

SUPREME COURT OF QUEENSLAND

CITATION: *Williams v Commonwealth Director of Public Prosecutions*
[2019] QSC 318

PARTIES: **KAREN ANN WILLIAMS**
(applicant)
v
COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS
(respondent)

FILE NO/S: BS No 7377 of 2019

DIVISION: Trial Division

PROCEEDING: Originating application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 19 December 2019

DELIVERED AT: Brisbane

HEARING DATE: 26 July 2019

JUDGE: Douglas J

ORDER: **1. The application be dismissed.**
2. The parties be heard as to costs.

CATCHWORDS: CRIMINAL LAW – PROCEDURE – DISCLOSURE OBLIGATIONS – where the applicant was issued with two arrest warrants by an officer of the Commonwealth alleging offences pursuant to ss 134.2(1) and 145.1(1) of the *Criminal Code* (Cth) and s 7(2) of the *Crimes (Taxation Offences) Act 1980* (Cth) – where the applicant challenged the validity of the warrants and sought production of the complaints on which they were based from the respondent – whether the complaints, on the proper construction of the *Justices Act 1886* (Qld), constitute criminal charges against the applicant – whether a committal proceeding is on foot once proceedings under the *Justices Act* have been commenced by a complaint in writing – whether the issuing of a warrant for arrest initiated a “relevant proceeding” within the meaning of s 590AB of the *Criminal Code* (Qld) such that the prosecution disclosure obligations were enlivened

Crimes (Taxation Offences) Act 1980 (Cth), s 7(2)
Criminal Code (Cth), ss 134.2(1), 145.1(1)

Criminal Code (Qld), ss 590AB, 590AD, 590AE(2), 590AH(2), 590AJ
Freedom of Information Act 1982 (Cth), s 31(1)(a)
Justices Act 1886 (Qld), ss 42, 57, 83A, 84, 104(1)(b), 114
Police Powers and Responsibilities Act 2000 (Qld), s 393

COUNSEL: A D Scott for the applicant
 G Rice QC for the respondent

SOLICITORS: Clayton Utz for the applicant
 Office of the Commonwealth Director of Public Prosecutions for
 the respondent

- [1] This is an application for declarations that the disclosure obligation defined by the *Criminal Code* (Qld) applies to two complaints made in support of warrants for the arrest of the applicant on 16 October 2017 and 17 July 2018 which are argued to have initiated a “relevant proceeding” within the meaning of s 590AB of the Code. The power to order declaratory relief is invoked in order to resolve the legal controversy between the parties as to whether there are relevant proceedings on foot to which the disclosure obligation applies.

The evidence

- [2] The evidence reveals that the applicant was issued with two arrest warrants on 26 October 2017 and 17 July 2018 by an officer of the Commonwealth. One alleged offences pursuant to ss 134.2(1) and 145.1(1) of the *Criminal Code* (Cth) and the second alleged offences under s 7(2) of the *Crimes (Taxation Offences) Act* 1980 (Cth) as well as ss 134.2(1) and 145.1(1) of the Commonwealth Criminal Code.
- [3] The applicant wishes to challenge the validity of the warrants and has sought production of the complaints on which they are based from the respondent, the Commonwealth Director of Public Prosecutions. The applicant has also sought copies of information seized pursuant to search warrants on 26 July 2017. That request has also been refused by the Australian Taxation Office.
- [4] One of the grounds on which the information sought by the request was refused was that the investigation into the applicant was “current and on-going and criminal charges have not been brought ...”. The concern was also expressed that disclosure of the information then would, or could reasonably be expected to, prejudice the conduct of the criminal investigation and so was said to be exempt under s 37(1)(a) of the *Freedom of Information Act* 1982 (Cth).
- [5] The letter from the ATO also went on to say that the applicant would be provided with “an unredacted version of the affidavit and copies of the relevant warrants should criminal charges be brought, as per the usual discovery process in those criminal proceedings”.
- [6] The applicant’s argument is that criminal proceedings are now on foot so that the prosecution disclosure obligation provided by the Queensland Criminal Code has been enlivened. Her submission is that the proceedings were initiated by the complaints which, on the proper construction of the *Justices Act* 1886 (Qld), constitute criminal charges against the applicant.

- [7] Mr Rice QC for the Commonwealth Director pointed out that the warrants have not yet been executed as the applicant is out of the jurisdiction and has not been served. The applicant's solicitors have indicated that the applicant was currently considering taking legal proceedings against the ATO in relation to issues with respect to its investigation of the applicant. She has also engaged Canadian lawyers who were seeking to understand the basis on which the warrants have been issued. The applicant has also indicated that she does not accept the jurisdiction of the Magistrates Court to conduct any committal proceeding.

The disclosure obligation

- [8] Section 590AB of the Queensland Criminal Code provides as follows:

"590AB Disclosure obligation

- (1) This chapter division acknowledges that it is a fundamental obligation of the prosecution to ensure criminal proceedings are conducted fairly with the single aim of determining and establishing truth.
- (2) Without limiting the scope of the obligation, in relation to disclosure in a relevant proceeding, the obligation includes an ongoing obligation for the prosecution to give an accused person full and early disclosure of—
 - (a) all evidence the prosecution proposes to rely on in the proceeding; and
 - (b) all things in the possession of the prosecution, other than things the disclosure of which would be unlawful or contrary to public interest, that would tend to help the case for the accused person."

Submissions for the applicant

- [9] The applicant's submission is that there is a committal proceeding on foot. Section 590AD defines a "relevant proceeding" to mean a committal proceeding among other possible proceedings. The submission is that a committal proceeding is on foot once proceedings under the *Justices Act* have been commenced by a complaint in writing; see s 42(1). It was argued that a complaint under the *Justices Act* has been "laid" and proceedings have thereby commenced as soon as a complaint is laid before a justice, therefore, even before the complaint has been filed in the Magistrates Court.
- [10] Here, there is no evidence that the Magistrates Court has opened a file in relation to the matter but the applicant submits that that does not determine the question of whether complaints have been "laid" under the *Justices Act*. The warrants are in evidence, although the complaints are not. The warrants say that they have been issued on the basis of complaints made on oath before the magistrates who issued the warrants and command police officers in Queensland to apprehend the applicant and bring her before justices for the State of Queensland to answer the complaints.

- [11] Section 57 of the *Justices Act* provides for the cases in which warrants may be issued. Where a complaint has been made before a justice, then the justice may issue a warrant to apprehend the person and to have the person brought before justices to answer the complaint. See also ss 59 and 62.
- [12] Accordingly, the applicant submitted that the warrants were made in consequence of complaints under the *Justices Act* which commenced relevant proceedings for a committal hearing which thereby engaged the disclosure obligation.

Submissions for the respondent

- [13] The respondent's contention is that neither the making of a complaint to a magistrate seeking a warrant nor the issue of a warrant commences a committal proceeding so that there is no relevant proceeding to which the disclosure requirements could apply. Section 42 of the *Justices Act*, which provides for commencement of "proceedings under this Act", does not define that term. The warrants in this case had been issued under s 57 and the laying of complaints before a magistrate and the issuing of warrants under that section are themselves a proceeding under the Act and the only proceeding to date. That process may or may not lead to the conduct of committal proceedings, depending on whether the warrants are executed.
- [14] The respondent's submission was, therefore, that the earliest point at which a "committal proceeding" could be taken to have commenced is when the person is brought before a court pursuant to the warrant "to answer the complaint". A process is thereby engaged in the Magistrates Court which results in a committal hearing and a Magistrates Court may give directions for the purpose of that proceeding: see s 83A of the *Justices Act* which deals with directions hearings.
- [15] The submission went on that, before the execution of the warrant, there is no person before the court who could be said to be the subject of a committal proceeding. There is no charge before the court, no issue to resolve, no arresting officer and no prosecutor all of which were said to be necessary ingredients of a committal proceeding.
- [16] Section 104(1)(b) makes it clear that an examination of witnesses in relation to an indictable offence shall be conducted in the presence and hearing of the defendant if the defendant is required to be present. The fact that a registry committal may be held without the attendance of the defendant if the defendant consents pursuant to s 114 does not detract from the fact that committals are based on the existence of a charge before the court and the presence of the defendant to answer it unless an exemption applies.
- [17] Mr Rice submitted, therefore, that the existence of a duty of full disclosure of prosecution evidence to a person not yet arrested or charged and who, in many cases, would not even be aware of a warrant, would be anomalous. There would be no evident purpose in the administration of criminal justice in regarding such a person as entitled to full disclosure or placing an applicant for a warrant under the burden of such disclosure. This is not applicable to circumstances before the subject of the warrant has even been arrested.

- [18] He also pointed to the normal course of events in criminal proceedings after the arrest of a suspect. He submitted that the court's function of conducting committal proceedings commences when the apprehended person is brought before it; an obligation imposed on a police officer pursuant to s 393 of the *Police Powers and Responsibilities Act 2000* (Qld).
- [19] On being apprehended and brought to court in compliance with a warrant, the apprehended person could then expect to be remanded under s 84 of the *Justices Act* when the person apprehended may apply for bail and, commonly, could expect to have the proceeding adjourned until the committal hearing takes place. Mr Rice submitted that committal proceedings are based on the existence of a charge before the court and the presence of the defendant to answer it unless an exemption applies.
- [20] He also submitted that the term "committal proceeding" where used in s 590AD of the Queensland Criminal Code took on its meaning from the nature of the disclosure obligations imposed by the chapter division in which it appeared. He argued that, in context, the term could only be interpreted as applicable to a proceeding between parties being prosecuted before a court where the duty to disclose is imposed on the "prosecution" which is defined as "the person in charge of the prosecution or person appearing for the prosecution".
- [21] In the present case, he pointed out, there is, as yet, no such person because there is only a warrant but no prosecution.
- [22] He also pointed to the terms of s 590AH(2) requiring disclosure of witness statements "for each proposed witness for the prosecution" and "a copy of anything else on which the prosecution intends to rely at the proceeding" and other references in s 590AJ dealing with disclosure that must be made on request and identifying, for a relevant proceeding, what the prosecution must, on request, give the accused person.
- [23] Thus, he submitted, the proceeding to which the sections apply is one between parties involving the giving of evidence and cannot sensibly be argued to apply before arrest with the consequence that the term "relevant proceeding" could not extend to that early stage of the criminal process.
- [24] He also pointed out that the obligation to disclose depended in many instances on whether the statement or thing was in the "possession of the prosecution" which was defined to mean "in the possession of the arresting officer or a person appearing for the prosecution": see s 590AE(2). Where there was neither an arrest nor a matter before the court, those provisions made it clear that the disclosure regime surrounding a "relevant proceeding" only applied post-arrest.

Conclusion

- [25] In my view, the submissions for the respondent are compelling, namely that in circumstances such as these where the warrants have not even been executed and there is no party before the court nor a prosecutor, then the obligation to disclose in respect of a committal proceeding has not yet arisen.

Order

[26] Accordingly, the application is dismissed. I shall hear the parties as to costs.