SUPREME COURT OF QUEENSLAND

CITATION:	*Parker v Commissioner of Police* [2026] QSC 150
PARTIES:	**PHILIP PARKER** (Applicant) **v** **COMMISSIONER OF POLICE** (Respondent)
FILE NO:	34/2026
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Townsville
DELIVERED ON:	26 June 2026
DELIVERED AT:	Townsville
HEARING DATE:	23 April, 4 June 2026
JUDGE:	Johnstone J
RULING:	Application dismissed with costs
CATCHWORDS:	PRIVILEGE – LEGAL PROFESSIONAL PRIVILEGE - WARRANTS, SEARCH, SEIZURE AND INCIDENTAL POWERS – ORDER FOR ACCESS INFORMATION TO A DIGITAL DEVICE – where a mobile phone was lawfully seized by police – where applicant provided access information pursuant to a lawful order – where the police downloaded all of the contents of the mobile phone – where applicant subsequently claimed contents of the mobile phone included documents subject to legal professional privilege – where applicant seeks declaratory and injunctive relief solely on the basis of legal professional privilege – whether equity arises – whether cause of action based on legal professional privilege exists *Police Powers and Responsibilities Act* 2000 s 154A, s 154A(2), s 154(1)(b), s 154(1)(c), s 149A, s 154 *Criminal Code* 1899 s 205A *Attorney-General for the Northern Territory v Maurice* (1986) 161 CLR 475. *Baker v Campbell* (1983) 153 CLR 52. *Commissioner of Australian Federal Police v Propend Finance Pty Limited* (1997) 188 CLR 501.

Commissioner of Police v Barbaro [2020] QCA 230.
The Daniels Corporation International Proprietary Limited v ACCC (2002) 213 CLR 543.
Glencore International AG v Commissioner of Taxation (2019) 265 CLR 646.
Woollahra Municipal Council v Westpac Banking Corporation (1994) 33 NSWLR 529.

COUNSEL: The Applicant appeared on his own behalf
Mr TC Schmitt for the Respondent

SOLICITORS: Crown Law for the Respondent

[1] On Saturday 14 March 2026, the applicant, Mr Parker, was arrested at his residence in Mooroobool. Later that day he was charged with three counts of assault occasioning bodily harm alleged to have occurred on 13 March 2026 at the Cairns Esplanade.

[2] At the time of his arrest, Mr Parker handed his mobile phone to the arresting officer Plain Clothes Senior Constable Jacob Robinson. PCSC Robinson retained possession of the phone. Mr Parker was transported to the Cairns watchhouse where he was charged. After he was charged, PCSC Robinson learned that he was named as a person of interest in relation to allegations of stalking and burglary alleged to have been committed 30 November 2025.

[3] PCSC Robinson's colleague, PCSC Nathan Cheng was the investigating officer in relation to the stalking and burglary allegations.

[4] PCSC Robinson seized the phone because he believed it may contain evidence concerning the charges of assault occasioning bodily harm including location data and photographs. In addition, based on information provided to him by PCSC Cheng, he also believed the phone may contain evidence relating to the stalking and burglary matters including potentially electronic communications, bank transactions and location data.

[5] On 16 March 2026, pursuant to s 154A of the *Police Powers and Responsibilities Act 2000* (**PPRA**), PCSC Robinson, applied for an order obliging Mr Parker to give to

him access information for the phone. An order granting access to the phone was made on that date by Magistrate Bowen in Cairns.

[6] On 24 March 2026, in compliance with the order of 16 March 2026, Mr Parker gave to the police the information necessary to enable them to access the phone.

[7] That same day, PCSC Robinson downloaded all of the data from the phone on to the Cellebrite system used by police and he conducted a search of that downloaded data. He focussed upon matters which were relevant to the assault occasioning bodily harm charges and in particular he viewed video footage and photographs.

[8] Mr Parker claims that the mobile telephone contains communications between him and various legal advisors relating to eight different matters dating from 2015. Most of the communications are, apparently, contained in emails which are accessible on the phone.

[9] Mr Parker seeks orders challenging the entitlement of the police to deal with the phone and its contents and seeks a variety of orders designed to protect the privilege he claims to exist in that correspondence.

History of the matter

[10] Mr Parker originally applied *ex parte* for an interim injunction restraining the respondent from, in effect, accessing and examining any data on the mobile phone. He also sought various interlocutory relief including orders requiring the respondent to take a number of positive steps including preserving the device in its current state and filing an affidavit within 48 hours as to the identity of all persons who have accessed data contained on the device.

[11] That application was heard on 1 April 2026. It was refused for reasons given at the time which included that police ought to have been served with the application given the circumstances did not justify an *ex parte* hearing. The application for an interlocutory injunction was adjourned.

[12] The application for interlocutory relief was heard on 9 and 10 April 2026, and was dismissed.

[13] The application was listed for review on 23 April 2026 at which time directions were made for the final hearing listed for 4 June 2026.

[14] In the meantime, Mr Parker filed an Amended Originating Application in which he seeks the following orders:

> 1. "A declaration that the mobile device (Field Property Receipt S1756303) ('the Device') contains material subject to legal professional privilege.
> 2. A declaration that the unilateral extraction, search, and dissemination of data from the Device by the Respondent, without the appointment of an independent referee to determine claims of privilege, was unlawful.
> 3. A permanent injunction restraining the Respondent, its officers, agents, or delegates from inspecting, reviewing, using, communicating, or relying upon **any material subject to Legal Professional Privilege** extracted from the Device.
> 4. An order that the Respondent permanently destroy and purge **all material subject to Legal Professional Privilege** obtained from the Device across all Queensland Police Service databases.
> 5. An order that the Respondent immediately deliver the physical Device, alongside all forensic copies, Cellebrite extractions, and derivative data, to an independent legal practitioner appointed by the Court as referee.
> 6. A order that the independent referee be tasked with reviewing the extracted data, identifying and quarantining all material subject to Legal Professional Privilege, and providing only the non-privileged material to the Respondent.
> 7. An order that upon delivery of the data to the referee, the Respondent permanently purge any existing, unfiltered extractions of the Device from all Queensland Police Service databases and internal servers.
> 8. An injunction restraining the Respondent from disseminating or communicating any confidential information already obtained from the Device to any third party or other investigating officer.
> 9. An order that the court file in this proceeding be sealed, and that no person other than the Applicant and the Respondent be permitted to search, inspect, or obtain copies of any documents on the file without the prior leave of the Court.
> 10. An order that the costs of the referee be borne by the Respondent.
> 11. The Respondent pay the Applicant's costs.
> 12. Such further or other orders as the Court considers appropriate."

What is the nature of the apparently privileged material?

[15] Mr Parker gave evidence that the phone was his primary method of communication with his legal representatives. He said that the phone contains "a massive volume of legal professional privilege (LPP) material spanning a decade."

[16] He deposed to the fact that he had identified eight distinct legal matters in which he had sought and received legal advice from various legal representatives, communications in relation to which, were conducted by email and accessible on his phone.

[17] In paragraph 13 of his affidavit, he described the communications in this manner:

> "(a) Civil Litigation: General Protections Claim:
>
> i. Timeframe: 8 December 2015 to 10 August 2018.
>
> ii. Legal Representative: Ms. Melanie Thorley (Principal Solicitor, hktlaw).
>
> iii. Nature of Storage: Email correspondence and document exchanges seeking and receiving legal advice regarding an employment law general protections claim.
>
> (b) Civil Litigation: Unfair Dismissal and Breach of Contract
>
> i. Timeframe: 20 January 2017 to 13 February 2022 (with the majority of correspondence occurring prior to 17 January 2018)
>
> ii. Legal Representatives: Mr. Jason Nott and Mr. Steven Hogg (Barrister, McPherson Chambers) .
>
> iii. Nature of Storage: Email correspondence and document exchanges seeking and receiving legal advice regarding an employment dispute, unfair dismissal, and breach of contract claim.
>
> (c) Civil litigation: Personal Civil Matters
>
> i Timeframe: 24 August 2020 to 28 April 2021.
>
> ii. Legal Representatives: Ms. Meegan Courteny and Mr. Jordan Anderton (Preston Law).
>
> iii. Nature of Storage: Email correspondence and document exchanges seeking and receiving legal advice regarding two distinct personal civil matters.
>
> (d) Criminal defence: Serious Assault of a Person Over 60

i. Timeframe: March 2024 to February 2025.

ii. Legal Representative: Mr. Ken Cuthbertson.

iii. Nature of Storage: Dozens of email threads containing strategic legal advice, alongside PDF attachments including Complainant Statements, Particulars Notices, and Notices to Appear. (This matter was ultimately dismissed).

(e) Legal Advice: International Allegations (Poland)

i. Timeframe: April 2024

ii. Legal Representative: Mr. Ken Cuthbertson.

iii. Nature of storage: Direct email correspondence seeking urgent legal advice regarding allegations originating in Poland, including communications regarding consular assistance.

(f) Criminal Defence: Assault Occasioning Bodily Harm (AOBH)

i. Timeframe: January 2025 to April 2026.

ii. Legal Representative: Mr. Ken Cuthbertson.

iii. Nature of Storage: Extensive email correspondence containing legal advice, bail applications, and defence strategy. (This Charge is currently withdrawn).

(g) Civil Litigation: Dave's Company v Trips Auto Group Pty Ltd

i. Timeframe: 18 February 2025 to 27 June 2025

ii Legal Representative: Mr. Joshua Auld.

iii. Nature of Storage: Email correspondence and document exchanges seeking and receiving legal advice regarding active civil litigation brought against my company, Trips Auto Group Pty Ltd.

(h) Legal Advice: Australian Federal Police Search Warrant

i. Timeframe: August 2025.

ii. Legal Representative: Mr Ken Cuthbertson.

iii. Nature of Storage: Email correspondence seeking and receiving legal advice regarding the execution of an AFP search warrant at my residence and the subsequent return of property.

iv. Criminal defence: Current proceedings.

v. Timeframe: March 2026 (including 16 March 2026, post-seizure).

vi Legal Representative: Mr. Ken Cuthbertson.

vii. Nature of Storage: Email correspondence directly to my lawyer seeking advice regarding the specific arrest and allegations for which the Device was seized by the Respondent."

[18] Mr Parker's evidence was that "[t]he communications detailed in paragraph 13 were made for the dominant purpose of seeking or providing legal advice, or for use in existing or anticipated legal proceedings."

The power of the police to seize and search the mobile phone?

[19] Relevantly, under s 154A(2) of the PPRA, on application of a police officer who has lawfully seized a digital device, a magistrate may make an order requiring a specified person to do a thing mentioned in ss 154(1)(b) or (c) of the PPRA.

[20] Subsections 154(1)(b) and (c) provide:

> **154 Order in search warrant about device information from digital device**
>
> (1) If the issuer is a magistrate or a judge, the issuer may, in a search warrant, order a specified person to do any of the following in relation to a digital device at the place—
>
> (a) …
>
> (b) give a police officer access information for the device or any assistance necessary for the officer to gain access to device information from the device;
>
> (c) allow a police officer to—
>
> (i) use access information for the device to gain access to device information from the device; or
>
> (ii) examine device information from the device to find out whether the information may be relevant evidence; or
>
> (iii) make a copy of device information from the device that may be relevant evidence, including by using another digital device; or
>
> (iv) convert device information from the device that may be relevant evidence into documentary form, or another form, that enables the information to be understood by a police officer.

[21] The order made by Magistrate Bowen pursuant to s 154A expressly authorised the police to do those things listed in ss 154(1)(b) and (c).

[22] Particular regard should be had to s 154(1)(c). The authorisation given to the police to examine Mr Parker's mobile phone was limited to finding, copying or converting information which may be "relevant evidence".

[23] "Relevant evidence" is defined in s 149A to mean:

(a) evidence of the commission of an offence; or

(b) evidence that may be confiscation related evidence.

[24] Both PCSC Robinson and PCSC Cheng swore affidavits which were read without objection in the application.

[25] In his affidavit, PCSC Robinson deposed that:

(a) he had downloaded all data from the Mr Parker's mobile phone on to the Cellbrite system;

(b) he had searched the downloaded data focussing on maters relevant to the "AOBH matter" (meaning the allegations of assault occasioning bodily harm);

(c) he particularly viewed video footage and photographs; and

(d) "when I accessed the data, I did not look at any emails nor did I see anything that related to solicitor/client communications or that I would consider to be subject to legal professional privilege".

[26] PCSC Robinson also deposed to having given PCSC Cheng access to the downloaded data and that he had not otherwise disseminated any information extracted from Mr Parker's mobile phone to any third party.

[27] In his affidavit, PCSC Cheng said:

> "I am the officer responsible for the investigation into the charges laid against Philip Parker regarding trespass and burglary. I can confirm that I accessed the data on the mobile phone device once the access order was granted, as part of my investigation into the Stalking and Burglary matter. When I accessed the data, I did not look at any emails nor did I see anything related to solicitor/client communications or that I considered might be subject to legal professional privilege. I have also not disseminated any information to persons outside of the investigation, that I have extracted from the phone for the purpose of my investigation."

Is Mr Parker entitled to all or any of the relief he seeks?

[28] Having regard to the nature of the evidence led, it is immediately obvious that even assuming Mr Parker had established the existence of a legitimate cause of action, the limited nature of the description of the privileged communications means that it would not be a proper exercise of the Court's powers to grant the declaratory relief sought in proposed order 1 of the Amended Originating Application. Quite simply, the evidence led by Mr Parker could not support such a declaration.

[29] The relief in proposed order 2 also could not properly be granted. There is no evidence to suggest that the police have acted unlawfully in doing what they have done.

[30] The relief sought in proposed order 5, 6, 7 and 10 also should not be granted. Mr Parker did not direct me to any authority in which that relief had been granted in a similar fact scenario. Further, Mr Parker did not lead any evidence as to who the "independent legal practitioner" should be, or that the "independent legal practitioner" had, or would, consent to being appointed as a "referee". Further, even if that evidence had been before the Court, given the nature of the powers of the police under the PPRA and the absence of any evidence by which the Court could conclude that the police have acted unlawfully, there is no rational basis why the police should be ordered to deliver to a legal practitioner, all copies of the data downloaded from the mobile phone. Additionally, there is no obvious reason as to why, if a referee were to be appointed, the police should be required to pay his or her costs as sought in proposed order 10.

[31] It also would not be appropriate to order the independent legal practitioner to undertake the task in proposed order 6. If such an order were to be made, obvious questions arise (which remained unanswered in the material) such as whether the independent legal practitioner would be obliged to provide reasons for each determination made and, given the limited evidence led by Mr Parker as to the alleged privileged communications, how or whether the police could (or would be entitled to) properly test the correctness of any determinations made by the referee.

[32] It also follows that proposed order 7 should not be made. It depends on the appointment of a referee in accordance with proposed order 5.

[33] That leaves proposed orders 3, 4, 8 and 9.

[34] In proposed order 8, Mr Parker seeks an order enjoining the police from disseminating the information downloaded, which Mr Parker described as the "confidential information," within the police or to any third party. I consider this below in conjunction with the relief sought in proposed orders 3 and 4.

[35] As to proposed order 9, Mr Parker did not make any submissions as to why the court file in this proceeding ought to be sealed. At all times the proceeding was conducted in open Court. Mr Parker did not ever submit that the Court ought be closed. There would not have been any reasonable basis to make such an order. Accordingly, the relief sought in proposed order 9 is refused.

Are the injunctive orders sought by Mr Parker capable of being made?

[36] It is well settled that the mere fact a person complies with a lawful order to produce privileged documents to a third party, does not mean that the person has impliedly waived any legitimate claim of privilege in relation to those documents: *Baker v Campbell* (1983) 153 CLR 52; *Woollahra Municipal Council v Westpac Banking Corporation* (1994) 33 NSWLR 529; *Commissioner of Australian Federal Police v Propend Finance Pty Limited* (1997) 188 CLR 501; *The Daniels Corporation International Proprietary Limited v ACCC* (2002) 213 CLR 543. The respondent did not make any submission to the contrary.

[37] Implied waiver is concerned with the question of fairness, and, in particular, whether having regard to the manner in which the party asserting privilege has chosen to refer to, or otherwise use the documents, whether it would be unfair to the other party if the assertion of privilege were permitted to be maintained: *Attorney-General for the Northern Territory v Maurice* (1986) 161 CLR 475.

[38] Specifically in relation to orders under s 154 of the PPRA, reference was made in submissions to *Commissioner of Police v Barbaro* [2020] QCA 230. In that case the Court of Appeal upheld a decision of the District Court overturning a decision of a magistrate who had convicted the respondent of an offence under under s 205A of the *Criminal Code* 1899 (**Code**) when he refused to provide access information to a mobile phone seized by police.

[39] Relevantly, under s 205A of the Code, a person who, without reasonable excuse, contravenes an order made under s 154A of the PPRA, commits a crime.

[40] The respondent in *Barbaro* had claimed by way of defence that he had a reasonable excuse for refusing to provide that access because he had been in the habit of using the phone to communicate with his solicitor by using various text messaging systems on his phone. He gave unchallenged evidence at his trial that the phone contained numerous privileged communications between him and his solicitor and did not wish police to read those messages. Sofronoff P at [10], referred to *Daniels Corporation* at [9] – [10] and *Baker v Campbell* (1983) 153 CLR 52 and said:

> "It has been established that legal professional privilege is a rule of substantive law which may be availed of by a person to resist the giving of information or the production of documents which would reveal communications between a client and his or her lawyer made for the dominant purpose of giving or obtaining legal advice. The right to refuse to disclose information extends to a right to resist giving information required by a search warrant."

[41] The present application does not concern s 205A of the Code. Mr Parker did not refuse to comply with the order made under s 154A(2) of the PPRA.

[42] What Mr Parker asserts is that he is entitled to the relief he seeks simply because, as a result of his compliance with the warrant issued, the police are now in possession of communications over which he maintains a claim of privilege.

[43] In submissions, the respondent framed the question this way:

> "The device information, and any material over which the Applicant claims LPP, is now in the possession of the police and may be used in connection with the exercise of their statutory powers unless the Applicant is able to identify a juridical basis on which the Court can restrain that use."

[44] In written submissions, which were augmented by oral submissions, Mr Parker submitted that his entitlement to all or at least some of the relief sought was on the basis of the Court's supervisory jurisdiction which he says has been enlivened by the use of the police of coercive search powers. Mr Parker cited *Baker v Campbell* and *Propend.* Neither case offers support to Mr Parker for the existence of his identified cause of action.

[45] The respondent referred to *Glencore International AG v Commissioner of Taxation* (2019) 265 CLR 646. *Glencore* was a case commenced in the High Court's original jurisdiction by way of claim. The plaintiffs were a series of related companies. The

issue was the intended use by a number of federal taxation commissioners of documents which were created for the sole or dominant purpose of obtaining legal advice but which had been stolen from the database of the law firm and disseminated by publication on the internet.

[46] The plaintiffs had continued to assert their claim for legal professional privilege over the documents and had asked for the return of the documents. That request had been refused. The essential question was whether a cause of action was disclosed on the pleading such that the relief sought, namely an injunction restraining the defendants from making any use of the documents, was available.

[47] The High Court proceeded on the basis that the documents were the subject of legal professional privilege. At [6] the Court said:

> "It is well known that equity will restrain an apprehended breach of confidential information and will do so with respect to documents which are the subject of legal professional privilege and which are confidential. Equity will restrain third parties if their conscience is relevantly affected."

[48] Because the documents were already in the public domain, the plaintiffs did not proceed on the basis of an entitlement to an injunction to maintain confidentiality. Rather the plaintiff's claim was that legal professional privilege itself was sufficient for the grant of the injunction sought.

[49] About that argument, the High Court at [12] said:

> "The plaintiff's argument cannot be accepted. Fundamentally it rests upon an incorrect premise, namely that legal professional privilege is a legal right which is capable of being enforced, which is to say that it may found a cause of action. The privilege is only an immunity from the exercise of powers which would otherwise compel the disclosure of privileged communications, as *Daniels Corporation* holds."

[50] In *Daniels Corporation*, the majority described legal professional privilege as "an important common law right or, perhaps more accurately, an important common law immunity". The High Court in *Glencore* (at [26]) endorsed this statement and also the remarks of Gummow J in *Propend* where his Honour said that legal professional privilege is "not to be characterised as a rule of law conferring individual rights, breach of which gives rise to an action on the case for damages, or an apprehended or continued breach of which may be restrained by injunction".

[51] Later in *Glencore*, the High Court at [34] said:

> "On the present state of the law, once privileged communications have been disclosed, resort must be had to equity for protection respecting the use of that material. Although the policy upon which the legal professional privilege is founded is not irrelevant to the exercise of that jurisdiction, the juridical basis for relief in equity is confidentiality". [citations omitted]

[52] And after referring to decisions from other common law jurisdictions, the Court at [39] said:

> In no way do these cases support the notion that the common law courts elsewhere are granting injunctions with respect to privileged material on the basis only of the wrongfulness associated with its taking. Certainly, it is necessary for an equity to arise that the person to be restrained must have an obligation of conscience, but the basis for an injunction is the need to protect the confidentiality of the privileged document." [citations omitted]

[53] In the present case, the facts are not completely analogous. In *Glencore*, the documents were stolen and then published to the world. Confidentiality had been lost. Here, Mr Parker gave access to his mobile phone in compliance with the s 154A order. Having done so, the police were, and remain, permitted to do those things authorised by the magistrate consistent with (and limited by) s 154 of the PPRA.

[54] Even assuming the legitimacy of Mr Parker's claims in respect of the categories of documents he has identified, using the language of the High Court from *Glencore* the "obligation of conscience" that the police would owe to him is defined by the powers conferred on them by the PPRA. There is no evidence that the relevant police officers involved have done, or intend to do, anything inconsistent with that obligation.

[55] In the circumstances, Mr Parker has failed to identify any equity that has arisen upon which he can rely in seeking the injunctive relief he does in proposed orders 3, 4 and 8 of the amended application.

Disposition

[56] Mr Parker has failed to establish an entitlement to any of the relief he seeks.

[57] The application is dismissed.

[58] Mr Parker is to pay the respondent's costs of and incidental to the application.