



Neutral Citation No. [2025] CICA (Civ) 12

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

CICA (Civil) Appeal No. 25 OF 2024
(Formerly Grand Court Cause No. G 81 of 2023)
(Summary Court (Criminal) 00659/22)

BETWEEN:

ISLAND POOLS LIMITED

Appellant

-AND-

(1) THE SUMMARY COURT OF THE CAYMAN ISLANDS

(2) THE DIRECTOR OF LABOUR

The Respondents

(3) STERLING SECURITY SOLUTIONS

Intervener

Before: The Rt Hon Sir John Goldring (President)
The Hon Sir Richard Field, JA
The Rt Hon Sir Jack Beatson, JA

Appearances: Mr Nicholas Dixey of Nelsons for the Appellant.
Ms Marilyn Brandt of the Attorney General's Chambers for the Respondent
The Intervener did not appear and was not represented

Heard: 2 May 2025

Draft circulated: 25 August 2025

Judgment delivered: 5 September 2025

JUDGMENT

Introduction

FIELD JA

1. This is an appeal from the order of Justice Carter (“the Judge”) dismissing the appellant’s application for judicial review of the decision dated 26 January 2023 of the Chief Magistrate, the Honourable Vadis Foldats (“the Magistrate”), in which he held that criminal proceedings in the Summary Court brought by the second respondent for contraventions of section 16 (offence 1) and section 31 (1) (offence 2) of the Labour Act had been brought within the six month time limit prescribed in section 78 of the Criminal Procedure Code (2021 Revision) (“the CPC”).
2. In relevant part, section 78 of the CPC provides:

“Except where a longer time is specially allowed by law, no offence which is triable summarily shall be triable by a Summary Court unless the charge or complaint relating to it is laid within six months from the date on which evidence is sufficient to justify proceedings came to the actual or constructive knowledge of a competent complainant ...”
3. Offence 1 charged the appellant with having failed to pay Mr Garth St Patrick McLeish (“Mr McLeish”) public holiday pay in the amount of CI\$ 7,680.00 for hours worked during public holidays contrary to section 16 of the Labour Act.
4. Offence 2 charged the appellant with having failed to pay Mr McLeish wages in the amount of CI\$ 2,130.00 contrary to 31 (1) of the Labour Act as read with sections 28 – 30 of the said Act.
5. These charges were laid on 10 May 2022, over two years after the last offence was allegedly committed in April 2020 and five years after the first offence was allegedly committed in November 2016.
6. The offences were Category C offences triable summarily and not otherwise.
7. Mr McLeish had first made a complaint to the Department of Labour and Pensions (“the DLP”) on 10 November 2021 because he had been asking to be paid but the respondent had refused his request. He delivered further documentary evidence, such as pay slips and time logs, to the DLP on 25 and 26 November 2021 and 6 and 13 December 2021.

The Appellant’s Case before the Magistrate

8. It was submitted to the Magistrate by Mr Dixey on behalf of the respondent that Mr McLeish was a “*competent complainant*” within the meaning of section 78 of the CPC and accordingly the Summary Court had no jurisdiction to try the two offences because they had been charged long after the expiration of six months following the time that Mr McLeish had been aware

that he had not been paid public holiday pay when he should have been or had not been paid wages that were due to him.

9. Mr Dixey submitted to the Magistrate that there were two issues to be determined:

“The first issue was whether Mr McLeish was a “competent complainant” within the meaning of section 78 of the CPC. If so, the second issue was when did evidence sufficient to justify proceedings come to his actual or constructive knowledge?”

10. Mr Dixey contended that the court should construe section 78 of the CPC in the light of its purpose which was to ensure that summary offences are charged and tried as soon as reasonably possible. He supported this contention by citing the decision of the English QBD (Lord Bingham CJ and Dyson J) in *R v Scunthorpe Justices, ex parte M and G*¹ where the court approved the decision of May J in *R v Newcastle upon Tyne Justices, ex parte John Bryce (Contractors) Ltd*², that the purpose of section 127(1) of the UK Magistrates Court Act 1980³, a provision similar but not identical to section 78 of the CPC, was as Mr Dixey submitted it to be.
11. In support of his submission that Mr McLeish was not only a complainant but was a competent complainant for the purposes of section 78, Mr Dixey relied on the facts that Mr McLeish was of the age of majority, he was not suffering from any mental disability that required him to have a litigation friend or guardian, he was competent to bring and defend court proceedings and give evidence in proceedings in his name and would have been entitled and competent in law to conduct a private prosecution under section 13 and 14 (1), (2), (3) & (4) of the CPC (5) which in relevant part provide:

“13. Any person conducting a private prosecution may do so in person or may be represented by a legal practitioner instructed by the person in that behalf.

14 (1) Criminal proceedings may be instituted either by the making of a complaint or by the bringing before a magistrate of a person who has been arrested without a warrant.

14 (2) Any person, who believes from a reasonable and probable cause that an offence has been committed by any person, may make a complaint thereof to a Justice of the Peace.

¹ [1998] EWHC 228 (Admin)

² [1976] 2All E R 611 at p.614A

³ S.127 (1) *“Except as otherwise expressly provided by any enactment and subject to subsection (2) below, a magistrates’ court shall not try an information or hear a complaint unless the information was laid, or the complaint made, within 6 months from the time when the offence was committed, or the matter of complaint arose.”*

14 (3) *A complaint may be made orally or in writing but if made orally shall be reduced to writing by the Justice of the Peace, and in either case shall be signed by the complainant and the Justice of the Peace: Provided that where proceedings are instituted by a police or other public officer, acting in the course of that person's duty as such, a formal charge, drawn up in conformity with this Code, duly signed by such officer may be presented to the Justice of the Peace and shall for the purposes of this Code be deemed to be a complaint and shall be signed by the Justice of the Peace.*

14 (4) *A Justice of the Peace, upon receiving any such complaint, shall, unless such complaint has been laid in the form of a formal charge under subsection (3), draw up or cause to be drawn up and shall sign a formal charge containing a statement of the offence with which the accused is charged."*

12. Before the Chief Magistrate, Mr Dixey also sought to distinguish and otherwise undermine the decision of HH Acting Magistrate McFarlane (as she then was) in *R v Front Door Cayman Ltd*⁴ which was a decision capable of being a persuasive authority but not one that was binding on the Court. In this case, the defendant company was charged with 38 separate offences of failing to pay overtime contrary to section 25 (1) of the Labour Act. The charges were laid by an official of the Department of Labour and Pensions. The Defendant submitted that the individual employees named in the charges were capable of being competent complainants for the purposes of section 78 of the CPC and more than six months had passed from the date on which evidence sufficient to justify proceedings came to their actual or constructive knowledge. In the alternative, the Defendant submitted that more than six months had passed since the completion of a report on 13 January 2014 into the alleged non-payment of overtime by a Senior Labour Inspector and Head of the Inspections Unit of the Department of Labour and Pensions who thereby had actual or constructive knowledge of evidence to justify proceedings.
13. Magistrate McFarlane rejected the submission that the employees themselves were competent complainants. In paragraphs [10] and [11] of her Ruling, she stated:

*"[10] A competent complainant is an individual (usually a police or other law and enforcement officer from an independent investigative authority) with the requisite expertise and experience to make a proper assessment about whether there is sufficient evidence to justify proceedings, much like the prison officer in R v Eldemire (where an inmate of Her Majesty's Prison Northwood was found in possession of 67 packets of vegetable matter resembling ganja). The Court took the view that the prison officer was the competent complainant because time began to run on the date the officer discovered the drugs*⁵.

⁴ (C#03767/2014)

⁵ R v Eldemire [2000 CILR 97] at p.101, lines 13-15.

[11] *In the case of Labour Law infractions, the competent complainant can be none other than inspectors or other agents of the Department of Labour and Pensions, because they alone are charged with enforcement of the Labour Law, and are therefore in the best position to determine whether there are reasonable and probable grounds for believing that a potential defendant has committed an offence⁶.*

14. In regard to paragraph [10], Mr Dixey submitted that the court's interpretation here placed far too much emphasis on the need for "*expertise and experience*" where the CPC provides that anyone can commence criminal proceedings. Further, Mr McLeish will say he knew full well on his own evidence that the Defendant had not paid him his wages. That is why he reported the matter to the DLP.
15. In regard to paragraph [11], Mr Dixey submitted that the real problem is that the Magistrate's interpretation allows, as in this case, a potentially aggrieved employee to sit and wait for five years to report, and yet the prosecution would still be in time. This consequence plainly offends against the clear purpose and intent of section 78 of the CPC.
16. Mr Dixey also sought to draw support for his case by referring to section 54 (2) of the Labour Act which provides that a complaint by an employee that he has been unfairly dismissed must be filed within ninety days of the date of dismissal which is an absolute time bar. A failure to pay wages, overtime pay or public holiday pay may have less damaging consequences for an employee than unfair dismissal and if it was the policy of the Labour Act to impose an absolute time bar in respect of claims for unfair dismissal, the court should not shrink from taking a strict view when construing section 78.

The Chief Magistrate's Ruling.

17. At an early point in his Ruling, the Chief Magistrate set out the issues that were to be determined which are set out in paragraph [8] above.
18. The Chief Magistrate then stated that he was not persuaded that section 78 should be construed in the same manner as section 127 (1) of the (UK) Magistrates' Court Act 1980. The two sections were not in identical terms. The UK provision was clearly an absolute time bar whereas section 78 contained the additional elements of "*evidence sufficient to justify proceedings [coming] to the actual or constructive knowledge of a competent complainant*". Secondly, in his view, the six-month absolute time limit in section 127 (1) reflected the fact that summary offences in England were minor offences whereas the Summary Courts in the Cayman Islands

⁶ See dicta of Sanderson J in *Eldemire* at p. 101, lines 26-27.

deal with very serious offences and have far greater sentencing powers than do Magistrates' Courts in England.

19. In addition, the Cayman Islands Summary Courts are the subject of Practice Direction 5/2015 (Summary Court Criminal Case Management) ('the PD') and the Criminal Procedure Rules (2019) (the 'CPR'). The overriding objective of the former is that "*criminal cases be dealt with justly as well as expeditiously*" and the various matters that must be considered in furtherance of the objective do not have as their sole concern the rapid disposal of cases. The overriding objective of the CPR is that criminal cases be dealt with justly and dealing with cases "*efficiently and expeditiously*" is but one of the many considerations that must be addressed by the court to ensure that a case is dealt with justly. Thus, as the PD and the Rules make clear, in the Cayman Islands, expedition is not the only consideration when dealing with summary offences.
20. The Chief Magistrate said that it was not in dispute that Mr McLeish was a "*complainant*", however the matters relied on by Mr Dixey to establish that Mr McLeish was a "*competent complainant*" related in paragraph 10 above did not mean that Mr McLeish was a "*competent complainant*", this being a phrase that should not be examined in isolation. The phrase was inextricably bound to the preceding words of section 78 – "*evidence sufficient to justify proceedings*" coming to the competent complainant's knowledge and, this being a prosecution brought pursuant to specific legislation – the Labour Act – that legislation must inform the court's interpretation.
21. The Chief Magistrate cited with approval paragraphs [10] and [11] of Magistrate McFarlane's Ruling in *R v Front Door Cayman Ltd* and rejected Mr Dixey's criticisms thereof on the grounds that the criticism aimed at [10] detached the requirement to determine evidential sufficiency from the legislative intent and missed the point that "*a victim knows when he is aggrieved but there is no weighing of sufficiency*"; and that aimed at [11] missed the point that delay, deliberate or not, is always subject to judicial scrutiny and where the delay results in an abuse of process, a prosecution will fail.
22. The Chief Magistrate also referred to Chapple J's citation in a summary drugs prosecution appeal, *Wayne Carlos Myers v R* [SCA 4-62020], of Pill LJ's dictum in *Letherbarrow v Warwickshire County Council*⁷ that "*[k]nowledge ... involves an opportunity for those with appropriate skills to consider whether there is sufficient information to justify a prosecution*".

⁷ [2015] EWHC 4820 (Admin).

23. The Chief Magistrate then went on to state that since the prosecution against the respondent was under the Labour Act, that legislation must inform the court's interpretation of section 78 and he set out in relevant part the wording of sections 71 – 73 of that Act as follows:

“71. (1) There is established a Department of Human Resources, comprising the Director of Labour, the Deputy Director and such labour inspectors and other staff as may be necessary for the due administration and enforcement of this Act.”

“72. Whether or not a complaint has been filed the Director shall be charged with securing the proper observance of this Act.”

“73. (2) The Director, Deputy Director or any labour inspector may institute criminal proceedings for any offence under this Act, and may appear before the Summary Court to conduct the prosecution in respect of any such offence.”

24. He then referred to the decision of HH Acting Magistrate Hernandez (as she then was) in *R v Island Builders Ltd*⁸, that in a prosecution under the Labour Act including sections 72 and 73 thereof, the competent complainant was the Director of Labour as *“an example of a court properly examining the legislative context when interpreting “generic” legislation like section 78 of the CPC.”*

25. Under the heading *“Conclusion”*, the last three paragraphs of the Chief Magistrate's Ruling read:

“In the end, bearing in mind the wording of section 78 of the CPC including the phrase “evidence sufficient to justify proceedings” and recognising that this is a prosecution brought pursuant to specific legislation, the Labour Act, it is clear to me that the Director of Labour is the “competent complainant” in Labour Act prosecutions, not Mr McLeish. The Director has “the appropriate skills to consider whether there is sufficient information to justify a prosecution”. This answers Mr Dixey's first question.

The second question is – when did evidence sufficient to justify proceedings come to the competent complainant's actual or constructive knowledge? Mr Dixey properly concedes that upon a finding that the Director of Labour is the “competent complainant”, the charges are laid in time.

Accordingly, this court has jurisdiction to try this case.”

The Judicial Review Proceedings

26. The appellant was granted leave to apply for judicial review of the Chief Magistrate's Ruling by the Judge on 6 June 2023 on the following grounds:

⁸ (C#1940/2014 & 2137/14)

- “(1). *The Summary Court erred as a matter of law in finding that only the Director of Labour is capable of being a “competent complainant” in prosecutions under the Labour Act for the purposes of section 78 of the CPC. There is no express provision in the Labour Act, the CPC or elsewhere that provides that only the Labour Director may be a competent complainant for the purposes of Labour Act prosecutions and there was no proper basis to find otherwise.*
- (2). *The Summary Court erred in finding that Mr McLeish was not a competent complainant for the purposes of section 78 of the CPC where it is undisputed that:*
- a. *Mr McLeish is a “complainant” within the meaning of the CPC generally, and was aggrieved;*
 - b. *Mr McLeish is at the age of majority;*
 - c. *Mr McLeish is not suffering from any relevant disability;*
 - d. *Mr McLeish is capable in law of bringing and defending a private prosecution pursuant to the CPC for a Labour Act offence (even in circumstances where the Labour Director had refused to support such a charge);*
 - e. *Mr McLeish was aware of the quantum of the wages had in fact been paid and was aggrieved from the outset – no special skills were required; and*
 - f. *The totality of the evidence against the Applicant comes from Mr McLeish and was in his possession from the outset. Accordingly, the sufficiency or otherwise of the evidence in support of the charges was not affected by any additional evidence garnered as a result of the DLP investigation, because there was no such additional evidence.*
- (3). *In the circumstances of the charges laid in the Summary Court Proceedings, the six month period under section 78 of the CPC ran from the date by which the Applicant was obliged, pursuant to the Labour Act, to have paid Mr McLeish those wages it is alleged were not paid. The charges were laid outside that period, and accordingly the Summary Court has no jurisdiction to try the case, and the Summary Court erred in finding otherwise.”*

27. Sterling Security Solutions Ltd were granted leave to intervene and served written submissions and appeared by counsel, Mr Richard Parrish.

The judgment below dismissing the judicial review application

28. The Judge began by setting out the relevant background to the application and summarising the Chief Magistrate’s decision. She then set out the grounds for review for which permission to

make the application had been granted and, by reference to each of those grounds, she summarised the appellant's submissions which were largely the contentions that had been made to the Chief Magistrate. In particular, she noted the following:

- “(1) The aim of section 78 is to ensure that summary offences are charged and tried quickly when an individual aggrieved complainant, or the enforcement agencies, are in possession of the evidence to support the bringing of a charge.*
- (2) Time runs from when sufficient evidence to charge came to the knowledge of the first competent complainant in time who is often but not always a private citizen.*
- (3) The intended effect of section 78 is that if, when the offence was allegedly committed, an aggrieved individual complainant was not competent e.g. the complainant was a child or an adult under a disability, time would run instead from when sufficient evidence to charge for the offence was in possession of the appropriate enforcement agency.*
- (4) Section 78 does not contemplate that there will always be only one competent complainant otherwise it would have used the words “the competent complainant”.*
- (5) Section 78 also recognises that in many cases there may not be an identifiable individual victim, such as in cases involving drugs, and in those cases the competent complainant will often be limited to the police or other enforcement agency.*
- (6) Section 78 concerns jurisdiction and should not involve any balance of discretion based upon procedural guidelines and on what a particular magistrate considers to be a fair outcome.*
- (7) Section 78 should be strictly construed in the light of Kennedy LJ's observation in Morgans v The DPP [1999] 1 WLR 968 at 983 that that is how section 11 (2) of the Interception of Communications Act 1985, a provision equivalent to section 78 CPC, should be construed.”*

29. The respondents' submissions recorded by the Judge included the following:

- “(1) The “quasi-civil nature” of the offences under the Immigration (Transition) Act; the Customs and Border Control Act; the Nation Pensions Act and the Labour Act, all of which confer power on an official to implement the legislation, means that the “competent complainant” to determine whether there is “evidence sufficient to justify proceedings” in relation to such offences, must be the appropriate authority created by the Legislature which is thereby vested with the duty to administer the law and its regulations.*
- (2) The “inherent nuances” of these quasi-civil offences gives rise to a requirement for an individual or entity with the requisite expertise and experience to determine what would amount to evidence sufficient to*

justify proceedings and whether there is such evidence to justify a criminal prosecution.

- (3) *A “competent complainant” is an individual or entity with the requisite expertise and/or experience to make a proper assessment about whether there exists sufficient evidence to justify proceedings, that is, that the actions or omissions that are the subject of the complaint(s) would likely amount to a criminal offence.*
- (4) *Though the former employee Mr McLeish would have been aggrieved by the omissions he alleged against the applicant, he lacks the requisite expertise and/or experience to make a proper assessment about whether there exists sufficient evidence to justify proceedings, that is, that the actions or omissions that are the subject of the complaint would likely amount to a criminal offence.”*

30. The Intervener adopted the case advanced by the appellant.

31. In paragraphs [52] – [80], the Judge set out her “*Considerations*” and her conclusion. Paragraphs [65] – [72] are the key paragraphs:

“[65]. The fact that the CPC refers to a **competent complainant** does not restrict the designation of a specific authority or agency as the competent complainant under the Act. This is separate to the issue of such competent authority being compliant with the strictures imposed regarding the time for bringing a prosecution for a category C offence under section 78.

[66]. The Applicant argues that the Act does not specifically say that an aggrieved individual cannot bring a prosecution. However, the phrase which precedes **competent complainant** in the Code qualifies that individual for the purposes of bringing criminal proceedings. In essence, Section 78 could be read as stating “*evidence sufficient to justify [criminal] proceedings*”. The section contemplates an assessment to determine if the evidence which may form the complaint is sufficient to justify such proceedings. This is the plain and obvious purpose of the phrase. On the Applicant’s submission, this is an assessment which can be made by an aggrieved individual. Counsel does not argue that such an assessment is unnecessary. It is unclear, however, how an aggrieved individual, such as the Complainant in this case against the Applicant, would be in a position to determine the exact nature and strength of the evidence necessary to justify criminal proceedings.

[67]. There must be an authority which makes such an assessment to ensure consistency and certainty in approach to such assessment. Under the Act, in respect of criminal prosecutions, that authority is the Director of Labour and Pensions. As quoted by the chief magistrate in the Ruling, the provisions of section 71-73 of the Act are relevant to determine the authority assigned that role.

[68]. One could well imagine a scenario, were it otherwise, where every person who felt himself aggrieved by an employer’s actions, charged with the assessment of whether there was evidence sufficient to justify criminal proceedings, could proceed to institute such proceedings. There would be

an influx of charges against employers. The need for an independent assessment of the evidence, whether such evidence could reach the threshold of being sufficient to justify criminal proceedings, is essential to protect not only employees but also employers from frivolous charges being brought against them.

[69]. The Applicant argues that an interpretation which places such an assessment with the DLP could allow “*a potentially aggrieved employee to sit and wait for five years to report, perhaps using that time and the threat of prosecution as a hatchet to try and negotiate a settlement and yet when the employee finally decides to report many years later, the prosecution would still be in time*”. However, the consequences for an employer could be worse if the potentially aggrieved employee were to institute charges against the employer without oversight.

[70]. The Chief Magistrate did not in finding that only the Director of Labour is capable of being a competent complainant in prosecutions under the Act as read with section 78 of the CPC. While there is no express provision of such in the Act, the factors considered by the Chief Magistrate were relevant, and there was a sufficient basis on which he concluded that the director of labour is the competent complainant.

[71]. The Summary Court did not err in finding that Mr McLeish was not a competent complainant. The issue is whether he was a competent complainant under the Act. Mr. McLeish is a complainant within the meaning of the CPC, but the Summary Court was correct to draw a distinction between Mr McLeish as a complainant and Mr McLeish as a competent complainant under the Act.

[72]. On the facts of this case, the charges against the Applicant have not been laid outside the time limited for the same under the relevant sections of the Act.

The parties' submissions on appeal

The appellant's case

32. The appellant's case was largely the same as that put to the court in the application for judicial review. It included the following significant submissions.
33. Section 78 is a jurisdictional provision and is a time bar the purpose of which is the prompt disposal of summary offences if not from their alleged commission, then upon the offences coming to light. Category C offences are the most commonly charged and the less serious.
34. The Chief Magistrate's observations concerning the PD and the CPR involve dangerous reasoning because section 78 concerns jurisdiction so that its interpretation must not be subject to any balance of discretion.
35. The Ruling of the Chief Magistrate did not address the appellant's primary point that the legislation expressly does not contemplate that there will always be only one competent

complainant. If that had been the intention, the words “*the* competent complainant” would have been used. Accordingly, time runs from when sufficient evidence to charge comes to the knowledge of the first competent complainant in time which is often but not always a private citizen.

36. The appellant repeated the contention based on Kennedy LJ’s dictum in *Morgans v The DPP* that section 78 of the CPC, like s.11 (2) of the Computer Misuse Act, should be strictly construed.
37. Mr. McLeish was a complainant when he told the DLP on 10 November 2021 that the defendant had not paid his wages. Mr McLeish was also undoubtedly a competent complainant for the reasons recited in paragraph 10 of this judgement.
38. The Labour Act refers to “*complaints*” and “*complainant*” describes an aggrieved employee throughout the legislation. Employees who are complainants are also subject to a jurisdictional time bar under section 54(2) in relation to unfair dismissal claims which proceeds on the basis that an aggrieved employee is competent enough to understand employment law and submit complaints about unfair dismissal within 90 days.
39. The question the Chief Magistrate should have asked himself was: “*What help do we get from the Labour Act in determining the legislative measure and contemplation of an individual employee’s competency - (i) to understand when there has been an act or omission by an employer which may fall foul of the criminal law; and (ii) to weigh the evidence in support of that act or omission? Whether or not the consequence of those breaches results in civil or criminal liability is wholly irrelevant to the answer to that question. Mr McLeish knew he had not been paid and was more than capable of weighing the evidence in support of that*”.
40. The appellant also makes the same criticisms of paragraphs [10] and [11] of Magistrate McFarlane’s Ruling as he did when addressing the Chief Magistrate.
41. The central problem with the Ruling by the Chief Magistrate is that it allows the potentially aggrieved employee to sit and wait for five years to report the complaint perhaps using during that time the threat of prosecution as a hatchet to try and negotiate a settlement and yet when the employee finally decides to report many years later to the DLP, the prosecution would still be in time.
42. The reference of the Chief Magistrate to the remedy of a stay for abuse of process where the respondents’ construction of section 78 would lead to possibly years of delay takes the discussion down the wrong path. Section 78 is a jurisdiction provision whereas staying a case

for abuse of process is classically a matter of discretion within the trial process and is employed sparingly where it can be established that a defendant cannot have a fair trial or where the conduct of the Crown has resulted in a prosecution offending against the conscience of the Court.

43. Where the legislature wishes to restrict the category of complainants who are competent on the grounds that only a particular body has the skills to assess the sufficiency of the evidence to lay a charge it does so expressly: see e.g. section 35 (2) of the Security Investment Business Act (2020 Revision) which provides “*proceedings with respect to offences under section 24 or 25 may only be instituted by the Director of Public Prosecutions*). See also s.21(2) of the *Misuse of Drugs Act (2017 Revision)*: “*Proceedings [under this Act in respect of an offence on a ship] shall not be instituted except by or with the consent of the Director of Public Prosecutions.*”
44. The appellant challenges the reasoning of the Judge in paragraph [66] of her judgment on the ground that the Labour Act expects an employee to make a decision to complain about an unfair dismissal within 90 days from the dismissal and it is absurd to conclude that only the DLP is competent to make this assessment. The Judge’s reasoning in paragraph [67] also ignores the fact that a private prosecution can be brought by complainant, even if the DLP decides not to.
45. The Judge’s reasoning in paragraphs [68] and [69] is a non-sequitur. It was never submitted that complainants should not report errant employers to the DLP, who will generally move the matter forward -- it was merely submitted that section 78 of the CPC operates in a manner that, should complainants fail to do so promptly, any subsequent charges related to their complaint that are filed may be out of time. The Judge also appears to overlook the fact that employees are already expressly empowered to bring a private prosecution for Labour Act offences without referring the matter to the DLP.

The respondent’s case

46. The determination of who qualifies as a “*competent complainant*” for the purposes of section 78 of the CPC must be undertaken contextually and on a case-by-case basis. This approach is particularly important given the broad spectrum of summary-only offences under Cayman Islands law, which range from conventional criminal infractions to complex regulatory breaches, such as those created by the Labour Act. In the context of labour enforcement, the statutory scheme deliberately entrusts investigatory responsibilities to a designated public authority, namely, the Director of Labour.
47. In determining who is the competent complainant for the purposes of section 78 of the CPC the inquiry must be directed at the nature of the offence in question and the statutory machinery

designed for its enforcement. Where the Category C offence charged is not a matter covered by a regulatory scheme rule, the aggrieved party may be the competent complainant.

48. Offences under the Labour Act, such as the failure to pay wages or public holiday entitlements, often involve questions of statutory interpretation, calculation of entitlements, and evaluation of employer records. These matters require regulatory expertise and access to information not typically available to the employee. That function cannot rest with the individual employee, who, while aggrieved, lacks both the legal mandate and institutional capacity to determine whether the evidentiary threshold for criminal proceedings has been met.
49. It follows from the duty and powers conferred on the Director of Labour under the following sections of the Labour Act: s.72 (secure the observance of the Act; 73 (empowered to take proceedings); and s.67 (continuing duty to investigate complaints) that when construing section 78 of the CPC where the charges fall within the purview of the Labour Act, that it is the Director of Labour who will be held to be the “competent complainant”.
50. The Appellant’s reliance on section 14 of the CPC, which permits private prosecutions in certain limited circumstances, is inapposite. Section 14 concerns procedural admissibility; it does not displace the clear statutory allocation of investigatory and prosecutorial competence within regulatory frameworks such as the Labour Act. The ability to file a private complaint is not determinative of *competence* under section 78. As Carter J and the Chief Magistrate rightly found, evaluative capacity and statutory designation (not procedural capacity) govern the application of the competent complainant criterion.
51. A competent complainant must, as stated in *R v Eldemire* [2000 CILR 97] and accepted in subsequent jurisprudence, be able to assess whether “*the evidence is sufficient in the mind of an unbiased, right-thinking person to show that the accused committed the offence*” [2/17/004]. In the context of the Labour Act, that assessment requires regulatory knowledge, and institutional objectivity, qualities the Legislature has entrusted to the Director, and which are not met by a complainant merely asserting a personal grievance.
52. The decision of Magistrate McFarlane in *R v Front Door Cayman Ltd* (op cit) is relied on where the learned magistrate reasoned that for a complainant to be a “*competent complainant*”) the complainant must possess the requisite experience and institutional knowledge to determine whether the evidentiary threshold for prosecution is met.
53. The decision of Justice Richards in *R v Kelliann Asshikpelokai t/a Pirates Eatery* [2/22/3] is also relied on. There it was accepted that the Director of Labour was the “*competent complainant*”. The employee in question had resigned on 6 July 2019 having not received

payment for his final two weeks of employment and submitted a complaint to the DLP on 26 August 2019, after which charges were laid on 27 February 2020, more than seven months after the employee's knowledge of the alleged breach, but exactly six months following the DLP's receipt of the complaint. Richards J held that the charges had been laid within the statutory time limit.

54. In affirming that jurisdiction existed, the Court necessarily proceeded on the basis that the limitation period commenced with the knowledge of the Director (i.e., the DLP) and not the employee. Although the issue was not the subject of adversarial argument, the Court's reasoning and outcome are nonetheless persuasive, reflecting a consistent judicial approach to the operation of section 78 of the CPC in the context of Labour Act prosecutions.
55. The Respondents submit that *Pirates Eatery* thus stands as practical affirmation of the following propositions:

*“An employee's knowledge of a grievance does not of itself engage the limitation period under section 78;
The competent complainant under the Labour Act is the Director of Labour; and
The statutory clock commences only when the Director, in his regulatory capacity, acquires knowledge of sufficient evidence to justify proceedings.”*

56. These conclusions are entirely consistent with the interpretation advanced by the Respondents and accepted by both the Summary Court and the Grand Court in the present matter. The term 'competent complainant' does not simply require legal capacity or standing. It requires the competence to determine whether evidence meets the threshold for criminal prosecution. The Labour Act expressly vests that authority in the Director.
57. It follows from the foregoing analysis that the limitation period under section 78 of the CPC is not triggered by the date on which a complainant, such as Mr McLeish, became aware that he had not been paid. Rather, the statutory framework requires that the six-month period begin only when a *competent complainant* in this context, the Director of Labour or his authorised officer, obtains knowledge of *evidence sufficient* to justify the initiation of proceedings.
58. The Appellant's submission erroneously conflates the notion of a personal grievance with the legal and institutional competence to evaluate evidentiary sufficiency. While Mr McLeish may have subjectively recognised that he had not been paid, such knowledge is not legally determinative for the purposes of section 78. Knowledge that one has been wronged is not equivalent to the professional and statutory assessment required to determine whether there

exists “*evidence sufficient to justify proceedings.*” This distinction is central to the structure and purpose of section 78.

59. The phrase “*evidence sufficient to justify proceedings*” is the operative criterion in section 78 of the CPC and serves as the statutory threshold for the initiation of a summary prosecution. It is not merely a procedural trigger; it is a substantive legal standard that goes to the jurisdiction of the court. Unless and until that threshold is met, the Summary Court is deprived of the authority to try the offence.
60. In this respect, the phrase performs a gatekeeping function, ensuring that criminal process is not engaged prematurely, arbitrarily, or without a proper foundation in fact and law. Its inclusion in section 78 reflects a deliberate legislative intention to condition the prosecution of summary offences not on mere suspicion or complaint, but on a reasoned evaluation of the available evidence.
61. The Cayman Islands courts have affirmed the meaning and function of this phrase. In *R v Eldemire* [2000 CILR 97], the Grand Court held that the sufficiency of evidence must be assessed objectively, stating:
- “... if the evidence is sufficient in the mind of an unbiased, right-thinking person to show that the accused committed the offence, then the proceedings would be justified. In other words: Are there reasonable and probable grounds for believing that the accused committed the offence?”*
[2/17/004]
62. When considering the threshold required for the laying of charges generally: it must be more than speculative or assumptive, it must be grounded in evidence that would reasonably support the initiation of criminal proceedings. It requires more than mere complaint or belief. It is a measured, legal test that rests on the quality and content of the evidence, not on the subjective conviction of the complainant.
63. The importance of this threshold cannot be overstated. It reflects the foundational principles of due process and the responsible exercise of prosecutorial discretion. Section 78 ensures that summary criminal proceedings are not used as instruments of personal grievance, retaliation, or error.
64. Moreover, by expressly linking the limitation period to the *acquisition of such evidence* by a *competent complainant*, section 78 of the CPC further reinforces the legal character of the test. It is not the date of report, nor the discovery of wrongdoing in a factual sense, but the point at which the evidence reaches the threshold necessary to found a prosecution in the judgment of someone with the legal and institutional authority to make that determination.

65. In this instance, the correct date on which the limitation period commenced is 10 November 2021, the date on which Mr McLeish filed a formal complaint with the DLP, thereby engaging the statutory machinery of enforcement under the Labour Act. It is on this date that the competent authority, namely the Director of Labour, was first placed in a position to examine the allegations, review any preliminary documentation, and assess whether the matter warranted criminal prosecution.
66. This was not a perfunctory receipt of information, but rather the point at which the Director was seized of the matter in an official capacity. The Respondents emphasise that, under section 72 of the Labour Act, the Director is legally mandated to secure compliance with the Act, including by determining whether the evidentiary threshold for criminal charges has been met. Thus, the institutional capacity to make such an assessment only crystallised upon receipt of the complaint by the DLP, not before.
67. The Appellant’s argument proceeds from the flawed premise that the time bar in section 78 can be activated by the knowledge of an aggrieved individual, even before any regulatory assessment has occurred. Such a reading would render the term “*competent complainant*” in section 78 superfluous and undermine the legislative intent to distinguish between mere knowledge of a grievance and a reasoned prosecutorial evaluation of legal sufficiency. It would also have the unacceptable consequence of penalising regulators for methodical enforcement, by requiring prosecution timelines to run before an official assessment has even commenced.
68. As Carter J explained unequivocally the charges were not statute-barred because the limitation period began when the competent authority, the Director, acquired knowledge of sufficient evidence. That occurred on 10 November 2021. This conclusion is both legally and logically sound. It aligns with the purpose of section 78, which is to ensure that summary offences are prosecuted in a timely manner, while still permitting the necessary time for regulatory bodies to gather, assess, and weigh evidence in accordance with their statutory duties. The provision is not designed to create a procedural trap for enforcement authorities who receive delayed complaints, especially where such authorities act diligently once the complaint is received.
69. The Respondents recognise that a legitimate concern arises where employees delay, sometimes significantly, in reporting alleged breaches to the DLP. However, this concern is neither overlooked nor unaddressed by the statutory framework. Section 78 of the CPC is carefully constructed to strike a balance between two competing policy considerations: (i) the need to ensure that summary offences are prosecuted in a timely manner; and (ii) the reality that certain offences (especially those under regulatory regimes such as the Labour Act) require

proper investigation, evidence gathering, and independent review by an authority with statutory competence before proceedings can lawfully be instituted.

70. The function of the Director as gatekeeper is central to protecting the interests of both the complainant and the accused. It is for the Director, upon receiving a complaint, to assess whether the delay has prejudiced the reliability or sufficiency of the available evidence, whether the matter is serious enough to justify prosecution, and whether proceeding would be fair, reasonable, and in the public interest. Where a complaint is so delayed that a fair trial is no longer possible, it is open to the Director to decline prosecution or for the courts to exercise their discretion to stay the proceedings as an abuse of process.
71. In this regard, section 78 provides a more nuanced and just framework than the absolute six-month bar found in section 127 of the UK's Magistrates' Courts Act 1980 [2/6/001]. Rather than applying a rigid and mechanical deadline that may arbitrarily extinguish meritorious cases, the Cayman provision ensures that prosecutions may only be brought where a competent regulatory authority has reviewed and approved the matter within a defined timeframe following such review. This promotes both fairness and legal certainty.
72. It follows that the potential unfairness to employers posed by delayed employee complaints is mitigated (if not eliminated) by the statutory requirement that the Director, as a competent and impartial public official, may determine when sufficient evidence exists to proceed. This threshold ensures that only cases which have been properly assessed and are capable of being fairly tried proceed to prosecution. Carter J recognized this and stated that:

“One could well imagine a scenario, were it otherwise, where every person who felt himself aggrieved by an employer's actions, charged with the assessment of whether there was evidence sufficient to justify criminal proceedings, could proceed to institute such proceedings. There would be an influx of charges against employers. The need for an independent assessment of the evidence, whether such evidence could reach the threshold of being sufficient to justify criminal proceedings, is essential to protect not only employees but also employers from frivolous charges being brought against them” [1/3/24]

73. Her Ladyship's remarks underscore the vital role of independent, institutional scrutiny in the initiation of regulatory prosecutions. Were the power to assess evidentiary sufficiency and lay charges vested in every aggrieved individual, regardless of legal expertise or statutory authority, the system would be vulnerable to misuse. Employers could be subject to unfounded or ill-considered charges brought without proper investigation or objective analysis, simply because an employee *felt* wronged. Such a scenario would not only undermine the integrity of the

enforcement process but would also disrupt the balance of fairness that the statutory framework seeks to preserve.

74. Carter J's recognition that "*an independent assessment of the evidence... is essential to protect not only employees but also employers*" reflects a broader principle of administrative justice: that regulatory prosecutions must be the product of reasoned and lawful discretion exercised by a competent authority, not merely the subjective grievance of an interested party. This ensures that prosecutions are not brought arbitrarily or vindictively, but only where there is a proper legal and evidential foundation.
75. The statutory design of section 78 does not disregard the risk of delayed reporting but rather manages it through a structured and principled approach. Employers are protected not only by the six-month time limit running from the Director's knowledge, but also by the Director's duty to act in the interests of justice.

Discussion and decision

76. As the Chief Magistrate observed below, these proceedings raise a short question of statutory construction.
77. Having scrutinised the many submissions advanced by both sides I have come to the same conclusion as that reached by the Judge that the Chief Magistrate was correct to hold that in the proceedings before him the "*competent complainant*" was the Director of Labour (who inevitably would be acting with the assistance of officials designated in the Labour Act). I have reached this conclusion in the light of the fact that the charges faced by the appellant concerned breaches of the Labour Act and were laid by an official or officials empowered to do so under section 73(2) of the Labour Act acting pursuant to the Director of Labour's duty to secure the proper observance of the Act and who would have the necessary personal attributes, experience and skill to determine whether the evidence was sufficient to justify the proceedings laid before the court.
78. In my opinion, so important is it in terms of the public interest for the role of the Summary Court to try Category C Labour offences to be aligned with the regulatory regime established by the Labour Act, I find the case for this construction of section 78 to be especially strong. Accordingly, I am not persuaded by Mr Dixey's elegant construction arguments including his postulated "*purpose*" of section 78; his characterisation of section 78 as a "*jurisdiction provision*"; his reference to other provisions in the Labour Act such as section 54(2) that imposes an absolute time bar of 90 days for the bringing of a claim for unfair dismissal; and his reference to those provisions in other regulatory statutes that stipulate that prosecutions

must be brought by the Director of Prosecutions, such as section 35(2) of the Securities Investment Business Act and section 21(2) of the Misuse of Drugs Act.

79. Mr Dixey also cogently submitted that the Chief Magistrate's interpretation of section 78 was wrong because it could give rise to years of delay if the employee is extremely dilatory in complaining to the DLP about a wages issue, following which the charges are laid within just short of six months. In my judgment the possibility of such delays is not a reason for overturning the construction of section 78 that the Magistrate upheld. If, unusually I suspect, there is such a delay it will not have to amount to an "*abuse of process*" as contemplated by Mr Dixey before it can lead to the dismissal of proceedings. The court is under an overriding duty to act fairly and if the delay is such that the defendant cannot have a fair trial the charge will be dismissed. I would imagine that the DPL is energetically using its media capabilities to encourage members of the public to report speedily to the DLP complaints involving the non-payment of the different types of remuneration, wages, overtime, holiday pay etc. If this is not so, I respectfully suggest that the DLP might consider adopting such a media campaign.
80. It is not the first time that the reasoning that has led to my upholding the Chief Magistrate's decision has been judicially adopted. As long ago as 8 December 2014 Magistrate McFarlane deployed the same reasoning in paragraph [11] of her judgment in *R v Island Builders* (op. cit.) and Magistrate Hernandez followed suit in her judgment dated 27 April 2015 in *R v Island Builders Ltd* (op. cit.) in paragraphs 13 and 19, plus footnote2. I pay tribute to these decisions which have played a useful part in my consideration of the issues in play in this appeal.
81. For the reasons I have given above, I propose that this appeal be dismissed and that the parties should serve written submissions as to costs both here and in the Grand Court, the Appellant's submissions to be formally served within 7 days of the date of this judgment, the Respondents' submissions in reply to follow within the next 7 days and the Appellant's reply submissions thereto within the next 7 days.

BEATSON JA

82. I agree.

GOLDRING P

83. I also agree.