**11/99; [1999] VSC 209**

**SUPREME COURT OF VICTORIA**

# *CROWN AMBASSADOR HOLDINGS PTY LTD & ANOR v MAEBUS*

**Warren J**

**23 March, 8 June 1999**

**PUBLIC HEALTH – SALE OF ADULTERATED FOOD – FOOD BOUGHT BY MEMBER OF PUBLIC AND HANDED TO AUTHORISED OFFICER – TIME LIMIT FOR COMMENCEMENT OF PROSECUTION – TIME LIMIT OF 90 DAYS IN RESPECT OF "ANY FOOD OBTAINED FOR ANALYSIS UNDER THIS ACT" – MEANING OF "UNDER THIS ACT" – WHETHER SUCH WORDS GOVERN THE WORD "ANALYSIS" – WHETHER STATUTORY TIME LIMIT APPLIES TO CASES WHERE FOOD IS OBTAINED FROM A MEMBER OF THE PUBLIC: *FOOD ACT* 1984, SS8, 45(2).**

Section 45(2) of the *Food Act* 1984 ('Act') provides:

> "Subject to sub-section (3), a prosecution for an offence against this Act in respect of any food obtained for analysis under this Act shall be instituted not later than 90 days after the day on which the food was so obtained.

Food was purchased by a member of the public and received by an authorised officer 2 days later. A prosecution for certain offences was instituted 146 days after the food was purchased. On the hearing of the charges it was submitted that the proceedings were issued outside the time limit imposed under s45(2) of the Act. The magistrate rejected this submission and found the charges proved. Upon appeal—

**HELD: Appeal dismissed.**

**1. The words "under this Act" govern the word "analysis" in s45(2) of the Act. The sub-section reflects a policy intention of ensuring the institution of a prosecution promptly where food is analysed pursuant to the provisions of the Act. The Act sets out a regime empowering authorised officers to obtain food in various ways. Section 45(2) imposes a limitation period not on a global basis for the purposes of the Act but only with respect to prosecutions involving food obtained for analysis under the authority of the Act. The entire scheme of s45(2) is intended to confine the limitation period to circumstances where food has been obtained for analysis under the Act compared with circumstances where food has been obtained from a member of the public and a decision is made subsequently to subject the food to analysis.**

***McMaster v Yallourn Bakery Pty Ltd* [1976] VicRp 17; [1976] VR 233; (1975) 32 LGRA 382 distinguished.**

***Lawson v Gorring* (1986) 1 Qd R 26, followed.**

**2. Accordingly, the magistrate was correct in ruling that the prosecution was not subject to the time limitation imposed by s45(2) of the Act.**

**WARREN J:**

1. The appellants bring appeals on questions of law under s92(1) of the *Magistrates' Court Act* 1989. The appeals arise from hearings at the Melbourne Magistrates' Court on 23 October 1998 when each of the appellants were found to have committed a breach of s8(1)(b) of the *Food Act* 1984 relating to the sale of adulterated food and were fined without conviction amounts totalling $4,000. The first appellant was ordered to pay the costs of the respondent in the sum of $1,693.

2. Each of the Magistrates' Court summons served on the appellants alleged that they sold food at Schwob's Swiss at 13-15 Hardware Street Melbourne, namely, a tuna sandwich that was adulterated in breach of s8(1)(b) of the *Food Act*. The appellants did not dispute the facts before the magistrate. However, a submission was made on behalf of the appellants below that the proceedings were issued outside the time limit imposed under the *Food Act*. The magistrate did not accept the submission and proceeded to convict the appellants and impose the penalties already stated.

3. The questions of law as determined by a Master are:

1. Whether the Magistrate should have found that the prosecution was in respect of "food obtained for analysis under this Act" within the meaning of section 45(2) of the *Food Act* 1984;

2. Whether the Magistrate should have dismissed the charge as the prosecution was not initiated not later than 90 days after the day on which the food, the subject of the charge was obtained.

4. It is necessary to consider the scheme of the *Food Act*. Section 8 of the Act prohibits the sale, preparation or packing of certain food. Section 8(1) renders it an offence, among other matters, to sell food that is unfit for human consumption or adulterated:

"**8. *Prohibition on sale, preparation for sale or packing of certain food***
(1) A person who sells, prepares for sale or packs any food that is—
(a) unfit for human consumption; or
(b) adulterated
is guilty of an offence.

Penalty: For a first offence 100 penalty units, and for a second or subsequent offence 200 penalty units or imprisonment for a term not exceeding 6 months or both.

(2) A court that convicts a person of an offence against sub-section (1) may, if it is of the opinion that the offence was committed wilfully or by the gross negligence of the defendant, impose a penalty of 100 penalty units in addition to any other penalty which may be imposed by the court for the offence in question.

(3) A person who sells, prepares for sale or packs any food that is damaged, deteriorated or perished is guilty of an offence.

Penalty: For a first offence 20 penalty units, and for a second or subsequent offence 40 penalty units."

5. The basic facts of the case were that the relevant food was purchased by a customer on 10 January 1998. The food was received by the respondent as informant on 12 January 1998. Each summons was issued on 4 June 1998, that is, 144 days after the food was received by the respondent and 146 days after the food was purchased by the customer. Section 45(2) of the *Food Act* requires any prosecution for an offence "in respect of any food obtained for analysis under the Act" to be instituted not later than 90 days after the day the food was so obtained. In the absence of the special time limit imposed by s45(2), any prosecution for an offence under the *Food Act* would be required to be commenced not later than 12 months after the offence is alleged to have been committed pursuant to s26(4) of the *Magistrates' Court Act* 1989. Section 45(2) of the *Food Act* provides:

"**45. *Proceedings for offences***
(1) Except as is otherwise expressly provided by this Act—
(a) all charges for offences under this Act may be heard and determined in a summary way before the Magistrates' Court; and
(b) all money, costs, and expenses made payable or recoverable by this Act may be recovered before the Magistrates' Court as a civil debt recoverable summarily or in any court of competent jurisdiction.

(2) Subject to sub-section (3), a prosecution for an offence against this Act in respect of any food obtained for analysis under this Act shall be instituted not later than 90 days after the day on which the food was so obtained.

(3) The Magistrates' Court shall have power to make an order extending the time appointed by sub-section (2) for instituting the prosecution where a person makes application for such an order not later than 90 days after the day on which the food was obtained.

(4) The summons in a prosecution for an offence against this Act in which an analyst's certificate is to be used shall be made returnable not less than 14 days after the date on which it is served.

(5) Where a summons referred to in sub-section (4) is served less than 14 days before the return date of the summons the court may, on an application made in that behalf, extend the return date of the summons.

(6) A copy of any analyst's certificate obtained on behalf of the informant shall be served with the summons in a prosecution for an offence against this Act in respect of any food."

6. Before the magistrate below a preliminary point was argued on behalf of the appellants that the summons was issued more than 90 days after the subject food was obtained. It was submitted that, as a consequence, the prosecution was out of time. The appellants below relied upon the judgments in *McMaster v Yallourn Bakery Pty Ltd* [1976] VicRp 17; [1976] VR 233; (1975) 32 LGRA 382 and *Lawson v Gorring* (1986) 1 Qd R 26. In the *McMaster* case the court considered an information issued under the *Health Act* 1958 in relation to the sale of adulterated food. A customer purchased a loaf of bread, made observations as to the possible adulteration of the food and handed it to a health inspector who stated that he would have the bread analysed. Section 295 of the *Health Act* provided:

> "Where any food drug or substance has been procured or purchased from any person for the purpose of analysis any prosecution under this Part in respect thereof shall not be instituted after the expiration of sixty days from the time of the purchase".

7. On the return of an *order nisi* Harris J held that the food had been "procured" for the purpose of analysis on the basis that the word "procured" in the section was to be read as meaning "obtained" or "got possession of". The learned judge held (at 236):

> "The conduct of an authorized officer by which he exercises his statutory powers to 'procure' samples will always be something which constitutes a sale of the food (s279(4)), but, in my opinion, it does not follow that these are the only ways an authorized officer can get food into his hands for the purpose of analysis.
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> It seems to me that a member of the public may often bring an article of food to the attention of an authorized officer and that the authorized officer may decide that he should obtain the food from that person for the purpose of analysis, to see whether someone has committed a breach of the *Health Act*. In my opinion, it is an appropriate use of language, in such a case, to say that the food has been 'procured' by the authorized officer for the purpose of analysis.
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> 'Procure' is a word that can mean merely 'to get possession of', or 'to obtain' as well as having a meaning which carries a connotation of the use of effort, or persuasion, or the use of special means. In my opinion, where the word 'procure' is used in ss277, 278 and 279 it is used as a convenient word to describe the act by which the food is got into the possession of an authorized officer, even though there may be some scope for thinking that it is used as some kind of term of art to describe the special means by which an authorized officer may obtain samples of food. When one finds the word 'procured' used again in s295, one finds that it is used in a clause expressed in impersonal terms. There is no apparent reason why such an impersonal clause should be limited in operation to authorized officers. It is capable of being applied, at least as far as concerns food which has been purchased for the purpose of analysis, to persons other than authorized officers. I do not see any reason why the word 'procured' should be read as a condensed expression for 'procured by an authorized officer pursuant to his powers under this Act'. In my opinion, the reference in s295 to the alternative of 'purchased' is not sufficient to produce such a result. Hence, in my opinion, the word 'procured' in s295 is to be read as meaning 'obtained' or 'got possession of', without any further connotation."

8. The learned judge went on to consider the policy underlying s295 of the *Health Act* and observed (at 237):

> "I add that the result which I have reached seems to me to be in accord with what may be thought to be the policy of s295. The policy seems to be to ensure that, where a defendant is charged with an offence under the Act consisting of a transaction relating to food which can, from one point of view, be described as a 'purchase', then if the food has been obtained by the informant (or by somebody who can be described as an opposite party to the defendant) for the purpose of analysis, no more than sixty days should elapse from the time when the food went out of the defendant's possession to the time when the prosecution is instituted. If conduct such as that by which the informant in this case obtained the bread was not a case where food had been procured for the purpose of analysis, then the situation would be that whether or not a defendant got the protection given by the section would depend upon the chance circumstances of whether an authorized officer obtained the suspected food by obtaining it directly from a shopkeeper or whether he obtained it after someone else had obtained it from a shopkeeper. I can see no reason why the period should not be applicable in the latter case, and the construction I have placed upon the word 'procured' in s295 does not produce the effect that it is not."

9. There are differences between s295 of the *Health Act* and s45(2) of the *Food Act*. The *Health Act* provision applied to food procured or purchased from any person for the purpose of

analysis. The *Food Act* provision refers to any food obtained for analysis. It was submitted below that the approach adopted in *McMaster* applied in the present matter on the basis that any food obtained for analysis was commensurate with any food procured or purchased for the purpose of analysis as stipulated under the provision of the *Health Act*. The magistrate held that *McMaster* was distinguishable as the relevant provision of the *Health Act* was not in the same terms as s45(2) of the *Food Act*.

10. The appellants relied, also, below on *Lawson's* case. In that case the Full Court of the Supreme Court of Queensland was concerned with circumstances where a pharmacist had dispensed to a purchaser certain tablets upon a prescription for other tablets. The two drugs were different in nature and substance. The relevant statute was the *Health Act* 1937-1984 under which s145(4) provided:

> "When any drug or article has been taken or obtained for analysis pursuant to Division V of this Part of this Act, no prosecution under this Act in respect thereof shall be instituted after the expiration of 90 days from the time when it was so taken or obtained".

11. Connolly J (with whom Carter and Moynihan JJ agreed) observed (at 28):

> "In *Herman Jennings and Co Limited v Slatcher* [1942] 2 KB 115; [1942] 2 All ER 1 the manufacturer of a food product was convicted under s85(2) of the *Food and Drugs Act* 1938 of giving a false warranty in respect of food sold by it. A sample had been obtained for analysis from the retailer and the prosecution was not launched within 28 days as required by proviso (a) to s80(1) of the Act where a sample had been procured under the Act. The Divisional Court held that the prosecution was not 'in respect of the article sampled', this being the type of prosecution with which proviso (a) dealt. It was further held that the limitation was that provided in respect of the giving of a false warranty by proviso (b) to the same subsection. The case is not directly in point but it shows that the mere fact that a sample has been provided and analysed will not necessarily bring a provision such as s145(4) into operation. *Herman Jennings* was distinguished in *Warner v Sunnybrook Icecream Pty Ltd* [1968] VicRp 11; [1968] VR 102; (1967) 15 LGRA 135 where a limitation of 42 days was provided from the purchase of 'any food, drug or substance for the purpose of analysis' for 'any prosecution in respect thereof'. Lush J having held that the word 'thereof' referred to the food, drug or substance, there was no impediment to the application of the provision to the defendant, although he was not himself the provider. In this respect it resembles the present case, save for the requirement in s145(4) that the drug or article be taken or obtained for analysis 'pursuant to Division V'. *McMaster v Yallourn Bakery Pty Ltd* [1976] VicRp 17; [1976] VR 233; (1975) 32 LGRA 382 is similarly distinguishable.
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> In my judgment it was not shown that there was a taking or obtaining or analysis pursuant to Division V of Part IV of the *Health Act* and the stipendiary magistrate was correct in applying the general period of limitation. The order to review should be discharged with costs."

12. In the court below the magistrate considered that s45(2) of the *Food Act* was analogous to the provision considered in *Lawson v Gorring*. In argument before me, Mr R McGarvie who appeared for the appellants, submitted that the reasoning of Harris J in *McMaster v Yallourn* Bakery Pty Ltd was applicable to the current Victorian legislation as contained in the *Food Act*. He submitted that the words in s45(2) of the *Food Act* "under this Act" should not be taken as governing the word "analysis" and which would remove the case from the application of the approach applied in *Lawson v Gorring*. Mr McGarvie submitted that in *Lawson* the Queensland legislation contained a specific limitation in relation to prosecutions under a particular Division of the Queensland *Health Act* and a general limitation for other prosecutions under the Act. He submitted that in the case of the Queensland legislation it was quite clear that the limitation applied only to articles "taken or obtained for analysis" pursuant to the relevant division of the Act. In *Lawson*, it was submitted, the application of the general period of limitation was the correct approach because in the circumstances before the magistrate at first instance it had not been shown that there was a taking or obtaining or analysis pursuant to the relevant division of the *Health Act*.

13. It was submitted, further, by Mr McGarvie that the statutory limitation provision contained in s45(2) of the *Food Act* is intended to extend to all prosecutions for offences under the Act. In support of this argument Mr McGarvie relied upon the legislative history of the *Food Act*, in particular, its amendment by the *Food (Amendment) Bill* 1986. Prior to its amendment in 1986 s45(2) and (3) of the *Food Act* provided:

> "(2) Subject to sub-section (3), a prosecution for an offence against this Act in respect of any food

> obtained for analysis under section 21 shall be instituted not later than 90 days after the day on which the food was so obtained.
>
> (3) A Magistrates' Court shall have power to make an order extending the time appointed by sub-section (2) for instituting the prosecution where a person makes application for such an order not later than 90 days after the day on which the food was obtained."

Mr J Gobbo who appeared for the respondent submitted that the present case could be distinguished from *McMaster* on an analysis of the scheme of the *Food Act* and in particular the proper construction of s45(2) of that Act. It is appropriate to consider in detail relevant provisions of the *Food Act*. *[Her Honour set out the relevant provisions of sections 21, 22-23 and 32, referred to sections 24 and 25 and continued] …*

19. These sections reveal a scheme in the Act enabling the taking and testing of samples of food. The term "sample" of itself is not defined in the Act. The scheme of the Act is to empower an authorised officer to obtain food by exercising various powers under the *Food Act*.

20. For the purposes of considering the proper construction of the limitation section it is necessary to consider s45(2) of the *Food Act* prior to its amendment by the *Food (Amendment) Act* in 1986 and the section as it is now. Further, in view of the approach taken by this court in *McMaster* it is necessary to compare the existing form of s45(2) of the *Food Act* with the relevant statutory provision in *McMaster*, namely, s295 of the *Health Act*. Section 45(2) of the *Food Act* prior to the amendment made in 1986 imposed a time limit upon any prosecution with respect to " … *any food obtained for analysis under s.21*". Section 21 of the *Food Act* remains unchanged following the *Food (Amendment) Act* 1986 (save for amendments made by s18 of the *Food (Amendment) Act* 1987 concerned with references to food handling and which are not relevant for present purposes). Section 45(2) of the *Food Act* in its present form and as amended by the 1986 amending Act imposes a limitation upon the time for bringing a prosecution concerned with " … *any food obtained for analysis under this Act*". The change rendered by the 1986 Act was the substitution of the words "under this Act" for the words "under s21". By contrast, s295 of the *Health Act* imposed a limitation upon the bringing of a prosecution in relation to " … *any food … (that) … has been procured or purchased for the purpose of analysis*".

21. As the *Food Act* previously stood it was clearly intended to apply to circumstances where an analysis had been obtained under s21 of the Act. The amendment confirmed the intention of the Legislature to apply the limitation under s45(2) to prosecutions concerned with food obtained for purposes of analysis under the Act and not food obtained otherwise than by the exercise of powers under the Act. So much is borne out by the explanatory memorandum to the *Food (Amendment) Bill*. The memorandum notes:

> "Clause 16 makes a drafting amendment to s45(2) of the Principal Act. This section requires that, where food has been obtained for analysis under s21, proceedings must be instituted not later than 90 days after the food was obtained. A number of sections deal with the purchase and analysis of food and it has been suggested that the reference to 's21' in s45(2) may be incorrect. The proposed amendment resolves any potential uncertainties by replacing the reference to 's21' with 'Act'."

22. Clearly the words "under the Act" govern the word "analysis" in s45(2) in its existing form. The sub-section reflects a policy intention of ensuring the institution of a prosecution promptly where food is analysed pursuant to the provisions of the Act. The Act sets out a regime empowering authorised officers to obtain food in various ways. The explanatory memorandum to the *Food (Amendment) Bill* makes it plain that the limitation contained in s45(2) is intended to apply to circumstances where food is obtained for analysis by virtue of an authorised officer exercising powers under the Act. The *Health Act* was different. It contemplated foods "obtained" for analysis. In *McMaster* the court treated tword "procured" as interchangeable with "obtained". (See *McMaster v Yallourn Baker Pty Ltd*, *supra*, 237). Consideration of the judgment in *McMaster* reveals that the learned judge specifically contemplated that "food obtained for analysis" encompassed circumstances where a member of the public gave an item of food to a health inspector who subsequently resolved to submit the item to analysis (see *McMaster* at 236). The key difference in the legislation for present purposes between the *Health Act* and the *Food Act* is that the words "under this Act" are inserted in s45(2) and govern the phrase "food obtained for analysis". Under the *Health Act* there were no equivalent words such as "under this Act" governing or qualifying

the word "analysis". Consequently, the learned judge in *McMaster* adopted the approach he did. If the words "under this Act" were omitted after the word "analysis" in s45(2) of the *Food Act* in its present form I would, with respect, in all likelihood agree with the learned judge in *McMaster* and adopt the same approach.

23. Nevertheless, the qualification of "analysis" provides a different statutory structure. It is the type of situation contemplated by the Full Court of the Supreme Court of Queensland in *Lawson v Gorring*, supra, whereby the addition of the qualifying words (obtained for analysis) "pursuant to Division V of this Part of this Act" led the court to approach the matter as I do in the construction of s45(2) of the *Food Act*. It was the same approach that led the Queensland Full Court to distinguish *McMaster* and which leads me to distinguish the case in the present proceeding.

24. I make the additional observation that my construction of s45(2) of the *Food Act* is supported by s46A of that Act. It provides:

> "**46A. Analysis is not necessary to conviction**
> Despite any provision of any other Act, in any prosecution under this Act if it appears to the court that the offence is sufficiently proved without an analysis, proof that an analysis has been made or of the results of an analysis is not necessary to conviction for the offence."

Section 46A was introduced to the *Food Act* by the *Food (Amendment) Act* 1986. It follows that the provision was introduced at the same time as the amendment was made to s45(2) of the *Food Act*. The Legislature can be assumed by virtue of the amending Act to have intended to achieve the elimination of uncertainty from s45(2) but at the same time to have contemplated prosecutions where food analysis was unnecessary with the consequence that the limitation under s45(2) would not apply to such prosecutions. The provision inserted by s46A supports the construction that insofar as s45(2) imposes a limitation period it does not purport to do so on a global basis for the purposes of the Act but only with respect to prosecutions involving food obtained for analysis under the authority of the Act i.e. such as under s21 of the *Food Act*. This approach reflects the policy that the legislation was intended to impose a special limitation period where food has been obtained and subjected to analysis under the Act compared with circumstances where a prosecution is pursued without analysis.

25. There are a number of offences created under the *Food Act* and which offences are not subject to the special limitation period contained in s45(2) of the Act. The range and nature of offences created demonstrate two relevant matters. Firstly, there are offences created under the Act which, by virtue of their subject matter, could not have been intended to be subject to the limitation period under s45(2). Secondly, there are many offences under the *Food Act* where a prosecution could proceed in respect of food without the relevant food having been obtained for analysis under the Act. These two factors are borne out by an overview of the offence provisions under the Food Act. The offence provisions reinforce the view that the limitation period imposed by s45(2) applies only to circumstances where a prosecution is instituted in relation to food obtained for analysis under the Act.

26. Examples of provisions under the *Food Act* where a prosecution could proceed without analysis of food obtained for that purpose under the Act are ss8, 9, 10 and 11. Section 8(1) renders it an offence to sell, prepare for sale or pack any food that is unfit for human consumption or adulterated. When considered in conjunction with s46A a prosecution could proceed under s8 without any evidence of analysis whatsoever and such prosecution would be exempt from the limitation period contained in s45(2). A similar observation can be made with respect to s8(3) of the *Food Act* which makes it an offence for a person to sell, prepare for sale or pack any food that is damaged, deteriorated or perished. The same situation applies under s8(4) which makes it an offence to sell, prepare for sale or pack any food for which there is a prescribed food standard if the food does not comply with that standard. Section 9 of the Act makes it an offence for a person to sell any food to the prejudice of the purchaser that is not of the nature, substance or quality of the food demanded by the purchaser. It can be readily envisaged that the relevant food may need to undergo analysis pursuant to the provisions of the Act before a prosecution can be instituted. In those circumstances s5(2) of the *Food Act* would come into play. However, where such analysis is unnecessary a prosecution can proceed on the basis of s46A of the Act without evidence of analysis and in such circumstances the prosecution would not be subject to

the limitation contained in s45(2). Similar observations can be made with respect to s10 of the Act which makes it an offence to sell food that does not comply with a prescribed food standard and s11 which makes it an offence for a person to pack or label food in a manner that is false or misleading, deceptive or otherwise not in compliance with the provisions of the *Food Act*.

26. Examples of provisions in the *Food Act* where the subject matter of the particular section discloses that it is not subject to the limitation period under s45(2) are ss12, 14, 15, 19(11), 19R, 29 and 34. Section 12 makes it an offence for a person to engage in false advertising for the purpose of effecting or promoting the sale of food. Section 13 makes it an offence for a person to sell a package of food that is not labelled in the prescribed manner. Section 14 makes it an offence for a person to sell a package of food that does not list the ingredients of the food in the prescribed manner. Section 15 makes it an offence to sell meat that has not been branded in accordance with the provisions of the *Meat Industry Act* 1993. Section 19(11) makes it an offence for a person to contravene or fail to comply with an order in relation to food premises and food vehicles. Section 19R makes it an offence to impersonate a food auditor approved under the Act. Section 29 makes it an offence for a person to interfere with an article seized under the Act, to refuse to sell food to an authorised officer or to refuse to furnish information to an authorised officer, Section 34 makes it an offence for a person to use for the purposes of any trade or advertisement an analyst's certificate obtained under the Act.

28. The remaining observation to be made is that the term "analysis" is defined under s4(1) of the *Food Act* to mean an examination carried out by an analyst. An "analyst" is a person authorised under the Act to carry out analyses for the purposes of the Act. Section 30 of the *Food Act* allows the authorisation of analysts under the Act. Section 31 imposes a duty on every analyst (authorised under the Act) to, among other matters, "make an analysis of any article submitted to him pursuant to this Act for analysis …" In my view the definition of the terms "analysis" and "analyst" considered in conjunction with ss30 and 31 of the Act support the construction of s45(2) I have made. The definitions of the relevant terms and the authority vested in and duties imposed upon analysts are confined to analyses conducted pursuant to or under the *Food Act*. Section 45(2) is intended to be confined to a prosecution concerned with food that has been obtained by other means for "analysis" and which analysis can mean only an examination carried out by an analyst being a person authorised under the Act to do so. In my view the entire scheme of s45(2) is intended to confine the limitation period to circumstances where food has been obtained for analysis *under the Act* compared with circumstances where food has been obtained such as from a member of the public and a decision is made subsequently to subject the food to analysis. In the present case there were two significant circumstances that placed the facts of the matter outside the application of s45(2). The relevant item of food was not obtained by an authorised officer for the purposes of analysis under the *Food Act* and only an authorised officer can obtain food for such purposes. Rather, the food was obtained initially by a member of the public who had no statutory powers to obtain food for the purposes of analysis under the Act.

29. It follows that the questions of law should be answered: 1.No. 2.No.

30. It follows that I consider the magistrate below was correct in the ruling made. It follows, further, that the appeal fails and should be dismissed.

**APPEARANCES:** For the appellants Crown Ambassador Holdings: Mr R McGarvie, counsel. Bullards, solicitors. For the respondent Maebus: Mr JA Gobbo, counsel. Mallesons Stephen Jaques, solicitors.

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