

PPRA – s 423 Questioning of intoxicated persons

(1) This section applies if a police officer wants to question or to continue to question a relevant person who is apparently under the influence of liquor or a drug.

(2) The police officer must delay the questioning until the police officer is reasonably satisfied the influence of the liquor or drug no longer affects the person's ability to understand his or her rights and to decide whether or not to answer questions.

Factors to look for to indicating non-compliance:

- Comments by the defendant about substance intake.
- Slurred speech.
- Does the person appear to understand the rights and cautions and decide to answer the questions.
- Responsiveness to questioning.
- Information about the amount, type, relative recent use of the drug or alcohol.
- Any substances, associated items, drugs or alcohol at the scene?

How the courts have interpreted the protection:

[R v Nash \[2014\] QSC 139](#) [30] Section 423 provides that the questioning of an “apparently” drug affected person such as the defendant must be delayed. The provisions of s 423 do not require the police officer to be absolutely satisfied that a person is intoxicated before the questioning is to be delayed, but rather the section provides that questioning must be delayed if the person is “apparently under the influence of liquor or a drug”. Once that question is objectively raised the section provides that the officer “must delay the questioning until the police officer is reasonably satisfied that the influence of the liquor or drug no longer affects the person's ability to understand his or her rights and to decide whether or not to answer questions.”

[R v LR \[2005\] QCA 368](#) [2] – [3] “...the provisions of the PPRA are such that the common law rule that a confession was only inadmissible if the degree of intoxication was “so great as to deprive him of understanding what he was confessing” have been altered by the passing of the Act. His Honour stated that “the focus is the person's ability to understand his rights and to decide whether or not to answer the questions being or about to be put to him. It is enough for this purpose if his ability to do either of those things is ‘affected’...”

Applications to exclude evidence as the PPRA was not complied with:

[R v Nash \[2014\] QSC 139](#) 5 day bender, police stopped and search defendant when appeared to be behaving in a manner consistent with drug use. Defendant was scattered, had no sleep in 4 days, admissions made. Def appeared to understand what was going on. Evidence excluded.

[Bowers v R \[2015\] QDC 276](#) Applicant advised police he had just used a meth pipe prior to police involvement. Police proceeded with the questioning. Indicia of being affected by drugs was not clear on the recording. Interview was not excluded.

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- Applications to exclude under s 130 Evidence Act – Applications in higher courts – 590AA applications.

- Noting the *Bunning v Cross* test will apply even if the police did not comply with their obligations.
- General tests to be applied discussed in [R v Appleton](#) [2016] QSC 250 [41] – [42].