

Case Law update for prosecuting agencies

***United Petroleum Pty Ltd v Sargent* [2019] QDC 93**

June 2019

The District Court has recently delivered a decision of significance to prosecuting agencies in relation to stay applications and time limitation periods.

The prosecution

A complaint alleging offences against the *Environmental Protection Act 1994* was filed in the Magistrates Court. The summary hearing was adjourned during the defence's case, and some months later, the defence applied for a permanent stay of the proceedings on the basis that the prosecution had been commenced out of time. The application was dismissed.

The appeal

The defence appealed the magistrate's refusal to grant a stay. There were two issues for the District Court to consider:

1. Whether the court had jurisdiction to hear the appeal (issue one) and
2. If it did, whether the complaint had been laid within time (issue two).

Issue one

The respondent (prosecution) contended that the appeal was 'incompetent' because the stay application decision was an interlocutory matter only, such that the court had no jurisdiction to hear the appeal. The appellant (defence) submitted that a decision to stay a proceeding is a final order (in that it concerns the disposition of the complaint) and therefore one which could be appealed.

The court accepted the submissions of the appellant that the magistrate's orders were final, in that they determined the appellant's right and entitlement not to be prosecuted.¹ In finding that the appeal had been 'competently brought',² the court distinguished *Schneider v Curtis* [1967] Qd R 300 (relied on by the respondent) on the

¹ At [15].

² At [20].

basis that unlike that case,³ here the decision being appealed concerned the 'substantive right of the matter to be determined once and for all'.⁴

Issue two

The appellant also argued that the prosecution was out of time, as the limitation period expired one year after the Environment Protection Order was issued by the Department, because that was the date on which the alleged offences came to the complainant's knowledge. It was contended that the time limitation period commenced when 'the requisite knowledge was acquired by any officer of the department (rather than the named complainant)'. Ultimately, the appellant's submission was that the complainant was the Department, not Mr Sargent.

The court however agreed with the respondent's position that Mr Sargent was the complainant, and it was his state of mind that was relevant – 'It ought not be extended to a situation where the knowledge of the agency as a whole be imputed to the individual officer who prepared the complaint.'⁵ In doing so, the court applied *Cross Country Realty Pty Ltd v Peebles* [2007] 2 Qd R 254 finding that the Department was not the entity that had the power to prosecute and so the relevant knowledge was that of the person named as the complainant.

The court found that the complaint had been laid in time, and the appeal was dismissed.

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³ Which involved an appeal of an unsuccessful no case submission.

⁴ At [13].

⁵ At [53].