DISTRICT COURT OF QUEENSLAND

CITATION:	*Witheyman v Van Riet & Ors* [2007] QDC 342
PARTIES:	**PETER ROBERT WITHEYMAN** Appellant **V** **NICHOLAS DANIEL VAN RIET** First respondent **AND** **EKARI PARK PTY LTD** Second Respondent **AND** **N J CONTRACTING PTY LTD** Third Respondent
FILE NO/S:	Appeal 53/07; Roma Appeal 2/06; MAG-0192264/05 (7)
DIVISION:	
PROCEEDING:	Appeal
ORIGINATING COURT:	Magistrates Court, Roma
DELIVERED ON:	21 December 2007
DELIVERED AT:	Brisbane
HEARING DATE:	17 August 2007
JUDGE:	McGill DCJ
ORDER:	**Appeal dismissed.**
CATCHWORDS:	CRIMINAL LAW – Limitation Period – summary offence – when offence came to complainant's knowledge – identity of offender not required. *Vegetation Management Act* 1999 s 68(3), (4). *Cross Country Realty Pty Ltd v Peebles* [2006] QCA 501 – considered. *House v the King* (1936) 55 CLR 499 – applied. *Morgans v Director of Public Prosecutions* [1999] 2 Cr App R 99 – considered. *Peebles v Cross Country Realty Pty Ltd* [2006] QDC 269 – considered. *Power v Heyward* [2007] 2 Qd R 69 – followed.

Smith v Baldwin, ex parte Smith [1979] Qd R 380 – applied.
Tesco Stores Ltd v London Borough of Harrow [2003] EWHC 2919 – considered.
William Crosby & Co Pty Ltd v the Commonwealth (1963) 109 CLR 490 – cited.
Woods v Beattie, ex parte Woods [1995] 1 Qd R 343 – applied.

COUNSEL: A. J. MacSporran SC and D. J. Grealy for the appellant

M. J. Byrne QC and P. D. Sheridan for the respondents

SOLICITORS: C. W. Lohe, Crown Solicitor for the appellant

Crowley Greenhalgh solicitors for the respondents

[1] This is an appeal from a decision of a magistrate at Roma who on 6 June 2006 dismissed complaints by the appellant against the respondents alleging offences under the *Integrated Planning Act* 1997, and offences under the *Land Act* 1994. The complaints were dismissed after the magistrate upheld a preliminary objection on the part of the respondents, that the proceeding had not been started within the times limited by the applicable statutes. The magistrate also refused to extend the time set by the applicable statutes, under a power to extend time if the magistrate considered it just and equitable in the circumstances to do so.

[2] By notice of appeal filed in the District Court at Roma, the appellant appealed against the whole of the decision in respect of the complaints against the three respondents under the *Integrated Planning Act*; the notice of appeal made no reference to the proceedings for offences under the *Land Act*. All the complaints involved allegations of unlawful clearing of native vegetation, the complaints brought under the *Integrated Planning Act* relating to alleged clearing on freehold land, while the complaints brought under the *Land Act* relating to alleged clearing on road reserves. I was told that the great bulk of the area alleged to have been unlawfully cleared was freehold land, so that the three complaints in respect of which appeals were brought covered most of the alleged offending, and there was a practical difference between the two sets of proceedings, in that the appellant considered that a defence which had been foreshadowed in correspondence would not have been applicable in respect of any offence under the *Land Act*.

[3] In any case, there was at that stage no appeal against the decision of the magistrate in relation to the complaints under the *Land Act*. On the hearing of the appeal the appellant sought leave to amend the notice of appeal to extend the appeal to cover the dismissal of the complaints alleging offences under the *Land Act*, on the basis that the same argument applied in relation to both sets of complaints. Leave to amend was refused. Accordingly, it is sufficient to refer to the legislative provisions applicable to the complaints alleging offences under the *Integrated Planning Act*.

[4] The complaints were in similar terms, and alleged that between 8 August 2002 and 15 April 2004 at Mungallala South the respondent did start assessable development without a development permit for the development, such assessable development being operational works that was the clearing of native vegetation on freehold land

contrary to the acts and regulations in such case made and provided. The complaints were made on 20 October 2005 so that the proceedings were started on that day.[1] The complaints averred that "knowledge of the commission of the offence did not come to the knowledge of the complainant until 22 October 2004." The complaints alleged offences against s 4.3.1 of the *Integrated Planning Act*, which prohibits the carrying out of assessable development unless there is an effective development permit for the development.

[5] Because the offences involved clearing of vegetation, the applicable time limitation was in s 68 of the *Vegetation Management Act* 1999. Subsection (1) provided that proceedings for an offence under the Act were to be taken in a summary way under the *Justices Act* 1886. Subsection (3) provided that a proceeding for a vegetation clearing offence,[2] "must start – (a) within one year after the commission of the offence; or (b) within one year after the offence comes to the complainant's knowledge, but within five years after the offence is committed." Subsection (4) then went on to give the power to extend time. Subsection (6) provided:

> "A vegetation clearing offence does not come to the complainant's knowledge merely because the complainant receives a remotely sensed image that may provide evidence of the offence."

[6] Plainly the proceeding was not started within one year after the commission of the alleged offence. It had been averred in the complaint, however, that the offence came to the complainant's knowledge less than one year (just) before the proceeding was commenced, so that *prima facie* the complaint was within time. The respondents, however, relied on two matters: that the clearing had been investigated in April 2004, and that at that time the offence had come to the complainant's knowledge. Further, reliance was placed on a letter the complainant had written on 22 September 2004, which the respondent said amounted to an admission that at that time the complainant had knowledge of the offence.

[7] The matter proceeded before the magistrate as a preliminary point decided on the basis of written submissions, with the appellant attaching to the written submissions a statement by the complainant, and the respondents attaching to their written submissions the correspondence relied on. The complainant was not cross-examined on his statement, which does not appear to have been even on oath. The magistrate after considering the submissions and the documents gave a decision upholding the preliminary objection and dismissing the complaints on that basis. Although initially the appellant disputed the propriety of the magistrate's determining the matter in a preliminary way like this, the point was not pressed on the hearing of the appeal, and I accept that the determination of the question of whether the proceeding has been started in time as a preliminary matter can occur legitimately in proceedings under the *Justices' Act*.[3]

[8] There are some aspects of the magistrate's reasoning which suggests that to an extent his conclusion was based on a rejection of some aspect of the complainant's statement. I do not think that that correctly reflects the approach of the magistrate, but in any case clearly it is appropriate for me on an appeal by way of rehearing to

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1 *McDonnell v Smith* (1918) 24 CLR 409; *R v Hinschen* [1945] QWN 21.

2 Which these were; see the definitions in the schedule to that Act.

3 *Power v Heyward* [2007] 2 Qd R 69.

make up my own mind about the matter.[4] This is not a matter where the magistrate had the advantage of having seen and heard the witnesses,[5] as the decision was on the basis of documentary materials, and I am in as good a position as he was to draw inferences from them. I accept the appellant's statement.

The facts

[9] The statement of the complainant reveals the following chronology:

April 2004	Investigation allocated to complainant
April 2004	Complainant inspected satellite imagery which suggested vegetation had been cleared.
April 2004	Warrant to enter property under the *Vegetation Management Act* 1999 issued by a magistrate
19 April 2004	Complainant spoke to Mr Jack Van Riet about entry to the property; he asked for something in writing, and a copy of the warrant was sent to him by fax.
20 April 2004	Complainant conducted a field inspection on the subject property, observing large areas of cleared mapped remnant vegetation which confirmed the satellite imagery. During the inspection the complainant met the first respondent who would not talk to him. According to the statement, at the end of the inspection the complainant believed that an offence may have been committed.
29 June 2004	Complainant spoke to Jack Van Riet by telephone; no relevant information was obtained.
30 June 2004	Complainant contacted by respondent's solicitor; no relevant information provided.
19 July 2004	Complainant contacted by respondent's solicitor; no relevant information provided.
22 July 2004	Complainant made aware of clearing on adjoining road reserves.
2 September 2004	Complainant sent notices requiring information under s 51(2) of the *Vegetation Management Act* 1999 to Merle Van Riet, and the second and third respondents.

[10] After the notices were served the solicitor for the respondents sent a facsimile dated 20 September 2004 to the complainant[6] advising that the firm acted on behalf of the second respondent and Mrs Van Riet, referring to the notices, and seeking advice "as to the basis of your reasonable belief that a vegetation clearing offence has been committed on our clients' property." The complainant was asked whether the first respondent could respond to the notices on behalf of the second respondent, the

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4 *Stevenson v Yasso* [2006] 2 Qd R 150 at [36]; *Parsons v Raby* [2007] QCA 98 at [24].

5 Cf *Fox v Percy* (2003) 214 CLR 118 at [25].

6 A copy of this and the reply of 22 September were attached to the respondent's submissions before the magistrate.

third respondent and Mrs Van Riet. In addition, an extension of time for responding to the notices was sought.

[11] On 22 September 2004 the complainant acknowledged receipt of the fax, and sought confirmation of whether the solicitors were acting for the third respondent. He continued:

> "The reasonable belief the department has came from the study of satellite imagery, a field inspection of the property and collection of other information. The department has verified that vegetation has been disturbed and therefore has a reasonable belief that an offence has been committed. Please note this is an alleged offence. As all parties issued with Notice Requirement to Give Information have an interest in the property the department also has reasonable belief that they may be able to give information about the alleged offence. As the department has a legal obligation to investigate this alleged offence it wishes to gather all information that may be relevant before making any further decision in relation to this matter." [sic]

The complainant went on to insist upon all of the people served with notices responding to them, and to complain about the delay in responding to the notices.

[12] To return to the chronology:

22 October 2004	Complainant received responses to the notices on behalf of Mrs Van Riet and the second and third respondents. From those responses the complainant formed the belief that the respondents had committed the offences ultimately charged.
1 March 2005	Court brief completed by the complainant
2 March 2005	Court brief forwarded to legal services in Brisbane.
9 May 2005	Complainant advised to obtain additional evidence.
20 July 2005	Complainant obtained additional evidence and forwarded a further court brief to legal services.
20 October 2005	Complaint and summons sworn.

Authorities

[13] The submission for the respondents was quite straightforward and was based on the decision of the Full Court in *Smith v Baldwin, ex parte Smith* [1979] Qd R 380. In that case the court was considering a provision in the *Auctioneers and Agents Act* 1971 in the following terms:

> "Proceedings for an offence against this Act may be instituted at any time within 12 months after the commission of the offence, or within six months after the commission of the offence comes to the knowledge of the complainant, whichever is the later."

[14] W. B. Campbell J, with whom Stable SPJ agreed, said in relation to this provision at pp 385-6:

> "The complainant could be said to have acquired knowledge of the commission of the offence only when he had such information before him as to give him reasonable grounds for such belief. … Before there was any investigation instituted into [the] allegations made in May, there is no evidence which could support a finding that any responsible officer in the employ of the office of the Registrar of Auctioneers and Agents had reasonable grounds for believing that the respondent had committed a breach of s 62(1)(a) of the Act. The complainant should be given a reasonable opportunity of finding out whether statements made to his office by a member of the public have any substance in them and whether they justify the institution of proceedings for an offence under the Act."

[15] That decision was referred to by the Court of Appeal in *Woods v Beattie, ex parte Woods* [1995] 1 Qd R 343 in relation to a provision in the *Electricity Act* that "a prosecution for an offence against this Act may be commenced … within six months after the matter of complaint comes to the knowledge of the complainant … ." In a joint judgment the court referred to *Smith v Baldwin* and an earlier decision of *Bernecker v White* (1890) 4 QLJ 1 and continued at pp 344-5:

> "In *Bernecker v White* the time ran from 'the discovery' of the offence and in *Smith v Baldwin* the time began when 'the commission of the offence comes to the knowledge of the complainant.' In both cases, it was held that time did not start to run until the complainant had reasonable grounds for believing that an offence had been committed. In effect, it was held that, when information was supplied by a member of the public, time did not commence to run until investigations had been made and the complainant 'had such information before him as to give reasonable grounds for such belief': *Smith v Baldwin* at 385F. … While these cases may provide some guidance, they cannot be directly applied. Both were concerned with different phrases from that contained in … the *Electricity Act*. … It is necessary to have regard to the terms of the provision which is presently material. The period commences when the complainant first has knowledge of 'the matter of complaint'. The matter of complaint is the act or omission alleged in the complaint by which a prosecution is commenced, in this instance (leaving aside the dates alleged) that the respondent had prevented the electricity meter from duly registering the quantity of electricity supplied. The question is when the prosecutor first had that knowledge. This is essentially a question of fact, the resolution of which is not advanced by judicial exegesis to substitute another set of words for the ordinary language used in the subsection. The critical word used is 'knowledge' which, in the context, bears a meaning different from a bare allegation, especially an allegation from an anonymous source. The prosecutor had information that the act alleged had been performed by the respondent but, until investigation confirmed what was alleged, his only 'knowledge' was

> that an allegation had been made. The information which the complainant had did not amount to 'knowledge' that the respondent had acted as the informant alleged."

[16] The provisions of the legislation applicable in the present case represent a departure from the ordinary case of a prosecution for a simple offence or breach of duty under the *Justices' Act*, which provides in s 52 that unless some other provision is applicable the "complaint must be made within one year from the time when the matter of complaint arose." Such a limitation has been part of the *Justices' Act* for a long time, though it was extended from six months to 12 months in 1949. It may be noted that where this section applies time runs from the time when the offence was committed, so that discovery of the offence, the investigation of it, identification of the offender and preparation of the case are all expected to occur within the period of 12 months allowed by s 52.

[17] The operation of that provision is displaced, in the case of a prosecution for an offence under the *Integrated Planning Act* 1997, by s 4.4.2 of that Act, which provides that the proceeding for an offence must start within one year after the commission of the offence or within six months after the offence comes to the complainant's knowledge. That provision is in its turn displaced in relation to a vegetation clearing offence by the provision in s 68(3) of the *Vegetation Management Act* referred to earlier. In relation to the interpretation of such a specific provision displacing a general limitation period, it was submitted on behalf of the respondents that it was relevant to bear in mind the approach adopted to the interpretation of such a provision in *Morgans v Director of Public Prosecutions* [1999] 2 Cr App R 99 at 113, where it was said in relation to a provision for the extension of such a limitation period:

> "Section 11(2) is an exception to the normal rule that summary offences should be prosecuted within six months. As an exception in favour of the prosecution it should be strictly construed."

[18] In that case, a distinction was drawn between 'a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge' and 'a period of six months from the date on which the prosecution forms the opinion that there is sufficient evidence to warrant proceedings.' The former provision, which was quoted from the relevant legislation, is much more specific than the provision in the present case and clearly includes identification of the offender.

[19] Reference was also made to the decision in *Tesco Stores Ltd v London Borough of Harrow* [2003] EWHC 2919. In that case the limitation period was one of three years from the commission of the offence or "one year from its discovery by the prosecutor, whichever is the earlier." Newman J said at [25]:

> "Before expressing my conclusions … it is convenient at this point to identify some particular considerations. First, to remind oneself of the legislative aims in connection with a provision such as this. The setting of time limits for the prosecution of offences is designed to achieve two important consequences. The first is to provide protection to the citizen who may have committed a criminal offence, and the second is to bring about, in the authority having

> responsibility for the prosecution, an efficient and timely investigation of the offence. Thus, next, it is material to ask: what would Parliament have intended as being the appropriate time when a prosecuting authority should assume a duty to investigate? … Parliament can be taken to have intended that once the commission of an offence is disclosed there should be a duty on the prosecuting authority to investigate it."

[20] McCombe J agreed and noted at [40] that it was not appropriate to equate the concept of discovery of the offence with the prosecutor's decision to prosecute. Of course, those decisions referred to differently formulated limitations, and to that extent they are not directly applicable, but where they state matters of general principle in relation to such limitation periods, I think they have some force.

[21] In *Peebles v Cross Country Realty Pty Ltd* [2006] QDC 269 McLauchlan DCJ allowed an appeal from a decision of a magistrate dismissing complaints on the ground that they were out of time. In that case the relevant provision was that the proceedings were to be taken within one year after the offence was committed or six months after "the commission of the offence comes to the complainant's knowledge" but within two years after the offence was committed. The point arose in a slightly unusual way; the complainant was involved in a search of some premises as a result of which a large number of documents were removed and taken to an office, where there was some delay before they were studied by the complainant, who then decided to prosecute.

[22] His Honour referred that the terms of the relevant provision, and *Smith v Baldwin*, and quoted the first sentence of the passage from the judgment of W B Campbell J quoted earlier, and continued at [8]:

> "So too, in this case, I consider that the complainant must be taken to have acquired knowledge of the commission of the offence when he had before him information which provided reasonable grounds for a belief that the particular offences in question had been committed. The information is 'before' the complainant, in this sense, when it is within his knowledge, in the sense that he has directed his mind to it. It is not, in my opinion, sufficient that the information be reasonably available to the complainant if it is not, in fact, known to him."

[23] His Honour said later at [12]:

> "In my opinion, the requirements of s 589(1)(b) is not satisfied by the fact that information sufficient to found a reasonable belief that an offence has been committed has come into the possession of the complainant or has become available to him, if he has not in fact acquainted himself with that information. Until that situation occurs it is not possible, in my opinion, to say that the commission of the offence has 'come to the complainant's knowledge'."

[24] The Court of Appeal dismissed an appeal from this decision: *Cross Country Realty Pty Ltd v Peebles* [2006] QCA 501.[7] McMurdo P with whom the other members of

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[7] Special leave to appeal refused, by majority: (No. B10/07, 21/6/7).

the court agreed said that the complainant had not had reasonable grounds for believing the applicants had committed offences under the Act before he examined the seized boxes of documents, and rejected the submission that time should be taken as beginning to run when the material was available to the complainant, even though he was not at that stage actually aware of it. Her Honour also said at [9]:

> "The High Court has repeatedly emphasised the need when interpreting and applying a statutory provision to look at the language of the statute rather than secondary sources or materials."

[25] Her Honour noted the reference to the complainant's knowledge must be a reference to the knowledge of the particular complainant who brought the proceedings for the offence under the Act, and went on to say at [10]:

> "The knowledge and belief necessary to satisfy a magistrate under s 550 of the Act that there are reasonable grounds for suspecting that there may be evidence obtained at the place the subject of the search will not necessarily equate to the knowledge to which [the relevant section] refers. The knowledge referred to in [the relevant section] requires a higher degree of certainty than the reasonable grounds for suspicion required for the issue of a search warrant under s 550(1) of the Act. It involves the complainant having knowledge of facts sufficient to establish a person's contravention of the Act."

[26] It is important to bear in mind that her Honour said that in the context of the particular circumstances then in issue, where the complainant had the material available but had not looked at it. I do not understand that her Honour was seeking in that case to reject the statement in *Smith v Baldwin* referred to earlier. Her Honour had quoted another part of the judgment in that case suggesting that in some circumstances a person who lays a complaint should be deemed to have had prior knowledge possessed by a servant or agent, which her Honour treated as not binding on the court. Her Honour did not express any doubt about the basic approach adopted in that decision.

[27] In addition, it does not appear that in that matter there was any issue about the question of whether the concept of knowledge of the commission of an offence involved knowledge of who it was who had committed it. It appears that in that case knowledge of the offence necessarily identified the offender, but obviously as a general proposition it may be possible to know that an offence has been committed without knowing who it was who committed it. The appellant's point is, essentially, that for the purposes s 68(3) an offence does not come to the complainant's knowledge until the complainant knows, that is to say has reasonable grounds to believe, that a particular person or persons committed the offence.

[28] It seems to me that this is essentially a question of construction of the legislation, and it is the issue on which the appeal must turn. It is clear enough from the notices under s 51 and the letter of 22 September 2004 that by that time the complainant had a reasonable belief, that is to say a belief on reasonable grounds, that an offence had been committed. Indeed, the power under s 51 only arises "if an authorised officer reasonably believes – (a) a vegetation clearing offence has been committed." It is therefore unsurprising that in the letter of 22 September 2004 the complainant said that the department (presumably in the person of himself) "has a reasonable

belief that an offence has been committed." That is consistent with his statement, that he was at that stage seeking further information, and at this point he was still unaware of who had conducted or authorised the clearing.

[29] If the offence did not come to the complainant's knowledge until the complainant had knowledge of the identity of the offender, it is difficult to see how the magistrate could on this material possibly have arrived at the conclusion that the complainant had knowledge of the offence more than 12 months before the complaint was made. On the other hand, if what matters is when the complainant has knowledge that the offence has been committed (ie by somebody), it seems to me that the issuing of the notices under s 51, the letter, and the statement of the complainant all support a conclusion that he had knowledge of the offence, that is a belief on reasonable grounds that the offence had been committed, more than one year before the complaints were made, and therefore the complaints were out of time, and the magistrate's decision was correct.

Analysis

[30] Counsel were not able to direct me to any earlier cases where the precise question was decided, whether knowledge of the commission of the offence includes knowledge of the identity of the offender, so that the offence could not be said to come to the complainant's knowledge until the complainant knew who had committed the offence. I have not found any decision which appears to be on point. It is clear on the basis of the authorities to which I have referred that the question is one of statutory construction, and that the answer depends on the terms of the applicable statute.

[31] In my opinion s 68(3)(b) of the *Vegetation Management Act* 1999, on its true construction, is satisfied when the fact that the offence has been committed has come to the complainant's knowledge, even if at that stage the complainant does not know who committed the offence. I take as a starting point the proposition that an offence comes to the complainant's knowledge for the purposes of the provision when the test in *Smith v Baldwin* is satisfied, that is to say, when the complainant has such information as to give reasonable grounds for a belief that the offence has been committed.[8]

[32] Obviously, a complainant is not going to "know" that the offence has been committed unless the complainant was present and saw it being committed with his own eyes, but in such circumstances the time would run from the time it was committed anyway, and the existence of an extension on this basis presupposes that someone who does not know of the offence of his own knowledge will nevertheless as a result of what is subsequently conveyed to him achieve a state such that the offence has come to his knowledge. *Smith v Baldwin* and the decisions to similar effect provide appropriate guidance as to what is required for that, but in none of those is there a clear statement that the requirements of knowledge extend to a requirement to know who the offender was.

[33] Some of the language in *Woods v Beattie* might suggest that the statutory provision in that case required knowledge that it was the respondent who had committed the offence, but this was because that the respondent had committed the offence was

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[8] In the sense explained in *Peebles*.

part of the "matter of complaint" knowledge of which was required. As was pointed out in that case, it is necessary to have regard to the terms of the particular statute. In *Peebles* the reference in the judgment of the President in the last sentence of [10] to "a person" is I think neutral; her Honour might have meant a particular person, or might have meant any person, and it is clear from her Honour's judgment as a whole that she was not directing her mind specifically to this issue, so it is not authority on the point. But that is as close to even *dicta* on the point that I can find, and there may be some significance in the fact that most of the statements in the cases are expressed in terms which do not, when read literally, suggest that knowledge of the identity of the offender is required.

[34] There is also the consideration that if the legislature had intended that subsection (3)(b) required knowledge of the identity of the offender, the enactment of subsection (6) seems particularly odd. Clearly one could not simply by looking at a satellite image, presumably showing that vegetation has been cleared, tell who it was who had cleared the vegetation. That subsection (6) was enacted suggests that the legislature must have thought that but for that subsection a conclusion might have been open that knowledge of the commission of an offence had come to a complainant as a result of receiving remotely sensed images which provided evidence of the offence. Subsection (6) clearly indicates that more than that is required, but there was a good deal more than that it the present case.

[35] By the time the notices under s 51 were issued, the complainant had a belief on reasonable grounds that an offence had been committed. That was what was required by s 51 for the notices to be issued, and there is nothing in the complainant's statement which amounts to an admission that the issuing of the notices was unjustified by his state of mind at the time and unauthorised by the statute, or that what he said in the letter of 22 September was false. Indeed, it seems to me that his statement is entirely consistent with that state of affairs, that at that time he believed on reasonable grounds that an offence had been committed and he was seeking further information principally to find out who it was who had committed it.

[36] The proposition in subsection (6) is rather like the proposition stated in other cases that it is not enough that the complainant be aware of the mere allegation that an offence has been committed; the complainant is entitled to investigate the matter to find out whether it appears to him that an offence has been committed. But once that point is reached, there is no good reason why time should not begin to run.

[37] Although the statute clearly contemplates that time will not necessarily run from the time the offence is committed, except for the "outer limit" provision, once the offence comes to the knowledge of the complainant, there is then a period of 12 months, which ought to be ample to investigate the offence and gather the necessary evidence, including in that process identifying the offender, before proceedings are commenced in time.[9] Some of the argument on behalf of the complainant seemed to suggest that the legislative intention was that the complainant should be allowed 12 months after the matter was in all respects ready

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[9] A period of 12 months is a relatively generous one; at one time s 449 of the Criminal Code provided a time limit for the prosecution of an offence under ss 445, 447, and 448 of one year after the offence was committed or within one month after the discovery of the offence, whichever was the later period. For other examples, see Kennedy Allen "The Justices Acts of Queensland" (3rd Ed 1956) pp 140-1.

for prosecution, but there is I think nothing to support such a construction of the statute. It seems to me with respect that the legislature obviously intended that, once a complainant found out that the offence had been committed, 12 months was a reasonable time for any necessary investigations before a prosecution was commenced.

[38] If the legislature had intended that more would be required, and in particular the knowledge of the identity of the offender, before time began to run, it could easily have said so. *Morgans v DPP (supra)* provides an example of a very clear provision which would obviously only be satisfied when the prosecutor was not merely able to identify a particular offender but had sufficient evidence to justify taking proceedings against that offender. Plainly the statutory test in the present case is very different.

[39] This particular provision is an exception to the general rule allowing 12 months in which to commence a prosecution after a summary offence is committed, and because of that, and because it is concerned with the prosecution of an offence and therefore a criminal matter, it ought not to be given a wider construction than is clearly indicated by the wording used, bearing in mind the purpose of the legislation. There are also the public policy considerations referred to in *Tesco Stores Ltd (supra)*. It does seem to me that the investigation in this case took a long time and there were some substantial gaps in it, so that it is unsurprising that, following such a history, by the time the complainant got around to making a complaint the limitation period had run out.

[40] It follows that I agree with the decision of the magistrate. The offences in this case came to the knowledge of the complainant more than 12 months before the complaints were made, and accordingly the complaints were out of time. Subject to an extension under subsection (4), the complaints were properly dismissed.

Appeal against the refusal to extend time

[41] Section 68(4) of the *Vegetation Management Act* 1999 provided:

> "If a magistrates court considers it just and equitable in the circumstances, the court may, at any time, extend a time set under this section."

[42] The magistrate was asked to extend time if he concluded that the complaints had not been made within time, and he refused to do so. The magistrate in his reasons referred to the fact that the original information which attracted the attention of the department was as long ago as 7 November 2003, which information received some confirmation fairly quickly from an examination of satellite imagery. The magistrate commented that the complainant appeared to have sat on his hands for several months and did very little to advance any prosecution. On the other hand, he thought unmeritorious the allegation the defendants were engaged in delaying tactics.[10]

[43] The magistrate referred to technological and financial support available to the complainant, and noted that no defendant should be left wondering for an excessive

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[10] The defendants of course were entitled to exercise their right to silence, subject to any statutory modification, and were under no obligation to cooperate with any prosecution against them.

or unreasonable period of time beyond that prescribed by law whether or not there is to be a prosecution. Ultimately he decided that it was not just and equitable to extend time, having regard to the legislation, the *Justices Act*, the purposes of the legislation and all the circumstances of the case. Although he did not repeat the point at this stage, obviously one important circumstance was the view that he had taken that there had been unreasonable delay in the pursuit of the prosecution.

[44] It seems to me that the chronology referred to earlier provides ample justification for such conclusion, even apart from the fact that it seems to have taken five months before there was anything useful done by way of investigation into the original report. The position was investigated in April 2004, which produced a belief that an offence may have been committed. After attempts to obtain information voluntarily were unsuccessful, notices under s 51 were sent out in early September 2004, evidently after other information had been collected.[11] By the end of September 2004 the department had a reasonable belief that an offence had been committed. The notices were responded to in October 2004, but it took until March 2005 for a court brief to be completed by the complainant and forwarded to Legal Services, two months for the complainant to be told to obtain additional evidence and over two months for the complainant to obtain the further evidence. There was then a further delay of three months, after matters ought to have been all ready to go. Overall, it seems to me that the conduct of this prosecution was decidedly tardy.

[45] It was submitted for the appellant that the magistrate had erred in treating the effluxion of time as itself a reason why the section should not be applied. It seems to me, however, that the magistrate's comment about the undesirability of people being left in a state of uncertainty as to whether there was going to be a prosecution was essentially consistent with the point made in *Tesco Stores Ltd (supra)*. It was also consistent with the general proposition that it is necessary, in the case of an exception to a time limit which has been imposed, for a person seeking an extension of time to show that there is good reason why in a particular case the extension should be granted.[12]

[46] This is an appeal against an exercise of discretion and is therefore subject to the general limitation on such appeals, that it must appear that some error has been made in exercising the discretion.[13] I do not consider that the appellant has shown that there was any error of principle, or taking into account extraneous or irrelevant matters, in the magistrate's exercise of discretion. Accordingly, in my opinion no basis has been shown on which, consistently with the approach in *House v the King*, I could interfere with the magistrate's exercise of discretion. In any case, if the discretion did fall to me, I would exercise it in the same way, in view of the extent of the delay and in the absence of any proper explanation, much less excuse, for the delay.

[47] Accordingly, the appeal will be dismissed. I will hear submissions on the question of costs when delivering judgment.

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11 This was referred to in the letter of 22 September 2004.

12 Cf *William Crosby & Co Pty Ltd v the Commonwealth* (1963) 109 CLR 490 at 496.

13 *House v the King* (1936) 55 CLR 499 at 504-5.