

Commission of Inquiry

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Commission's Ruling

The Commission issued, and served on Dr. Brown, a subpoena requiring his attendance to appear as a witness before the Commission at its September hearing. On the 29th of September, the second day of that hearing, Mr. Lynch, Queen's Counsel, applied on behalf of Dr. Brown to discharge the subpoena, and the Commission varied the date for Dr. Brown's appearance until tomorrow, the 30th of November, at 10:00 a.m.

This morning, Mr. Lynch, Queen's Counsel, has applied for the subpoena to be discharged on the ground that Dr. Brown, if he does appear as a witness, will assert his legal right to claim privilege against self-incrimination as regards all of the seven matters which the Commission seeks to question him about. Mr. Lynch has also indicated that Dr. Brown will swear an affidavit asserting his right to claim privilege in regard to all those issues.

As the Commission has made clear throughout its proceedings, all witnesses who appear before it are entitled to exercise their full legal rights, including, in the case of Dr. Brown and one other witness, the right to claim privilege against self-incrimination, sometimes popularly known as "Pleading the Fifth."

The first question is whether Dr. Brown has the legal right to claim the privilege, and the Commission accepts that he does. The second issue is whether it is necessary for him to attend as a witness in order to assert his right in response to each and every question that he will be asked. On this issue, the Commission is prepared to accept Dr. Brown's claim for privilege in affidavit form, but it will not discharge the subpoena for him to give oral evidence until the affidavit is sworn in terms which are acceptable to the Commission.

The application, therefore, is adjourned until tomorrow morning, the 30th of November, at 10:00 a.m., and the time for Dr. Brown to appear under the subpoena is varied until 12:00 noon tomorrow, the 30th of November, 2016.