



# In The Supreme Court of Bermuda

## APPELLATE JURISDICTION

**2016: 20**

LOUIS SOMNER

Appellant

-v-

THE QUEEN

Respondent

**2016 : 34**

NICHOLE TUCKER

Appellant

-v-

FIONA MILLER

(Police Sergeant)

Respondent

## JUDGMENT

(in Court)<sup>1</sup>

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<sup>1</sup> The present judgment was circulated to the parties without a hearing.

*Appeal from Magistrates' Court-jurisdiction of Drug Treatment Court to deal with alcohol addiction and traffic offences-Criminal Code section 68- Eligibility Criteria (Drug Treatment Programmes) Notice 2001*

Date of hearing: August 24, 2016

Date of Judgment: August 30, 2016

Mr. Saul Dismont, Marshall Diel and Myers Limited, for the Appellants

Ms. Nicole Smith, Office of the Director of Public Prosecutions, for the Respondents

## **Introductory**

1. The two appeals were heard together because they raise the same essential ground of appeal. The relevant background may best be described by reproducing the introductory paragraphs of Mr Dismont's 'Appellants' Submissions':

*"1. The Appellants both suffer from substance misuse and, having pleaded guilty to impaired driving offences, they are seeking to overturn their sentences in order that they can gain the rehabilitative benefit of Drug Treatment Court ('DTC').*

*2.The ground of appeal in each case is that the Learned Sentencing Magistrates erred in not properly applying S.68 of the Criminal Code Act 1907, which provides for the Drug Treatment Court Programme.*

*3.The Appellants both have a history of impaired driving offences and in 2015 they pleaded guilty to another impaired offence, committed whilst they were already disqualified for impaired driving. Both Appellants suffer from addiction to alcohol and attribute their offending behaviour to their substance misuse. At sentencing they revealed their addictions but their requests for Drug Treatment Court were refused."*

## **Overview of the disputed legal issues**

2. In the 1<sup>st</sup> Appellant's case in the Magistrates' Court (Wor. Archibald Warner), the Learned Magistrate gave no written reasons for declining to refer the driving whilst disqualified offence to which the Appellant had pleaded guilty (on December 17, 2015) to the DTC. It is common ground that he found that this offence was not an eligible one. In the 2<sup>nd</sup> Appellant's case, she pleaded guilty to driving whilst disqualified and refusing to supply a specimen on January 5, 2016. The Learned Senior Magistrate expressed sympathy for the underlying merits of the Applicant's submissions, but ruled that the DTC scheme did not apply to traffic offences because

they were distinct from criminal offences. Although the Learned Senior Magistrate expressed the view that even if the 2<sup>nd</sup> Appellant was legally eligible, the existing DTC structure might not be appropriate, this was on any view not a formal finding.

3. Mr Dismont wisely focussed his attack on the operative findings in both cases that the nature of the offences of which the Appellants had been convicted disqualified each of them from formal consideration for the DTC programme. He argued that there was no legal distinction between traffic offences and other criminal offences which was relevant for DTC purposes under section 68 of the Criminal Code. The DTC legislative scheme was designed to provide an alternative treatment option to offenders with addiction problems and the Appellants met the eligibility criteria prescribed. It followed that the Magistrates' Court in each case had erred in law in refusing to find that the Appellants were potential DTC clients, subject to a formal assessment of their needs.
4. This otherwise careful analysis breezed over what I considered to be a difficult and unavoidable threshold point; a point which both of the counsel who appeared below<sup>2</sup> and the Learned Senior Magistrate clearly intuitively felt to be unproblematic in the 2<sup>nd</sup> Appellant's case. Does section 68 and the DTC apply to offenders addicted to all 'drugs', controlled (or illegal) or otherwise, including alcohol? Or is the legislative scheme limited to persons with 'drug' addiction problems in the popular local sense, which would exclude legal drugs and, in particular, alcohol? The only point that was argued at first instance, perhaps less than comprehensively, was whether the legislative scheme extended to traffic offences.
5. In response to interventions from the Bench, Ms Smith embraced the narrower interpretation of the term "drug" in section 68, both on linguistic grounds and policy grounds, She argued that the limited scope of the term "drug" was clear, a point she reiterated when helpfully supplying a copy of the Explanatory Memorandum to the Bill which introduced the current version of section 68 into the Criminal Code in 2001 to the Court after the hearing. On the traffic offences point, she contended that legislative reform was necessary to create a dedicated alternative court scheme for drivers with alcohol problems, as illustrated by the development of 'DWI' courts in the United States; a related publication was also submitted to the Court. Crown Counsel also defended the Learned Senior Magistrate's view that traffic offences did not qualify, relying more on practical than conceptual grounds. The obligatory disqualification scheme and public safety implications of now prevalent drink driving offences made it undesirable for such traffic offenders to be able to opt out of deterrent sentencing required to protect the public.
6. Two issues accordingly fall for determination:

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<sup>2</sup> Ms Smith did not appear in the Magistrates' Court.

- (1) does the DTC legislative scheme confer jurisdiction on the DTC to deal with alcohol addiction?
  - (2) does the DTC legislative scheme apply to offenders who have admitted committing traffic offences?
7. I decline to consider the practical question of whether or not a suitable DTC treatment programme can be prepared in relation to alcohol. That is a question for the Magistrates' Court to decide in each case after determining that an offender is otherwise eligible for the DTC.
8. It is nevertheless important to view these abstract legal questions in the factual human context of the present appeals. The offences to which the Appellants pleaded guilty and the penalties which they received are as follows:
  - (1) 1<sup>st</sup> Appellant: failing to provide a specimen of breath (section 35C Road Traffic Act 1947-fined \$4000 and disqualified from driving for 5 years) and driving whilst disqualified (section 123 Motor Car Act 1951-fined \$500);
  - (2) 2<sup>nd</sup> Appellant: failing to provide a specimen of breath (section 35C Road Traffic Act 1947-three months imprisonment suspended for 12 months and disqualified from driving for 5 years concurrent with previous disqualification) and driving whilst disqualified (section 123 Motor Car Act 1951- three months imprisonment suspended for 12 months). In addition she was made subject to a 12 months' Probation Order with conditions that she (a) abstain from alcohol and illicit substances and (b) submit to random drug testing.
9. Two repeat offenders have reportedly privately instructed their lawyer to avail themselves of what Mr Dismont described as the "carrot and stick" regime of the DTC with a view to overcoming the underlying cause of their offending. Their counsel argued that the DTC option, properly understood, is a far more rigorous and demanding one than the traditional penalties which have been imposed.

**Does section 68 of the Criminal Code apply to offenders addicted to alcohol?**

**The relevant statutory provisions in their context**

10. Section 68 (“*Drug treatment programmes*”) is found in Part IV (“*PURPOSE AND PRINCIPLES OF SENTENCING*”). The jurisdiction of the DTC the section creates is defined in the first three subsections:

*“(1) There is established a special magistrates court to be known as the Drug Treatment Court.*

*“(2) The Chief Justice may designate any magistrate as a judge of the Drug Treatment Court.*

*“(3) Where an accused other than a corporation—*

*(a) pleads guilty to or is found guilty of an offence;*

*(b) appears to the court to satisfy the eligibility criteria; and*

*(c) is willing to undergo an assessment by a qualified person to determine his suitability for a drug treatment programme,*

*the court may by order direct the offender to appear before the Drug Treatment Court.”*

11. Persons entitled to seek referral to the DTC must not only have pleaded guilty to an offence, but must also apparently meet the “*eligibility criteria*” and be willing to be assessed by a “*qualified person*” for suitability for a “*drug treatment programme*”. These terms are defined in section 68 as follows:

*“(9) In this section—*

*(a) ‘drug treatment programme’ means a drug treatment and rehabilitative programme approved by the Minister responsible for drug prevention;*

*(b) ‘eligibility criteria’ means eligibility criteria for participation in a drug treatment programme that are approved by the Minister responsible for drug prevention and are published in the Gazette;*

*(c) ‘qualified person’ means a person approved by the Minister responsible for drug prevention as qualified to conduct an assessment under this section.”*

12. While the natural and ordinary meaning of the word ‘drug’ in its popular sense may not include ‘alcohol’ or other legal addictive substances, it is a notorious fact that in chemical or scientific terms alcohol is a drug which is potentially addictive.
13. Ms Smith for the Crown conceded that neither section 68 nor the Explanatory Memorandum shed any direct light on the meaning of the word ‘drug’ but she insisted alcohol was not included because of the distinction made in section 70 between “alcohol” and other drugs. Mr Dismont responded by referring the Court to the second meaning of the ‘*Black’s Law Dictionary*’ definition of the word ‘drug’:

*“A natural or synthetic substance that alters one’s perception or consciousness.”<sup>3</sup>*

14. This definition is not dispositive because other definitions may be found which define the word ‘drug’ in a narrower way, restricted to either drugs used for medical treatment or illicit drugs. In any event, the crucial term in section 68 is “*drug treatment*”. The natural and ordinary meaning of the term ‘drug treatment’ is accordingly somewhat ambiguous. It can be said to embrace programmes designed to deal with substance abuse in its broader rather than its narrower sense<sup>4</sup>. However, the term is also frequently used in the narrower, illicit drugs, sense. The wider statutory context of Part IV of the Criminal Code does not resolve this issue in a straightforward way.
15. Under section 70B of the Act, the Court is empowered to impose probation conditions requiring the offender to:

*“(b) submit to drug testing as directed by the court;*

*(c) abstain from—*

- (i) the consumption of alcohol or other intoxicating substance,*
- (ii) the consumption of controlled drugs within the meaning of the Misuse of Drugs Act 1972 except in accordance with a medical prescription; ...”*

16. ‘Drug testing’ under the probation regime clearly contemplates testing for alcohol, other (legal) intoxicants and for controlled drugs. Section 62 (dealing with presentence reports) speaks of a court considering “*a probation order which will contain a requirement that the offender submit to treatment for alcohol or drug addiction*” (subsection (5)). Under section 70B, ‘drug testing’ contemplates testing for all intoxicants as part of a treatment programme. Section 62(5) implicitly

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<sup>3</sup> 8<sup>th</sup> edition, page 535.

<sup>4</sup> For instance, the United States National Institute on Drug Abuse treats alcohol as a ‘drug’:  
<http://www.drugabuse.gov>.

contemplates treatment for all forms of drug addiction including alcohol, but deploys language which distinguishes ‘alcohol’ from ‘drugs’ (presumably controlled drugs and, to use the section 70B (c) (i) term, ‘other intoxicating substances’.

17. It is not obvious or self-evident what legislative object would be achieved by making treatment for alcohol dependency available to offenders in the probation context but making it unavailable in the DTC context. Does “*drug treatment programme*” in section 68 mean programmes addressing addiction to:

- (a) only controlled or illicit drug treatment programme;
- (b) controlled drugs and other intoxicants but not alcohol; or
- (c) all drugs which are linked to offences which the offender has admitted (i.e. controlled drugs, alcohol and other intoxicants)?

18. Mr Dismont placed before the Court an important piece of subsidiary legislation which sheds more light on the operational scope of the DTC regime. The Eligibility Criteria (Drug Treatment Programmes) Notice 2001 (“the Eligibility Notice”) was relied upon mainly to demonstrate that traffic offences were not excluded offences. However it also makes the following provision relating to “*Drug History*”:

*“Drug History*

- (i) *the offender has at least three prior positive tests with the Bermuda Assessment and Referral Centre in the last 12 months and an assessor of the Centre recommends, after examining the type of substance and the frequency and pattern of abuse, that the offender participate in the Drug Treatment Court programme;*
- (ii) *the offender has a verified history of drug abuse in the last 12 months. This must be confirmed by a professional, for example, a medical practitioner; or*
- (iii) *the offender tests positive for a substance on the day of arrest or initial appearance or after a random spot test and an assessor of the Centre recommends, after examining the type of substance and the frequency and pattern of abuse, that the defendant participate in the Drug Treatment Court programme.”*

19. The Eligibility Notice sheds no decisive light on the question of whether alcohol abuse qualifies for entry into the DTC regime. This question turns on whether one selects a narrow popular definition of the term ‘drug’ or a broader scientific and therapeutic definition in the governing provisions of section 68 of the Code. The

definition in ‘*Black’s Law Dictionary*’ upon which the Appellant’s counsel relied is an example of a scientific or therapeutic definition.

### **Legislative history**

20. Before considering the Explanatory Memorandum on the Criminal Code Amendment Act Bill, which introduced the current version of Part IV in which section 68 is found, it is helpful to restate the use to which the legislative history of a provision may properly be put:

*“47. The first question is what weight can be given to the Explanatory Memorandum itself. Oliver Jones’ ‘Bennion on Statutory Interpretation’, Sixth Edition, quotes the following extract from the judgment of Brooke LJ in Flora (Tarlochan Singh)-v- Wakom (Heathrow) Ltd. [2006] EWCA Civ 1103 at [15]-[17] as authority for the use to which an explanatory memorandum may be put. The Explanatory Memorandum cannot simply be adopted wholesale and substituted for the presumed intent of Parliament as expressed in the legislative enactment itself:*

*‘15. The use that courts may make of Explanatory Notes as an aid to construction was explained by Lord Steyn in R (Westminster City Council) v NASS [2002] UKHL 38 at [2]-[6]; [2002] 1 WLR 2956; see also R (S) v Chief Constable of South Yorkshire Police [2004] UKHL 39 at [4], [2004] 1 WLR 2196. As Lord Steyn says in the NASS case, Explanatory Notes accompany a Bill on introduction and are updated in the light of changes to the Bill made in the parliamentary process. They are prepared by the Government department responsible for the legislation. They do not form part of the Bill, are not endorsed by Parliament and cannot be amended by Parliament. They are intended to be neutral in political tone: they aim to explain the effect of the text and not to justify it.*

*16. The text of an Act does not have to be ambiguous before a court may be permitted to take into account an Explanatory Note in order to understand the contextual scene in which the act is set (NASS, para 5). In so far as this material casts light on the objective setting or contextual scene of the statute, and the mischief to which it is aimed, it is always an admissible aid to construction. Lord Steyn, however, ended his exposition of the value of Explanatory Notes as an aid to construction by saying (at para 6):*

*‘What is impermissible is to treat the wishes and desires of the Government about the scope of the statutory language as reflecting the will of*

Parliament. The aims of the Government in respect of the meaning of clauses as revealed in Explanatory Notes cannot be attributed to Parliament. The object is to see what is the intention expressed by the words enacted. [Emphasis added]<sup>5</sup>

21. The Explanatory Memorandum to the Bill which introduced Part IV of the Criminal Code may accordingly be referred to insofar as it “casts light on the objective setting or contextual scene of the statute, and the mischief to which it is aimed”. The setting, contextual scene and mischief to which the new legislative scheme was aimed all clearly entailed the objective of redressing an historical bias towards imprisonment (as opposed to non-custodial penalties) as a criminal sentencing tool. This is apparent from the first paragraph of the Bill:

*“This Bill gives statutory effect to the recommendations of the report of the Legislative Task Force Alternatives to Incarceration Steering Committee. The Committee recommended a complete revision of the sentencing provisions of the Criminal Code 1907 and the Bill...repeals sections 53 to 71 and substitutes new provisions which enunciate the purpose and principles of sentencing and provide a range of alternatives to incarceration of the offender.”*

22. I have previously acknowledged the significance of this legislative policy underpinning Part IV of the Criminal Code in the following terms:

*“83. Section 53 of the Criminal Code provides that: ‘The fundamental purpose of sentencing is to promote respect for the law and to maintain a just, peaceful and safe society...’ The guidelines that follow were enacted in 2001 as part of a comparatively new Government’s Alternatives to Incarceration programme.*

*84. From an English perspective, they may be seen as simply codifying the common law. From a Bermudian law perspective, however, these statutory provisions ought properly to be viewed as an attempt to make a decisive break with Bermuda’s historical legal past in which the criminal justice system had displayed an unhealthy enthusiasm for (at worst) and casualness about (at best) the incarceration of Bermudian men of African descent, both during and after the slavery era...”*

23. The commentary in the Explanatory Memorandum on what is now section 68 is accordingly coloured by this overarching legislative purpose:

*“Section 68 provides for the drug treatment court. The court may, with the agreement of the offender, instead of convicting him of an offence, order that*

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<sup>5</sup> *Minister of Home Affairs-v-Carne and Correia* [2014] Bda LR 47; (2014) 84 WIR 163.

[he] *be enrolled in [a] drug treatment programme of such duration and subject to such conditions as the court may specify in the order.*

*Where the offender fails to comply with the rules of the programme or the conditions set by the court, he may be sentenced for the original offence.”*

24. If the dominant mischief which Part IV of the Criminal Code is designed to meet to enlarge the range of non-custodial options available to the Court, this favours giving the phrase “*drug treatment*” in section 68 a broader rather than a narrower construction. It would, on reflection, be both absurd and contrary to public policy to construe section 68 as designed to:

(a) provide treatment (and an alternative to incarceration) to offenders who have become addicted to illicit drugs purchased the black market from persons operating a criminal enterprise; and

(b) deny treatment (and an alternative to incarceration) to offenders who have become addicted to legal drugs acquired from respectable businesses whose operations are regulated by the Government.

25. The legislative history of section 68 provides decisive support for viewing the DTC as potentially available to offenders suffering from all forms of substance abuse, not simply the abuse of controlled drugs.

**Summary: jurisdiction of DTC to deal with offenders addicted to alcohol**

26. It is necessary to distinguish the question of whether the term “*drug treatment*” in section 68 of the Criminal Code potentially includes treatment for alcohol addiction from the administrative question of whether such programmes presently exist or can conveniently be developed. More importantly still are the two following considerations.

27. It would be inconsistent with alternatives to incarceration impulses which informed the enactment of section 68 of the Criminal Code in its present form for the section to be construed as intended to deny access to the DTC for persons addicted to alcohol and, by extension, other intoxicants which are not controlled drugs. Such an interpretation also produces the absurd result that Parliament is deemed to have extended a wider range of non-custodial options for persons whose offending is materially influenced by illegal as opposed to legal drugs<sup>6</sup>.

28. For the above reasons I find that the DTC is jurisdictionally competent to deal with offenders addicted to any form of drug, including alcohol. The Learned Senior

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<sup>6</sup> This interpretation would also be inconsistent with what appears to be the predominant US approach. According to a May 2016 US Department of Justice publication ‘*Drug Courts*’, “*Drug courts are specialized court docket programs that target criminal defendants and offenders, juvenile offenders, and parents with pending child welfare cases who have alcohol and other drug dependency problems*”: [www.ncjrs.gov](http://www.ncjrs.gov). This document was not addressed in argument but is merely confirmatory of a conclusion I would in any event have reached on this issue.

Magistrate and both counsel who appeared in relation to the 2<sup>nd</sup> Appellant's case below were both right in their intuitive assumptions that alcohol fell within the ambit of section 68.

### **Does section 68 of the Criminal Code apply to traffic offences?**

#### **Relevant statutory provisions**

29. The scheme of the Act is to make all offences potentially qualifying ones but to permit the Minister to decide which offences are eligible. Section 68 provides so far as is material:

*“(3)Where an accused other than a corporation—*

*(a)pleads guilty to or is found guilty of an offence;*

*(b)appears to the court to satisfy the eligibility criteria;...*

*(9)... (b) ‘eligibility criteria’ means eligibility criteria for participation in a drug treatment programme that are approved by the Minister responsible for drug prevention and are published in the Gazette...”*

30. Section 68(3) makes any “offence” potentially eligible. ‘Offence’ is legally defined in section 4(2) of the Interpretation Act 1951 (for the purposes of “every Act and in every statutory instrument”) in the following open-ended way:

*“‘offence’ means any act or omission which is punishable by or under any statutory provision...”*

#### **The Eligibility Notice**

31. The Eligibility Notice in terms of eligible offences imposes (in paragraph 2) the following criteria in respect of the “Current Charge”, which obviously means the offence before the court when eligibility for the DTC is being determined:

*“(i) Pending Trial*

*The offender is charged with one or more offences triable summarily, and is able to be maintained in the community*

*(ii) Pending Sentencing*

*Offenders charged with offences triable summarily, who have pleaded guilty or have been found guilty, and are able to be maintained in the community, will be eligible for participation in the Drug Treatment Court programme.”*

32. The primary requirement is that the offender be charged or convicted of an offence triable summarily i.e. in the Magistrates’ Court. Any offences which can only be tried

in the Supreme Court are implicitly excluded. The same paragraph in the Notice explicitly provides (under “Criminal History”) that if the offender has been convicted of an “excluded offence” within the last three years, he will not be eligible. It is possible that the listed offences are “excluded” for all eligibility purposes. Be that as it may, traffic offences are not a class of offence which is excluded:

*“(i) No previous excluded offences for which an offender was convicted, serving a sentence, on probation or on licence within the last three years.*

*(ii) For the purpose of Drug Treatment Court eligibility determinations, excluded offences include:*

*murder;  
manslaughter;  
infanticide;  
sexual assaults resulting in a sentence of imprisonment;  
any violent offence named in the Children Act 1998 deprivation of liberty;  
robbery;  
arson;  
demanding property with menaces;  
all offences under the Firearms Act 1973;  
importation or supply of drugs or possession with intent to supply;  
felony assaults;  
attempt or conspiracy to commit any of the above offences.”*

### **The traffic offences in question**

33. The first offence is under section 35C of the Road Traffic Act 1947. Subsection (7) provides:

*“(7) Any person who, without reasonable excuse, fails or refuses to comply with a demand made to him by a police officer under this section commits an offence.”*

34. The second offence is under section 123 of the Motor Car Act 1951 which provides that any person who drives whilst disqualified “*commits an offence against this Act.*” The Traffic Offences (Penalties) Act 1976 (in Schedule 1) provides the following penalties for these two offences:

(a) section 35C RTA: a fine of \$1000 and/or 12 months imprisonment with discretionary disqualification for a first offence (obligatory for subsequent offences) with automatic penalty points in any case;

(b) section 123 of the MCA: \$1000 or 3 months imprisonment with discretionary disqualification for a first offence (obligatory for a second offence) with obligatory penalty points in any case; and

(c) classifies both offences as “summary” under Head 4. According to section 2(2)(b) of the Act, “*head 4 of the Schedule shows whether the offence is punishable on summary conviction or on indictment or either in one way or the other*”.

35. It is impossible to identify any cogent basis on which it could be contended that traffic offences generally, and the traffic offences concerned in the present case, do not qualify as “offences” for the purposes of section 68(3) of the Criminal Code. I have admittedly myself always assumed that there is an ill-defined but clear dividing line between ‘criminal offences’ and ‘traffic offences’. This may have been the basis of the submission made on this point by Crown Counsel which the magistrates’ Court was persuaded to accept. The only basis I can now identify for my own supposition that a distinction existed between criminal offences and traffic offences is the fact that for many years the Police as an administrative matter maintained separate ‘criminal’ and ‘traffic’ records. The present appeal has demonstrated, however, that any assumption that traffic offences are not criminal offences is entirely without substance. As Mr Dismont rightly submitted without contradiction, this Court has in the comparatively recent past applied the provisions of Part IV of the Criminal Code in the context of imposing sentences for traffic offences without doubting the Code’s applicability: *R-v-Olivera* [2005] Bda L.R. 17 (Kawaley J); *Grant-v-The Queen; Lambe-v-Miller (PS)* [2012] Bda LR 17 (Ground CJ).
36. Ms Smith submitted that the nature of traffic offences and related penalties were so distinct that a separate legislative and administrative structure was required to deal with such offences, pointing to an American example of such an approach (driving while under the influence or DWI courts)<sup>7</sup>. There may well be the need to tweak administrative structures but it is not for this Court to exclude a category of offences which the Minister has not decided to include in the ‘excluded’ list. The most important problem she identified was the need to prevent an offender liable to an obligatory disqualification from driving. But Mr Dismont persuasively countered that there was a simple solution. The DTC could impose a non-driving condition on an offender under section 68(4) and, if the condition was breached, impose the disqualification penalty which the offender was previously liable to receive under section 68(6) (a) (i) or (b) (iii).

### **Summary**

37. In my judgment it is important to distinguish between two questions. The first is the question of whether section 68, properly construed in conjunction with the Eligibility Notice, includes or excludes traffic offences. The second question is whether or not as a matter of legislative or executive policy, traffic offences ought to be excluded. Only the first question is a matter for this Court and falls to be determined in the context of the present scheme. The second question is a matter for the Legislature and the Executive. It is true that the practicability of a certain interpretation of a statute may be

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<sup>7</sup> National Center for DWI Courts, ‘*The Ten Guiding principles of DWI Courts*’. My own researches suggest that this is not the only approach although it may well be the more common approach. There are examples of “hybrid” treatment courts as well.

taken into account when construing a provision because Parliament is presumed not to have intended an unworkable result.

38. However there is no ambiguity in the scope of section 68 and the Eligibility Notice and in my judgment there is no credible basis for this Court finding on the basis of mere argument unsupported by evidence that the inclusion of eligible traffic offences in the DTC regime would be obviously unworkable. Accordingly, I resolve this second issue in favour of the Appellant.

### **Conclusion**

39. The Magistrates' Court in two separate cases declined to consider referring the Appellants' cases to the Drug Treatment Court on the explicit or implicit basis that section 68 of the Criminal Code does not apply to traffic offences. This Court has concluded not without some difficulty that this jurisdiction does in fact exist and that, as was tacitly agreed below, section 68 embraces alcohol addiction<sup>8</sup> as well. This conclusion is based upon interpreting section 68 of the Code in conjunction with the current version of the Eligibility Notice issued by the Minister under that section in 2001.
40. Whether the Appellants are suitable candidates for the DTC can now be considered on the merits for the first time by the Magistrates' Court. The appeals are allowed and the matters remitted to the Magistrates' Court to be dealt with according to law.

Dated this 30<sup>th</sup> day of August, 2016 \_\_\_\_\_  
IAN RC KAWALEY CJ

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<sup>8</sup> Because of the way in which section 68 is drafted, I found the question of whether it extended to alcohol to be difficult and ultimately found that it did extend to this 'drug'. The Learned Senior Magistrate and counsel appearing in one of the two cases below reached the same conclusion with no difficulty at all. The contentious traffic offences issue was argued more fully in the context of the present appeal.