



Hunt & Hunt

LAWYERS

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27 September 2005

The Secretary
Queensland Public Hospitals Commission of Inquiry
PO Box 13147
George Street
BRISBANE QLD 4000

Dear Sir,

Our client: Mr Peter Leck

We **enclose** herewith copies of the following medical reports relating to our client Mr Leck:

1. Dr Martin Nothling dated 22 September 2005;
2. Dr Jeremy Butler dated 14 September 2005;
3. Dr Jeremy Butler dated 17 August 2005;
4. Dr Jeremy Butler dated 20 June 2005; and
5. Dr Jeremy Butler dated 8 June 2005

You will see that the list includes two reports additional to those received by the previous Commission as a confidential exhibit. These two additional reports are those of Dr Butler dated 14 September 2005 and Dr Nothling dated 22 September 2005.

It is our submission that our client should be excused from giving evidence at the Commission.

Background

Mr Leck has been served by the Commission with a summons dated 14 September 2005 pursuant to s.5(1)(a) of the *Commission of Inquiry Act 1950* ("the Act").

Further, Mr Leck has been directed pursuant to s.5(2)(b) of the Act that, if he wishes to claim that he has a reasonable excuse and is unable to attend, he must provide by 5.00pm on Tuesday 27th September 2005:

- (a) written reasons outlining any reasonable excuse for non-attendance; and

- (b) all evidence relating to that reasonable excuse.

The Law

Section 5(2)(b) of the Act requires Mr Leck to satisfy the Chairperson of the Commission that he "has a reasonable excuse for not complying (with the summons) as required by paragraph (a) of ss.2."

"Reasonable excuse" is defined in the Act in relation to any act or omission by a witness or a person summoned to attend before a commission as a witness to mean:

"An excuse which would excuse an act or omission of a similar nature by a witness or a person summoned to attend before a Court of Law as a witness."

A reasonable excuse is no more or less than an excuse which would be accepted by a reasonable person (Dawson J. *Taikato v. The R* 1996, 186, CLR 454 at 470; see the discussion of "reasonable excuse" in *Callanan v. Bush* (2004) QSC 88).

Genuine illness is a "reasonable excuse" (*Harris/D-E Pty Ltd v. McClelland's Coffee and Tea Pty Ltd* (1999) NSWSC 36) and was said to be so in relation to commissions of inquiry by the learned author Hallett *Royal Commissions and Boards of Inquiry*, page 103.

The Evidence

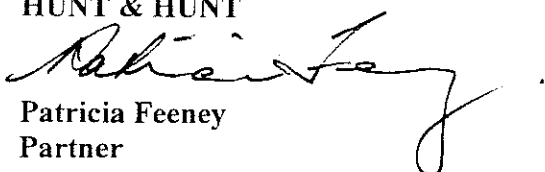
The evidence is contained in the enclosed medical reports. They are provided by eminent practitioners, one of whom, Dr Nothling, was selected from a panel nominated by the previous Commission of Inquiry. They make two things clear:

- (a) Mr Leck suffers from a psychiatric disorder which inhibits him from giving reliable evidence;
- (b) being required to give evidence is likely to further harm his psychiatric condition.

Submission

In all the circumstances, we submit that Mr Leck should be excused from giving evidence at the Commission. The previous Commission treated this matter confidentially and, again, we respectfully ask that, insofar as is possible, confidentiality be afforded to Mr Leck in relation to his medical condition.

Yours faithfully
HUNT & HUNT


Patricia Feeney
Partner