Balkans in July 1998 or at any other time.

Count 18. In answer to the question:

> Mr Urban, were you deployed in Bosnia-Herzegovina?

Mr Urban answered:

> Yes.

The accused was never deployed in Bosnia-Herzegovina.

Count 19. In answer to the question:

> What exactly were the duties you performed in Bosnia-Herzegovina?

Mr Urban answered:

> We went out with interpreters to various sites to speak to people and then the forensic teams, once we found areas with the British Army, the forensic teams

> went in and did war graves and photography and all the actual forensic investigations.

The accused was never deployed in Bosnia-Herzegovina, and did not conduct forensic investigations in relation to war crimes.

Count 20. In answer to the question:

> Who did you apply to, before you left to go to Bosnia?

Mr Urban answered:

> West Midlands Police. Yes.

The accused was never deployed to the Balkans and did not apply to the West Midlands Police to go there.

Count 21. The accused was also asked about a service medal claimed to be connected to his service in the Balkans. In answer to the question:

> You did not request the service medal. It was just sent you?

Mr Urban answered:

> Yes, that is correct.

Not only did the accused not serve in the Balkans, the UK Police did not issue any medals to those police who actually did serve in the Balkans. The accused had acquired the medal by some other means and falsely claimed that it was a medal given to him in honour of service he never gave.

On Friday, 21 September 2018, the accused was arrested and a search warrant executed at his home premises. The accused participated in a record of interview, but declined to comment.

Mr Urban relies upon section 90(1) and section 98(2)(c) of the Criminal Procedure Act [2004]. By section 90(1) a Superior Court to which an accused is committed on a charge or in which an accused is indicted on a charge, may at any time, order that the prosecution of the charge be stayed permanently, if it is in the interests of justice to do so.

Section 98(2)(c) provides that a Superior Court, if it is satisfied as a matter of law that the accused has no case to answer on a charge, may find the accused not guilty of the charge, without requiring a jury to give its verdict on the charge, notwithstanding the reference to a jury - sorry, I'll read that again.

Section 98(2)(c) provides that a Superior Court, if it is satisfied as a matter of law that the accused has no case to answer on a charge, may find the accused not guilty of the charge, without requiring a jury to give its verdict on the charge.

Notwithstanding the reference to a jury, there is no issue that the subsection has application before trial.

Mr Urban submits that he has already been found guilty by the Parliament of making false statements to the Committee and been dealt with by it.

In the circumstances, a prosecution for the same conduct, it is submitted, would constitute an abuse of process.

It is not in issue that the prosecution has been commenced, otherwise than pursuant to section 15 of the Parliamentary Privileges Act.

It is contended that what Mr Urban said to the Committee is protected by Parliamentary Privilege. It is accepted by the State that in the event evidence of what Mr Urban said to the Parliamentary Committee is inadmissible, then a judgment of acquittal is appropriate in relation to counts 8 to 21.

Mr Urban submits that an offence contrary to section 57 of the Criminal Code cannot be committed by a Member of Parliament, in the circumstances, a judgment of committal is appropriate.

In the State of Western Australia v Belos [2008] WASCA 226, the accused was charged with armed robbery and applied prior to trial, for rulings as to admissibility of identification evidence.

It was submitted that if the accused succeeded n the admissibility issue, then that would - there would be no case to answer.

Hasluck J excluded some of the evidence objected to, but in the result, considered that the prosecution evidence taken at its highest, was capable of producing in the minds of

properly instructed - of a properly instructed jury, satisfaction beyond reasonable doubt that each element of the offence had been established. That's paragraph 59 of Hasluck Js decision.

Now, it's on that basis, essentially what the - is contended on behalf of Mr Urban in relation to ground 1, is the evidence of what he said to the Committee is inadmissible, and therefore the prosecution cannot, taken at its highest, succeed. That's in relation to ground 1.

It's necessary to set out in some detail, some of the legislative framework and legal principles which must be applied in this case.

By the Constitution Act [1889 a constitution was conferred upon the State of Western Australia. By section 36 of that Act, the Legislature was empowered to define by statute, the privileges, immunities and powers to be held, enjoyed and exercised by the Legislative Council and Legislative Assembly, and by the Members thereof respectively.

There was a proviso that no such privileges, immunities or powers shall exceed those for the time being held, enjoyed and exercised by the Commons House of Parliament or the Members thereof.

Such definition by statute as referred to in section 36, is contained within the Parliamentary Privileges Act [1890 - - -

GREAVES, MR: 1891, your Honour.

STAVRIANOU DCJ: Just I've got a typing. It is '91, isn't? I've got '99. It's a typographical error. It's '91, isn't it.

GREAVES, MR: 1891, your Honour.

STAVRIANOU DCJ: Yes, that's what I thought. Yes. Yes, that's right.

Such definition by statute is contained in the Parliamentary Privileges Act [1891] which indeed commenced on 26 February 1891.

The long title of the Parliamentary Privileges Act is, and I quote:

> An Act for defining the privileges, immunities and powers of the Legislative Council and legislative Assembly of Western Australia respectively.

As enacted, there were 16 sections. Section 1 of the Act as amended, reads, and I quote:

> The Legislative Council and Legislative Assembly of Western Australia and their Members and Committees have and may exercise (a) the privilege, immunities and powers set out in this act; and (b) to the extent that they are not inconsistent with this Act, the privileges, immunities and powers by custom, statute or otherwise of the Commons House of Parliament of the United Kingdom and its Members and Committees as at 1 January 1989.
>
> It is to be noted that the Legislative Council and Legislative Assembly of Western Australia, and their members and committees, have the privileges, immunities and powers by custom, statute or otherwise of the Commons House of Parliament of the United Kingdom, as I said, as at 1 January 1989.

The present form of section 1, which I've just recited results from amendments made in 2004. The effect of the amendments was to link Parliamentary Privilege in Western Australia to the Commons House of Parliament of the United Kingdom and its members and committees as at 1 January 1989. In 1989 in the 21st edition of Erskine May's Parliamentary Procedure, United Kingdom Authoritative Text was published being an authoritative guide to Parliamentary procedure.

The privileges, immunities and powers referred to in section 1 include the privilege of freedom of speech. That privilege is provided by Article 9 of the Bill of Rights 1688, which reads, in modern language:

> That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.

Now, when I say modern language, when one resorts to the Bill of Rights itself it's expressed somewhat differently but the wording that I've just outlined is the wording of the legislation.

By section 1, the privilege of free speech may be exercised to the extent by section 1 of the Parliamentary Privileges Act. The privilege of free speech may be exercised to the

extent that it was not inconsistent with the Parliamentary Privileges Act 1891. Lord Brown-Wilkinson in Pepper v Hart [1993] AC 593 at 638 observed that:

> The plain meaning of Article 9 viewed against the historical background in which it was enacted, was to ensure that Members of Parliament were not subjected to any penalty, civil or criminal for what they said and were able to discuss what they, as opposed to the Monarch, chose to have discussed.

It is against all of that background the issues arise in this case. It's necessary to refer to some further sections of the Parliamentary Privileges Act. Section 14 of the Parliamentary Privileges Act as enacted reads:

> The publishing of any false or scandalous libel of any member touching his conduct as a member by any person other than a member is hereby declared to be a misdemeanour.

Section 15 of the Parliamentary Privileges Act reads:

> It shall be lawful for either House to direct the Attorney General to prosecute before the Supreme Court any such person guilty of any other contempt against the House which is punishable by law.

Just pausing there, section 8 of the same Act identifies a number of different types of contempts.

Section 16 of the Parliamentary Privileges Act, which was repealed by the Criminal Code 1902. 1 & 2 Edw VII No. 14 read:

> If any person before either House or before any committee of either House shall give a wilfully false answer to any lawful and relevant question which shall be put to him during the course of any examination he shall be guilty of a misdemeanour and shall be liable on being convicted thereof to be punished in the same manner as though he'd been convicted of wilful and corrupt perjury.

Section 16 thus created an offence. It was introduced into the Parliamentary Privileges Act at the same time as section 1. Section 16 relates to the giving of wilfully false answers. Given the freedom of speech conferred by Article 9 could have no effective operation unless Article 9 was abrogated. The only way in which a conviction could be secured under section 16 would have

been production of the questions and answers given and asked of the committee.

Section 16 in the circumstances must have affected a limited abrogation of Article 9 to enable a prosecution for an offence contrary to that section to proceed.

The history and approach to interpretation of the Criminal Code of this State was outlined in Hayman v Cartwright [2018] WASCA 116 in a joint judgment, and I summarise the position as follows from that decision. The history of the Code, as outlined in the judgment of the court is as follows:

> The Criminal Code Act 1902 (WA) (the 1902 Act) established a Code of Criminal Law. Section 2 of the 1902 Act provided that on and from 1 May 1902 the provisions contained in the Code set forth in the First Schedule to the 1902 Act shall be the law of Western Australia 'with respect to the several matters therein dealt with'. The Code adopted substantially Sir Samuel Griffith's draft Criminal Code, which had been enacted in Queensland by the Criminal Code Act 1899.
>
> By section 2 of the Criminal Code Act Compilation Act 1913 (WA) the 1902 Act as amended was repealed, and the compiled Act set forth in Appendix B to the 1913 Compilation Act was enacted under the title of the Criminal Code Act 1913.
>
> Sir Samuel Griffith sent his draft Criminal Code to the Attorney-General of Queensland with a letter dated 29 October 1897.
>
> In the letter Sir Samuel Griffith noted:
>
> (a) The pages of the draft were arranged in two columns, the proposed provisions of the Code being printed in the right-hand column, and the sources from which they were derived, or other analogous provisions, being stated or referred to in the left-hand column.
>
> (b) Where the source was statute law, the corresponding provisions of the statute were reprinted from Sir Samuel's Digest of the Statutory Criminal Law of Queensland of 1896.

> (c) In other cases, the sources of analogous provisions were indicated by a reference to the section of the draft Bill introduced into the House of Commons in 1880, which was based on a Draft Code of Criminal Law of 1879 prepared by Lord Blackburn, Justice Barry (of Ireland), Justice Lush and Sir James Fitzjames Stephen, or other authority to which Sir Samuel had had recourse, with such notes as appeared to be desirable to elucidate any particular provision.
>
> (d) When the proposed provision was 'undoubted Criminal(?) Law, Sir Samuel had not thought it necessary to do more than say so.

Pausing there. It's to be noted that in his letter dated 29 October 1897 under the heading Offences against Public Order, Sir Samuel stated:

> Offences against the executive and legislative power I have included in this part various provisions as to misconduct which, in the United Kingdom, is treated as a breach of privileges and Parliament and punished accordingly.
>
> The reasons which there exist but not recording it as a breach of the criminal law are, however, not applicable to Queensland. I have no doubt that much of the misconduct is a misdemeanour at Common law although never practised, punished as an indictable offence.

The note in the left-hand column in Sir Samuel Griffith's draft code in relation to section 57 reads:

> Any person who in the course of an examination by either House of Parliament or before a committee of either House wilfully gives a false answer to any lawful and relevant question put to him in the course of examination is guilty.

Returning then to the decision in Hayman, in the judgment reference was made to the proper approach to interpretation of the Criminal Code. The judgment of the court continues, commencing at 54, as follows:

> The starting point for any process of construction is the text of the statutory provision. The meaning of a specific provision must be determined by reference to the language and purpose of all of the provisions of the statute. A definition is not to be construed

> in isolation from the operative provisions in which the definition is used. Rather, ordinarily at least, the definition is to be inserted into the operative provision and then the the operative provision construed.

55:

> These general precepts of statutory construction apply equally to the construction of a code.

56:

> The proper construction of a code was explained by Dixon, and Evatt Jessica Johnson in Brennan v The King.

And the quote follows:

> The Code is intended to replace the common law, and its language should be construed according to its natural meaning and without any presumption that it was intended to do no more than restate the existing law. It is not the proper course to begin by finding how the law stood before the Code, and then to see if the Code will bear an interpretation which will leave the law unaltered.

57.

> Resort to the Common Law may be appropriate where the language of the Code is ambiguous or uses language which has previously acquired a technical meaning. However, as Gibbs J noted in Stewart, 'It should be remembered that the first duty of the interpreter of the provisions of the Code is to look at the current text rather than the old writing which has been erased. If the former is clear the latter is of no relevance'.

58.

> The principle that a Code should be construed according to its ordinary meaning without any presumption that it was intended to do no more than to re-state the existing law is qualified in relation to the adoption in a Code of a word or expression having an established meaning under the pre-existing law where that word or expression is not defined in the Code.

In Bowie v The Queen, Brennan J observed:

> It is erroneous to approach the Code with the presumption that it was intended to do no more than re-state the existing law but when the Code employs words and phrases that are conventionally used to express a general common law principle it is permissible to interpret the statutory language in the light of decisions expounding the common law including decisions subsequent to the Code's enactment.
>
> The meaning of the words and phrases to be found in a Code is controlled by the context in which they are found but when the context does not exclude the common law principles, which particular words and phrases imply the import, resort to those common law principles is both permissible and required.

Section 57 of the Criminal Code reads:

> Any person who, in the course of an examination before either House of Parliament or before a Committee of either House or before a Joint Committee of both Houses, knowingly gives a false answer to any lawful and relevant question put to him in the course of examination is guilty of a crime and is liable to imprisonment for seven years.

The relationship between section 57, section 16 and the equivalent Queensland provision is accurately articulated in the State's submissions which I adopt in this respect and are as follows:

> Section 16 of the PPA and section 57 of the Code are materially the same in that they create an offence with identical elements despite their slightly different wording. It's apparent that section 57 of the Code picked up and incorporated the original section 16 of the PPA. That is confirmed by considering the original draft Code submitted to the Queensland legislature.
>
> The equivalent provision was originally section 58 of the draft Code (but it became section 57 of the enacted Queensland Code) and Sir Samuel's marginal note to section 58 directed attention to section 53 of 31 Victoria number 38 which is the Constitution Act 1867 of Queensland. Section 53 is identical to section 16 of the Parliamentary Privileges Act.

A number of further points can be made at this stage. First, section 57 of the Code is contained in chapter 8 of Part 2 of the Code. The heading to Part 2 is, "Offences Against Public Order" and the heading to chapter 8 is, "Offences Against the Executive and Legislative Power".

Second, section 16 of the Parliamentary Privileges Act and section 57 of the Code, as already noted, are in almost identical terms. The differences are, for present purposes, irrelevant. It's clear that section 57 was based upon section 16. So much is accepted by the parties.

Third, chapter 8 comprises section 54 to 61. Each of these sections, save for section 60, applies to any person. Section 60 contains a qualification that a person can only be liable if they are a member of either House of Parliament. The legislature thus chose to limit the operation of section 60 and provided a limited definition of "person".

Fourth, section 57 is clearly expressed to refer to any person. There is no obvious limitation in its application to persons who are not Members of Parliament.

Fifth, section 58 is limited to an examination before either House of Parliament or before a Committee of either House or before a Joint Committee of both Houses. Thus it would have no application to speeches or debates within either House of Parliament.

Sixth, the application of section 57 is limited to the giving of false evidence in response to a lawful and relevant question.

Seventh, in any prosecution for an offence contrary to section 57 it will be necessary to adduce evidence of the question and the answer given.

Eighth, section 57 has no application to statements or assertions made in the Parliament which are not responsive to a question, as noted in the State's written submissions. The section would have no application to "speeches or debates or answers by Members to questions in the ordinary course of Parliamentary business".

Ground 1 of the application relates to the admissibility of Mr Urban's evidence to the Committee. Absent the abrogation of Article 9, evidence of what Mr Urban said to the Committee could not be adduced. I accept that the privileges of Parliament are rightly jealously preserved and are an important feature of a functioning democratic society.

Those who represent the community in the Parliament must be free to speak openly within our Parliamentary Houses but in relation to section 57 there are limitations. The State's submission is that Article 9 is abrogated for the limited purpose contemplated by section 57, namely establishing the giving of false evidence. Mr Urban's submission is that section 15 of the Parliamentary Privileges Act 1891 affects an express, albeit limited, abrogation of Article 9 for the purpose of a prosecution for an offence under section 57.

Mr Urban submits that section 57 of the Code does not abrogate Article 9. Mr Urban's submission is that he can be prosecuted in the Supreme Court in circumstances where section 15 of the Parliamentary Privileges Act has been engaged, that is, a prosecution can proceed in the Supreme Court following a direction given to the Attorney-General by either House.

Pausing there, it's to be noted that the Attorney-General and the Director of Public Prosecutions are each authorised officers able to commence prosecutions in the superior court. See section 83(1) of the Criminal Procedure Act. The submission as developed by senior counsel for Mr Urban was that a prosecution could be commenced by the Director of Public Prosecutions.

However, before evidence of what was said to the Committee can be adduced the fiat of the House must first be obtained

under section 15 of the Parliamentary Privileges Act 1891. Thus it is an admissibility issue which arises in relation to ground 1. Let there be no misunderstanding about the way in which the matter is put. It's put as an admissibility issue.

That's correct, isn't it, Mr Greaves? That's the way it's put, ground 1?

GREAVES, MR: Yes, your Honour.

STAVRIANOU DCJ: Thank you.

Mr Urban's submission is that as the prosecution is brought otherwise than pursuant to section 15 the giving of evidence as to what was said before the Committee is protected by Parliamentary Privilege. In consequence an acquittal is inevitable on counts 8 to 21 inclusive in the submission of Mr Urban.

It is the case that there is no express abrogation of Article 9 contained in the Parliamentary Privileges Act or the Criminal Code. The State relies upon an implied abrogation for the purpose of section 57. The issue of implied abrogation was dealt with in Daniels Corporation International Pty Ltd and Another v - those letters, Mr Greaves, do you know what they are - - -

GREAVES, MR: I apologise your Honour.

STAVRIANOU DCJ: - - - ACCC? Do you know, ACCC? Australian - - -

GREAVES, MR: Competition and Consumer Commission.

STAVRIANOU DCJ: Daniels Corporation Pty Ltd and Another Australian - sorry, Mr Greaves.

GREAVES, MR: Australian Consumer and Competition - no.

STAVRIANOU DCJ: Consumer and Competition Commission, ACCC.

GREAVES, MR: Yes, so long as we're clear that it's the CCC and not the CC which is a very - - -

STAVRIANOU DCJ: Triple.

GREAVES, MR: - - - different body.

STAVRIANOU DCJ: Triple, triple.

GREAVES, MR: Triple, yes.

STAVRIANOU DCJ: It's CCC [2002] HCA 49, where Gleeson CJ, Gaudron, Gummow and Hayne JJ in a joint judgment, said:

> The courts will hold that the presumption has not been overcome -

- in a different context -

> - unless the relevant legislation expressly abolishes, suspends or adversely affects the right, freedom or immunity or does so by necessary implication.
>
> They will hold that the legislature has done so by necessary implication whenever the legislative provision would be rendered inoperative or its object largely frustrated in its practical application if the right, freedom or immunity were to prevail over the legislation. A power conferred in general terms, however, is unlikely to contain the necessary implication because 'general words will almost always be able to be given some operation, even if that operation is limited in scope'.

Where a claim of Parliamentary Privilege is raised in the course of legal proceedings it is for the court and not Parliament to adjudicate whether the privilege exists.

Section 15 is not inconsistent with the privileges, immunities or powers of the House of Commons. Certain conduct within Parliament may amount to both a contempt and a crime.

Section 15 of the Parliamentary Privileges Act grants power to an individual House to direct the Attorney General to prosecute.

There is no basis in my view, for reading section 15 is in any way fettering the Director of Public Prosecutions' discretion to prosecute.

In his submissions, Mr Urban identifies a number of consequences said to flow from an abrogation of privilege for what is said before a Parliamentary Committee.

Specifically, every person who gives evidence to a Parliamentary Commission is exposed to the risk that the

Executive Government, without the fear for Parliament could prosecute them if the Executive Government itself considers their evidence to be knowingly false.

Secondly, Parliamentary Committees in many cases, consider what the law should be. There will be a range of different opinions about what the law should be.

> All manner of people will express all manner of views on the factual matters that underpin those judgments. The correctness of such factual evidence ought not routinely be called into questions before the courts.

That's paragraph 82 of the submissions.

83.

> The court should not infer that the fundamental principle of Parliamentary Privilege was impliedly abrogated for all purposes under section 57, thereby giving the executive carte blanch to determine who should be prosecuted under it, particularly where there is already a limited express abrogation on the statutes.

Mr Urban's position is ultimately summarised in his submissions in the following terms, and I quote:

> Section 57 does not contain such unmistakable and unambiguous language that the general words of section 57 may be used to impute to the Legislature, an intention to interfere with Parliamentary Privilege, unless there if first a direction by the relevant House to the Attorney under section 15 of the Parliamentary Privileges Act to bring a prosecution.

And finally:

> The correct way to bring a prosecution under section 15 is for the attorney to receive a direction under section 15. That course has not been followed.

That's paragraph 85 of the submission.

Now, the elements of the offence created by section 57 of the West Australian Criminal Code are, (1) that the offender was the accused.

Secondly, that the accused was examined by a committee of either House.

(3) That the question put was lawful.

(4) That the question put was relevant.

(5) That his answer to the question was false, and

(6) That at the time he gave the answer, he knew it to be false.

In any prosecution, it will be necessary to adduce evidence as to what was said by the accused to the Committee. It will also be necessary to question what was said in the Parliament in the sense that it will be necessary to prove what the accused said to the Committee was false.

I accept the reasoning outlined in the State's submission that, and I quote:

> First, Parliamentary Privilege including article 9, belongs to Parliament, not to individual Members.
>
> Secondly the evidence of all witnesses before Parliament or its committees is privileged whether the witness is a member or otherwise.
>
> That is consistent with and a consequence of the first proposition that the privilege belongs to Parliament and not its individual members.
>
> Thirdly, it can generally be taken that Parliament does not intend to enact laws that have no effect. Parliament cannot have intended to create an offence by section 57, the essential evidence for which would never be admissible in court.
>
> Consequently, Parliament has by clear and unambiguous language, manifested its intention that article 9 be abrogated for the purpose of section 57.

In oral submissions, counsel for the State said, and I quote:

> My friend was emphatic yesterday that on the State's construction, section 15 has nothing to do, and in my submission that's plainly wrong.

Relevantly, the submission continues:

> On the State's construction, what the section continues to do and what it has always been intended to do, was to permit a House, which is a collection of individuals who would be dealing with and witnessing the relevant contempt at first instance as a contempt, to say well, this is too serious. This is something that justifies punishment as a crime - prosecution of a crime. We resolve that the Attorney General is to direct this to be the subject of a prosecution in the Supreme Court.
>
> It is in terms a power to do something. That's also what now the ALS case, Aboriginal Legal Services v the State of Western Australia - as I say, Aboriginal v the State of Western - as I say, it doesn't deal directly with construing section 15, but it describes the scheme of the Legislation and your Honour has head me already refer to the hybrid.

The effect of section 15 of the Parliamentary Privileges Act [1891] is to grant a power to the House to direct the Attorney General to prosecute.

There is no inconsistency in my view, between section 1 and 15 and accordingly, section 15 does not operate as submitted by Mr Urban, to abrogate article 9.

Certain conduct could constitute a contempt of Parliament and also a criminal offence. Conduct which constitutes a contempt as is submitted by the State, always able to be prosecuted as a crime.

It is unnecessary for there to be an abrogation of article 9 for section 15 to have work to do. There are many different types of conduct which could be the subject of a section 15 direction, and which would not result in an infringement of article 9.

Section 15 does not expressly or by required implication, abrogate article 9.

In contrast, a prosecution under section 57 does require an abrogation of article 9. Parliament must have been aware of the implications to article 9 in simultaneously creating a provision allowing the prosecution in the court, of the giving of false evidence before Parliament.

The Parliament must have known of the effect of the operation of section 16 of the Parliamentary Privileges Act. Section 15 effects a similar repeal of article 9 as that which was affected by section 16.

Article 9 in my view, is abrogated by necessary implication in a prosecution under section 57, because otherwise section 57 would be of no effect insofar as it relates to Members of Parliament.

The accused submits that - accordingly, I consider that there is no merit in ground 1.

The accused submits that it is an abuse of process of the court for the Executive Government to now seek to relitigate the decision of the House by prosecuting the same subject matter before the court.

In further enunciating the submissions, counsel for Mr Urban said that the Parliament in using the word guilty, was doing so carefully, cautiously, deliberately and in accordance with the ordinary meaning of the word, when it's used - when it is used by a body that has criminal jurisdiction.

It was further submitted that the word guilt, when used by a body with the power to imprison, penal powers as the Parliament unquestionably has, is unambiguous.

Having been found guilty by the Parliament there was, quote:

> Nothing left for the court to determine.

A sanction had, it was submitted, been imposed, namely loss of privileges, and Mr Urban's resignation from the Parliament was causally related to the Committee's findings.

It is said that public confidence will be adversely affected if at trial, Mr Urban is found not guilty of those charges which are the subject of the application.

The right of an accused to a fair trial according to law is a fundamental element of the Australian Criminal Justice System, whether it's expressed as the right to a fair trial or the right not to be tried unfairly. See generally, Dietrich v the Queen [1992] 177 CLR 292 and Jago v the District Court of New South Wales [1989] 168 CLR 23, and in particular at 25 and 26 and 56.

The courts possess an inherent jurisdiction to stay proceedings which are an abuse of process. The principles relevant to determining whether criminal proceedings ought to be stayed as an abuse of process were summarised in

Culverwell v Ginbey [2016] WASC 3, delivered 8 September 2016 and I quote as follows, from the decision:

> Two policy considerations are fundamental to determination. First the public interest in the administration of justice requires that the courts protect its ability to function as a court of law by ensuring that its processes are used fairly by State and citizen alike.
>
> And second, a failure by a court to protect its ability to function in that way will lead to an erosion of public confidence by reason of concern that the court's processes may lend themselves to oppression and injustice.

(b) Abuses of process cannot be restricted to defined and closed categories.

Notions of justice and injustice as well as other considerations that bear on public confidence in the administration of justice must reflect contemporary values and take account of the particular circumstances of the case.

That does not mean that the concept is at large or without meaning and extends to proceedings that are instituted for an improper purpose and to proceedings that are seriously and unfairly burdensome, prejudicial or damaging or productive of serious and unjustified trouble and harassment.

Although the jurisdiction to stay proceedings as an abuse of process is wide it is not within limits. It's been said that the discretion cannot be exercised to stop proceedings merely because the evidence against an accused is weak or because the court disapproves of the prosecution.

The majority in Walton v Gardiner noted that the power to stay proceedings as an abuse was not confined to cases where the court was satisfied that the hearing would necessarily be unfair or that proceedings had been brought for an improper purpose.

The power extended to all category of cases in which the processes and procedures of the court may be converted into instruments of injustice or unfairness. Examples include where the proceedings were doomed to fail, where proceedings were commenced in a court that was clearly an inappropriate forum and proceedings that sought to litigate

a new case that had already been disposed of in earlier proceedings.

The majority in Walton v Gardiner considered that the determination of whether criminal proceedings should be stayed was to be determined:

> By a weighing process involving a subjective balancing of a variety of factors and considerations. Amongst those factors and considerations are the requirements of fairness to the accused, the legitimate public interest in the disposition of charges of serious offences and in the conviction of those guilty of crime and the need to maintain public confidence in the administration of justice.

(e) A prosecution will only be stayed in the most exceptional circumstances. The onus of satisfying the court that there is an abuse of process lies upon the party making the allegation and the onus is a heavy one. To justify a permanent stay of criminal proceedings there must be a fundamental defect which goes to the root of the trial of such a nature that nothing that the trial judge can do in the conduct of the trial can relieve against its unfair consequences. See generally Jago, a decision of Mason CJ, at 21.

The attributes of a fair trial cannot be exhaustively defined. In Jago v District Court, Deane J said at paragraph 5:

> The general notion of fairness which has inspired much of the traditional criminal law of this country defies analytical definition. Nor is it possible to catalogue in the abstract the occurrences outside or within the actual trial which will or may affect the overall trial to an extent that it can no longer properly be regarded as a fair one.
>
> Putting to one side cases of actual or ostensible bias the identification of what does and what does not remove the quality of fairness from an overall trial must proceed on a case by case basis and involve an undesirably, but unavoidably, large content of essentially intuitive judgment. The best that one can do is to formulate relevant general propositions and examples derives from past experience.

> Thus it can be said that as a general proposition default or impropriety on the part of the prosecution in pre-trial procedures can, depending on the circumstances, be so prejudicial to an accused that the trial itself is made an unfair one.

Similarly, in Dietrich v the Queen, Mason CJ and McHugh J in a joint judgment said:

> There has been no judicial attempt to list exhaustively the attributes of a fair trial. That is because in the ordinary course of the criminal appellate process an appellate court is generally called upon to determine, as here, whether something that was done or said in the course of the trial, or less usually before trial, resulted in the accused being deprived of a fair trial and led to a miscarriage of justice.

More recently in X7 v Australian Crime Commission [2013] 248 CLR 92 at 38, French CJ and Crennan J said:

> The courts have long had inherent powers to ensure that court processes are not abused. Such powers exist to enable courts to ensure that their processes are not used in a manner giving rise to injustice, thereby safeguarding the administration of justice. The power to prevent an abuse is an incident of the general power to ensure fairness.
>
> A court's equally ancient institutional power to punish for contempt, an attribute of judicial power provided for in Chapter III of the Constitution, also enables it to control and supervise proceedings to prevent injustice and includes a power to take appropriate action in respect of a contempt, or a threatened contempt, in relation to a fair trial.

It is self-evident that if an accused cannot receive a fair trial, it would involve unacceptable injustice or unfairness and be unfair and unjustifiably oppressive and the court would accordingly grant a stay of the proceedings. See Crown v Edwards [2009] HCA 20 and a similar expression of that sentiment contained in Walton v Gardiner.

Now, counsel, if I was to have a break, it would be now. I suspect I've got about another 10 minutes. Does counsel want a break or are you right to go? Keep going?

BURGESS, MS: I pick keep going, your Honour.

STAVRIANOU DCJ: Keep going?

GREAVES, MR: It's up to your Honour. We're in your hands entirely.

STAVRIANOU DCJ: Okay. We'll keep going then. In Kariapper v Wijesinha [1968] AC 717:

> Legislation imposed 'civil disabilities' on Members of Parliament against whom allegations of bribery had been sustained including the losses of their seats in Parliament.

This was a case from what was previously described as Ceylon. The Judicial Commission of the Privy Council at page 736 determined that:

> The disabilities imposed by the Act are not, in all the circumstances, punishment.

It was further held that the principal purpose of the disabilities imposed was not to punish but to keep public life clean for the public good.

Mr Urban filed written submissions in support of the application and in response to those of the State. What follows is largely a repetition and incorporation of the bulk of his submissions. The primary submission is that the prosecution of the counts is an abuse of process. This is because the matters the subject of the counts have already been conclusively dealt with by the Parliament, which found him guilty.

It's further submitted that a finding that the Parliament has already dealt with the matter should lead to a permanent stay of each of the charges. Mr Urban's submission is that the legislative arm of Government has already judged him guilty in relation to matters that were wholly within its purview. Counsel, in submissions, sought to rely upon public policy considerations similar to those applicable to principles of double jeopardy and autrefois convict.

Mr Urban's written submissions continue:

> The House could have directed the Attorney under section 15 of the Parliamentary Privileges Act 1891 to prosecute Mr Urban in the Supreme Court but did

> not adopt the course. Rather, the House finalised this saga on 9 May in the manner described at 24 above.

39.

> It's an abuse of the process of the court for the Executive Government to now seek to relitigate the decision of the House by prosecuting the same subject matter before the court.

40.

> The findings of the court are not analogous to the findings of an employer. This is not a case where an employee has been terminated and subsequently prosecuted criminally for the same alleged wrongful acts. No ordinary employer has the power to adjudge guilt. The House has that power. The House used that power.

Mr Urban refers to the findings and recommendations of the Committee and asserts at paragraph 41 of his written submissions that:

As a consequences of those findings, the House accepted and endorsed the Committee's report recommendations 7 and 8 that Mr Urban be expelled as a Member of the Assembly even though he had resigned and that any and all privileges he would otherwise have held as a former Member of the Parliament be revoked. There can be no doubt that Mr Urban’s resignation was causatively linked to the committee’s recommendations.

(c) The House’s resolution has conclusively and finally dealt with the alleged false statements that Mr Urban made to the committee, and;

(d) Each of charges 8 to 21 ought be permanently stayed in the interests of justice pursuant to section 90(1) of the Criminal Procedure Act.

Now, the committee report notes adverse consequences to Mr Urban on his contempt. It notes that he has relinquished his positions serving on committees which, it notes, is equivalent to a direct substantial financial penalty.

However, I do not accept that this was in the nature of a punishment but, in my view, was the equivalent to a loss of entitlement or benefit.

Mr Urban indeed conceded that his expulsion was framed as protective in nature and not as punishment. Relevantly, in the report, reference is made to what is described as the applicant description in Erskine May that expulsion has been aptly described as:

> - less of a punitive measure, and more of an example of the House's power to regulate its own constitution.

In the report, after referring to the decision in Armstrong v Budd the committee states:

> The committee concurs that expulsion is a protective measure for a legislature.

However, Mr Urban submits that, and I quote:

> This does not alter the findings including of guilt.
>
> (b) although the word, guilt, was used in connection with biographical information, his inaugural speech and his person explanation axiomatically it extends to Mr Urban's evidence to the committee. Mr Urban's testimony given to the committee was said to aggravate the contempt that Mr Urban was guilty of and, in particular, report recommendations 1 and 5.
>
> (c) Parliament has found Mr Urban guilty of the same set of facts the Director now seeks to prosecute in the name of the State, and
>
> (d) an abuse for the Executive to seek to retry the same controversy in this particular forum, namely the District Court.

Mr Urban further notes that the court's judgment has the real tendency in the event of an acquittal to controvert and undermine the findings of the House. The relationship between the court and the Parliament and, in particular, the principle of exclusive cognisance was considered in the case of Chaytor. Lord Phillips in Chaytor referred to exclusive cognisance as follows:

> The phrase describes areas where the courts have ruled that any issue should be left to be resolved by Parliament rather than determined judicially. Exclusive cognisance refers not simply to Parliament, but to the exclusive right of each House to manage its own affairs without interference from the other or from outside Parliament. The boundaries of

> exclusive cognisance result from accord between the two Houses and the courts as to what falls within the exclusive province of the former. Unlike the absolute privilege imposed by Article 9, exclusive cognisance can be waived or relinquished by Parliament.

In dealing with the issue of criminal law, Lord Phillips said Parliament has never challenged in general the application of criminal law within the precincts of Parliament and has accepted that the mere fact that a crime has been committed within these precincts is no bar to the jurisdiction of the criminal courts.

> In May 1812, John Bellingham was indicted, tried and convicted of the murder of the Prime Minister, Spencer Percival, at the entrance to the lobby of the House of Commons. Bellingham was not a member of Parliament but it would have made no difference had he been. When a crime is committed within the House of Commons this may well also constitute a contempt of Parliament.
>
> The courts and Parliament have different overlapping jurisdictions. The House can take disciplinary proceedings of contempt and the court can try the offender for the crime. Where a prosecution is brought Parliament will suspend any disciplinary proceedings. Conversely, if a Member of Parliament were disciplined by the House consideration would be given by the Crown prosecution service as to whether a prosecution would be in the public interest.
>
> In 1988, Mr Ron Brown damaged the Mace in the course of the heated debate and declined to apologise. The House exercised its penal powers in relation to both the damage to the Mace and the lack of respect for the authority of the Chair. The Director of Public Prosecutions subsequently halted an attempt to bring a private prosecution. Erskine May records at pages 162-163 that in cases of breach of privilege which are also offences at law, where the punishment which the Commons has power to inflict would not be adequate to the offence, or where for any other reason the House has thought a proceeding at law necessary, either as a substitute for or in addition to its own proceedings, the attorney has been directed to prosecute the offender.

> It is of note that in two of the cases cited the Attorney was directed to prosecute witnesses to Parliamentary committees for wilful and corrupt perjury. No instance is cited beyond the 19th century and a footnote records that on two occasions in the 1970s the House authorities informally invited the police to consider prosecuting those responsible for gross misbehaviour in the gallery. Thus the House does not assert an exclusive jurisdiction to deal with criminal conduct even where this relates to or interferes with proceedings in committees or in the House.
>
> Where it is considered appropriate the police will be invited to intervene with a view to prosecution in the courts. Furthermore, criminal prosecutions are unlikely to be possible without the prosecution of Parliament.
>
> Before a prosecution can take place it's necessary to investigate the facts and obtain evidence.

Counsel for Mr Urban referred at length to the consequences of a finding of guilt. However, it is to be noted that any direction under section 15 of the Parliamentary Privileges Act from the House is linked to a finding of guilt. This weighs very much against the proposition that the prosecution is an abuse. The finding of guilt is necessary before section 15 can be engaged. This is not a question - there is no question of fettering of any prosecutorial discretion.

It is important in this consideration to identify the nature of the committee's task. It was to consider the representations made by Mr Urban. It's readily apparent that the issue before the committee was different to that which would be dealt with in a trial of an offence contrary to section 57 of the Criminal Code.

The inquiry itself was of a different character to a trial before a judge alone or judge and jury. There are a number of aspects to this. First, written submissions were received from a number of individuals as well as evidence.

Second, the findings made by the committee were determined on the basis of applying a standard of proof of the balance of probabilities. That said, I accept there is reference to a higher standard and there's also reference to the beyond reasonable doubt. However, the committee makes clear early in its report that the balance of probabilities is the standard which is applied. I'm satisfied, as I've

said, that this was the case notwithstanding references in parts of the report to proof beyond reasonable doubt.

Third, the relevant findings in relation to the giving of evidence by Mr Urban to the committee appeared to be rolled up, to a certain extent, with the provision of submissions and documentation.

Mr Urban's conduct exposed him to prosecution for an offence in contravention of section 57 and Parliamentary disciplinary proceedings. The determination that he was guilty of contempt does not, in my view, preclude the prosecution in this case. Each process is commenced and was for a different purpose.

The process undertaken by the Parliament and the committee was designed to regulate the conduct of one of its members. It was disciplinary and protective. So much was accepted by the committee in its report. And the reference to the finding of guilt does not change the process which was engaged. It was not a criminal procedure. Mr Urban was not being dealt with for contravention of section 57 of the Criminal Code. As the State notes in its submissions, different purposes are served by the different processes which were engaged in.

The Parliamentary process which has been conducted bears no significant similarity to what will occur in the proposed trial. That said, there will, of course, be evidence and material no doubt would be the subject of tender.

As observed in Chaytor:

> The court and the Parliament have different, overlapping jurisdictions.

The determination of the Parliament does not mean that any trial of the counts on the indictment would be unfair or work an injustice. The trial is to be a trial by judge alone. Notions of prejudice or unfair publicity are accommodated in itself by the nature of the trial. In my view, maintenance of the prosecution would not constitute an abuse of process.

Mr Urban's submission is that he was a Member of Parliament at the relevant date and because of that he is unable to be prosecuted for an offence contrary to section 57 of the Criminal Code.

The orthodox approach to statutory construction generally, is enunciated in SZTAL v the Minister for Immigration and Border Protection [2017] 262 CLR 362.

In their joint judgment, Kiefel J, Nettle J and Gordon J, said:

> The starting point for the ascertainment of the meaning of a statutory provision is the text of the statute, whilst at the same time, regard is had to it's context and purpose.
>
> Context should be regarded at this first stage, not at some later stage, and it should be regarded in its widest sense.
>
> This is not to deny the importance of the natural and ordinary meaning of a word, namely how it is ordinarily understood in discourse, to the process of construction.
>
> Consideration of context and purpose simply recognise that understood in its statutory historical or other context, some other meaning of a word may be suggested, and so to, if its ordinary meaning is not consistent with the statutory purpose, that meaning must be rejected.

See also CJC Insurance Limited v Bankstown Football Club Limited [1997] 187 CLR 384 at 408.

Mr Urban has in submissions, relied upon opinions expressed by the Honourable Robert Cock QC, and an article written by Mr C Lowey, the Crown Solicitor for Queensland, which article was published as a chapter in Justice According to Law. Festschrift - what's that word, Mr Greaves?

GREAVES, MR: Festschrift.

STAVRIANOU DCJ: Fest - I'll spell it for the purpose of the transcript - f-e-s-t-s-c-h-r-i-f-t - for the Honourable Mr Justice BH McPherson CB edited by Alladin Ara Hantoula(?) published Brisbane, Queensland, Supreme Court of Queensland Library 2006.

In his opinion, Mr Cock has stated that, and I quote:

> It is possible that a court might construe the word person in sections 55 to 59 and 61, to not include a Member of Parliament.

This would be a means of incorporating into the provision an acceptance - provisions, an acceptance of Parliamentary privilege and would to some extent be consistent with the terms of section 60, which deliberately includes a Member of Parliament into the term -

Sorry:

- deliberately -

- of the Criminal - can you just read - section 60 excludes a member of Parliament, doesn't it, Mr Greaves?

GREAVES, MR: The text of section 50 I believe, on the version - - -

STAVRIANOU DCJ: 60?

GREAVES, MR: Yes, 60 - 6-0.

STAVRIANOU DCJ: Yes.

GREAVES, MR: The text on the version I've got, and I've no reason to think it's not the correct version - - -

STAVRIANOU DCJ: Yes.

GREAVES, MR:

Any person who being a member of either House - - -

STAVRIANOU DCJ: Includes - - -

GREAVES, MR:

- asks receives or - - -

STAVRIANOU DCJ: Yes, that's right.

GREAVES, MR:

- or obtains - - -

STAVRIANOU DCJ: Yes, that's all right. Sorry, I thought it may have been include - exclude.

GREAVES, MR: There's also section 61.

STAVRIANOU DCJ: Yes. Which is the same effect, isn't it? Sorry?

GREAVES, MR: Is bribery of a member of Parliament.

STAVRIANOU DCJ: Yes. Yes. So this would be a means - so just return to Mr Cock's quote, and I finish the quote. I'll restate the quote, the second half - the second sentence of the quote:

> This would be a means of incorporating into the provision an acceptance of Parliamentary Privilege and would to some extent be consistent with the terms of section 60, which deliberately includes a Member of Parliament into the term person.

Three observations, which are all identified by Mr Urban in his written submissions, need to be made as to Mr Cock's opinion.

First, section 5 of the Criminal - of the Interpretation Act contains a wide definition of person. Further, section 1 of the Criminal Code contains no applicable definition of person.

Secondly, the ordinary natural meaning of the word person would not support the limited interpretation as contended.

Thirdly, section 19(3)(a) of the Interpretation Act provides that:

> In relation to interpretation, whether consideration should be given to any material or in considering the weight to be given to any such material, regard should be had to the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision, taking into account its context in the written law and the purpose or object underlying the written law.

Insofar as Mr Lowey's article is concerned, Mr Urban relies upon it as in effect buttressing a submission that the historical context of section 57 is that it was drafted to apply only to non-Members of Parliament.

Mr Lowey's article traces the historical development of the Queensland equivalent of section 57. Mr Urban's submissions continue, and I quote:

> Counsel can do no better than incorporate the festschrift into these submissions. At page 600,

> Mr Lowey opined, 'I have great difficulty in reaching any other conclusion than that section 13 of the 1861 Act and section 53 of the 1867 Act were never intended to apply to members and that they were never thought to apply to members.'
>
> At pages 600 to 601, Mr Lowey leaves open the possibility that the movement of the offence into the Griffith Code may have changed the context.
>
> An applications of the principles discussed in Lavan, and it tells again such a discussion.

Close quote. Section 57 of the Code is in, as I've already outlined, is in very similar terms to section 16 of the Parliamentary Privileges Act [1891].

Section 14 of the Parliamentary Privileges Act was expressed to apply to any person other than a member. Section 14 was enacted at the same time as section 16.

Parliament chose to specifically exclude Members of Parliament from the conduct proscribed by section 14. Section 16 contained no such limitation. Section 16 referred only to any person. There was no limitation as contained in section 14, confining its operation to only non-Members of Parliament.

Section 5 of the Interpretation Act defines a person as person or any word or expression descriptive of a person. It includes a public body, company or association or body of persons, corporate or unincorporated.

No assistance can be gained by the - Mr Urban in relation to the matter from that particular definition.

The purpose of section 57 of the Criminal Code is clear. It imposes criminal liability in relation to the giving of false answers. There are a number of constraints within the section.

First, the answer must be knowingly false. Second, the question must be lawful. Third, the question must be relevant. Fourth, the question must be in the course of an examination.

It cannot be doubted that the business of a committee of Parliament is important business. It relies, and must rely, upon persons who appear before it, being truthful.

Whilst there was a submission that members infrequently appear before a committee, that particular submission cannot override the clear legislative purpose, that is that the giving of truthful evidence during an examination is what is intended.

There is no specific limitation contained within the Criminal Code in relation to the definition of person. There is no basis for an interpretation of the word person in section 57 to be limited to any person no being a member of Parliament.

The word person should be given its ordinary and natural meaning. In the circumstances, a Member of Parliament would not be excluded, in my view, from the operation of section 57.

Accordingly, in summary, in my view, each of the grounds of the application must be dismissed. I would therefore dismiss the application dated 26 August 2020.