

THE ROAD TRAFFIC ACT - MATTERS ARISING

INTRODUCTION:

There was a time when only the least fortunate of lawyers went or were sent to the Traffic Court.

Indeed, my first appearance in court occurred in that manner - an executed Bench Warrant at the Traffic Court before His Honour Mr. Lopez of blessed memory. Being the youngest attorney, I was dispatched to Orange Street where the court was then located. Afterwards, my client's gratitude turned to distress when he heard that it had been my first case!!!!

Not so nowadays, with points, substantial fines, the prospect of suspension of driver's licences and the breathalyser, the Traffic Court is now boom town for advocates.

It may be for this reason that I have been asked to present a paper on the subject.

GENERAL REVIEW:

The Road Traffic Act and its Regulations were passed in 1938 but have been substantially amended from time to time, (approximately thirty-two (32) times up to 1996).

The Act establishes a Road Traffic Control Authority and Area Authorities whose function it is to regulate and control traffic on roads, to inspect motor vehicles, test

applicants for driver's licence, grant certificates of fitness, keep records of endorsements of drivers' licences, keep records of accidents on roads, report annually to the Minister on all accidents involving death or injury, and to enforce the Act and regulations.

The Authority is given wide powers of delegation and in 1970 an amendment was made which attempted to ensure that nothing done by the Authority would be invalidated by a vacancy or defect in appointment of members [Section 8].

The Act also has provisions for the Regulation of Motor Vehicles. In this regard a Certificate of Fitness is required. [Section 10(3) allows for the revocation at any time of the certificate]; An Annual Licencing Duty is payable [Section 12]; and the Minister of Finance is empowered to amend the duties and may do so as to affect any "**existing licence**" [Section 12(3)]. This provision came into effect in 1967 but research has not revealed a challenge to it in court. In my view it may be of dubious constitutionality, however retroactive taxation has been upheld by the courts, **Bata Shoe Co. V. CIR** (1976) 24 WIR 172 at 208 but Quere does this apply when the additional fees are levied on an expired licence?

There is a "**month of grace**" in respect of the duty payable on each motor vehicle licence [Section 13 (3) (b) and 13 (4)].

The licencing of drivers is also regulated by the Act. There are three (3) categories. It is of interest to note that a private driver's licence entitles the holder to drive "**not for reward, trucks, motor cars and invalid carriages**" [Section 16(4)]; A "truck" is a motor vehicle not being classified as a motor car which is "**constructed.....**

to carry a load or passengers or both” [Section 11(1) (b)]. However, the Authority may upon issuing a driver’s licence restrict the description or class of vehicle he is competent to drive and specify it in the licence. [Section 16 (5)].

The Act also creates driving offences related to speed [Section 26]; Reckless or dangerous driving [Section 27]; causing death by reckless or dangerous driving [Section 30]; careless driving [Section 32], note that this is a criminal offence and in cases of careless driving it matters not whether the motorist’s actions are due to negligence, incompetence, inexperience, recklessness or deliberate intent. The only mens rea required is simply to show that the prohibited physical act done by the accused was directed by a mind that was conscious of what his body was doing, **Wilkinson Road Traffic Offences** 2nd ed. P. 281 citing **R v Lawrence** [1981] RTR 217 at 220. The test is whether the motorist is at fault, that is, whether he has departed from the standard of a reasonable, competent and prudent driver in all the circumstances of a particular case and needs to be established beyond reasonable doubt: **Walker v Tolhurst** [1976] RTR 513. The offence of driving under the influence existed long before the breathalyser [Section 34]. It was necessary to prove that due to the consumption of drink or drug, the driver was incapable of having proper control of the vehicle. With the advent of the breathalyser it also became an offence to drive or attempt to drive or be in charge of a motor vehicle on a road or other public place if one had consumed alcohol in such quantity that the proportion in the breath or blood exceeded the prescribed limit. [Section 34A].

The Act has 123 Sections and 2 Schedules. This paper will therefore not

attempt to review it in its entirety. Rather, I deal with subject areas highlighted below:

“TICKETS”, THE POINTS SYSTEM AND THE SUSPENSION OF DRIVER’S LICENCE:

In or about 1993 amendments were made to the Act which sought to speed up and simplify the processing of persons charged with traffic offences. Thus, a Notice was to be issued which gave the offender a chance of either paying his fine at the Tax Office or if he wished to contest the matter by attending court on a date stated in the Notice.

Upon payment of the fine or conviction, a certain number of penalty points would be recorded against the licence.

This was done by amendment to Section 116 which made provision for the issue of Notices by traffic wardens in respect of vehicles parked. The amendment widened the category of offence in respect of which notices may be issued.

Section 116 (1) now reads:

“This Section shall apply to any offence created by or under an enactment and punishable on summary conviction -

- (a) being an offence committed in respect of a vehicle -
 - i) by its being left or parked on a road without the lights or reflectors required by law;
 - ii) by its obstructing a road or waiting, or being left or parked or being loaded or unloaded, in a road; or

- iii) by the non-payment of the charge made at a parking place on a road; and
- (b) being an offence specified in the Appendix:

Provided that this Section shall not extend to circumstances where, pursuant to Section 22, a person is required by a Constable to produce his driver's licence but is unable to do so."

It is noteworthy that Section 116(2) provides, "**no person shall then be liable to be convicted of that offence if the fixed penalty is paid in accordance with this section**".

The requirements of the notice are set out in detail in Section 116(6) and ought to be carefully perused because it has been my experience that police officers tend not to carefully prepare these Notices. In Linstead, I was successful in having a matter dismissed where the offence was not specified. Interestingly, the word "ticket" does not appear in the relevant sections although the subhead to Section 116 uses the term. The notice is however commonly referred to as a traffic ticket.

Section 116(7) deems a notice "affixed" to a vehicle as given to the person liable for the offence.

Section 116(10) states that in any proceedings no reference shall be made to the giving of the notice. This of course is contrary to our daily experience in which persons are called with reference to the notice and exists because the Act originally contemplated issuance of court process if the fine was not paid at the Tax Office. The Justice of the Peace Jurisdiction Act was however amended in March 1994 to allow the

Notice to be treated as an Information or Summons, Section 2(2) now provides:

“For the purposes of this Act any Notice given under Subsection (2) of Section 116 of the Road Traffic Act may be construed as an information and Summons”.

In tandem with the attempt to widen the number of offences to which Section 116 applied the 1993 Amendment created a new Section 59A for the purpose of introducing a points system. It is in this section and not in Section 116 that demerit points are imposed on a person served with a Section 116 Notice who pays the penalty, Section 59A(3)(a). Section 59A also provides that a court before whom a person is convicted “shall” order that the demerit points specified be recorded against the licence.

Disqualification from holding a driver’s licence may be ordered by a court Section 59A(1)(b), but note that a court ought not to impose penalty points or order disqualification due to a compilation of points if the punishment imposed for an offence by the court includes disqualification.

Section 59A(4) (a) to (c) sets up disqualification in consequence of accumulation of points. So that for example with ten (10) or more but less than fourteen (14) points a person “shall” be disqualified for holding or obtaining a driver’s licence.

A period of three (3) years without having points recorded against a licence (not counting any periods of suspension) will result in points previously recorded being expunged, Section 59B.

The Act is silent as to who shall disqualify a licensee when the points are accumulated. Section 19(A) states that the Licencing Authority shall “refuse to grant or renew” a driver’s licence if a person is disqualified pursuant to Section 10. Further,

where it appears to the Licencing Authority that there is reason to believe that a person is not entitled to be granted a licence or the applicant is disqualified, then in relation to the holder of a licence the Licencing Authority "shall" revoke or suspend the licence.

A person is disqualified pursuant to Section 19, if:

- "(a) another licence of the same class granted to him is in force, whether the licence is suspended or not;
- (b) he is by a conviction under this Part or by an order of a court under this Part disqualified for holding or obtaining a driver's licence;
- (c) he is disqualified by virtue of any of the provisions of paragraph (a), (b) or (c) of subsection 4 of Section 59A.

The Licencing Authority suspends by giving a notice Section 19A(3). The holder should then surrender the licence without prejudice to any Appeal to the Road Traffic Appeal Tribunal. Failure to surrender a licence is made an offence.

In practice the Licencing Authority has been issuing notices purporting to suspend driver's licence due to the accumulation of points years after the points were accumulated and after the period of disqualification expired.

This situation is unjust and undesirable in that years after the last of the points are accumulated a person may conceivably find themselves faced with the prospect of suspension for offences which allegedly occurred over a period of years prior to that. After such a lapse will any reasonable person be able to recall if he committed these offences? Will it not make a mockery of the right of Appeal? Errors are possible. In one case my client had never driven on the road on which one of the offences were alleged to have been committed.

It is submitted that a failure to serve a suspension notice within the period of disqualification renders the notice of suspension void. This is because the Licencing Authority is to suspend a licence when the holder is “disqualified” Section 19A(i) and 19(1) (c).

A person is disqualified when the points he accumulates total the amounts specified in Section 59A(4). Therefore, once the period of disqualification specified has passed the licence may no longer be suspended or revoked by the Licencing Authority.

This was the view of the Law accepted by The Honourable Mr. Justice Hibbert in the matter of **Delapenha v Attorney General** Suit No. C.L. D-127/1998 on a construction Summons. The learned judge asked himself whether disqualification was automatic on the accumulation of points and held that this was the necessary inference from the statute. It was for the administrators to put their system in order so that notices suspending would be timely.

You will note that there has been no reference to British authorities in this discourse. This is because in England suspension of a driver’s licence only occurs after a judicial determination. A person whose licence may be disqualified always has an opportunity to be heard. The period of suspension commences immediately the Order is made. See **Taylor v Kenyon** [1952] 2 ALLER 726 [1983] 3 ALL. Our legislature however sought to impose an unjust system which suspends driver’s licence mechanically upon accumulation of demerit points without reference to the circumstances in which the points were incurred. As Justice Hibbert stated, conceivably an accumulation of no parking tickets over a ten (10) year period may result in

disqualification of a driver's licence even though the offence has nothing to do with one's ability or inability to drive or properly control a vehicle. This position is ameliorated but only slightly so by the provision of a right of Appeal to the Road Traffic Appeal Tribunal where "any person" is aggrieved by the "revocation or suspension" of a licence. The Appeal Tribunal may order the Authority to give such a person a hearing, Section 21(7). In the interim, however, the driver's licence is to be surrendered.

In England, there is a discretion as to the number of points for some offences and in some instances as to whether disqualification is to result. Licences are to be surrendered for the purpose of having the points endorsed. For a general discussion, see **Wilkinson Road Traffic Offences** - 12th edition p. 735 et seq.

There has been some criticism of our points structure, and the attached comparative schedule of points supports the critics.

DRUNKEN DRIVERS, THE BREATHALYSER AND THE ROAD TRAFFIC (AMENDMENT) ACT 1995:

The Road Traffic (Amendment) Act came into effect on the 29th March, 1995 and was designed to deal with drunken drivers. This legislation is almost identical to the provisions in relation to drunken drivers under the Road Traffic Act in England.

There are four categories of offences and these are as follows:-

- (1) Driving, attempting to drive or being in charge of a motor vehicle on a road or other public place while the level of alcohol in the breath or blood exceeds the prescribed limit (hereafter called the main offence). Section 34A.

- (2) Failing to provide a specimen of breath without reasonable excuse.
Section 34B.
- (3) Failing to submit to a breath analysis.
- (4) Wilfully doing something to alter the concentration of alcohol in the breath or in the blood. Section 34C(3) proviso (b).

The first offence is the main offence.

1. **The Main Offence of Drunken Driving:**

The following persons may commit the offence:

- (i) Drivers - In England the Courts have decided that a driver is a person who has some control over the direction and movement of a vehicle. In R v McDonagh 1974 RTR 372 the defendant who was pushing and steering a vehicle was not driving it. However, in Scotland, the Courts held that such a person was driving. The engine of a vehicle need not be running for it to be driven and use of the driver's controls is sufficient. In R v Kitson (1995) 39 Cr. App. R. 66 the accused asleep in car woke up to find it moving and steered it erratically to a verge and was held to be the driver.
- (ii) Persons attempting to drive - These are persons who do something which is sufficiently proximate to driving. For example, inserting the wrong key in the ignition and attempting to start the vehicle.
- (iii) Persons in charge of the vehicle - The English Courts have decided that persons in charge of a vehicle fall into two categories:

- The owner or possessor or recent driver of a vehicle will be in charge as long as he retains actual control over the vehicle and until he has relinquished his charge. In **Leach v Evans** [1952] 2 AER 264 the intoxicated accused approached a police officer and asked assistance to find his van. The van was 3 yards away. Lord Goddard held that the accused was in “charge”.

- A person sitting in the vehicle or otherwise involved with it in circumstances which show that he has assumed charge of or actual control of the vehicle, although he is not the owner, lawful possessor or recent driver of it.

See **DPP v Watkins** (1989) 1 AER 1126 in which the person convicted was sitting in a car he did not own with keys for a different make of car which keys fit the ignition of the car.

There was no evidence that the key could start the car.

(iv) Aiders, Abettors, Counselors - A person will aid, abet, counsel or procure this offence if he knew that or was reckless, whether the principal offender had consumed excess alcohol and aided, abetted, counselled or procured the commission of the offence.

(b) Places where the offence may be committed

The offence may be committed on a road or other public place. The use of the word other, suggests that it must be a public road. A public road or

public place is any road or place to which the public at large (and not just a special class of the public) have access. Lord Parker has held that for a public place to become a private place there must be some physical obstruction to overcome, **R v Walters** (1963) 107 SJ 275.

(c) Level of alcohol required for the offence

The offence is only committed if the person driving, attempting to drive or in charge of the vehicle has consumed such an amount of alcohol that the level in his breath or blood exceeds the prescribed limit which is, 35 microgrammes of alcohol in 100 milliliters of breath and for blood alcohol concentration 80 milligrams of alcohol in 100 milliliters of blood.

Any excess over the prescribed limit will support a conviction. In England the Home Office has directed that there be no prosecutions for offenders with less than 40 microgrammes in order to cater for those occasions when the machine may be reading high". **Wilkinson p. 225**. At page 227 Wilkinson has a useful discussion on the devices used to test breath. In relation to blood samples there is a normal laboratory practice to allow a margin of error by deducting 6 mg. from specimens of blood of 100 mg. or less, and 6% from specimens over 100 mg. In **Walker v Hodgins** (1984) RTR 34 this margin of error resulted in acquittal.

Note: (i) That the word consumed is not limited to drinking, but includes other modes of introducing alcohol into the body such as by injection.

(ii) The use of the words “level of alcohol in his breath or blood” in the main offence indicates that either the breath test or the blood test may provide sufficient evidence for a conviction.

(d) Sentence for the offence

First offenders: A fine of \$3,000.00 or in default 6 months imprisonment; Section 34A (2) (a).

Second offenders: A fine of \$5,000.00 or in default 12 months imprisonment; Section 34A 2(b).

In addition, offenders will be liable to 14 demerit points and disqualification from holding a licence for 12 months or more.

(e) Arrest for the offence

Unless in hospital as a patient, the offender may be arrested without a warrant. Section 34B (b).

2. **Obtaining Evidence for the Main Offence:**

The first method of obtaining evidence is by a Breath test.

This is defined as a test to determine the proportion of alcohol in a persons breath by an approved hand held device.

Pre-conditions for the breath test:

(a) A constable in uniform or one who shows his authority as a member of the Constabulary force is the only person authorized to require a breath test. Section 34B (1).

- (b) The constable above may only require a breath test if he has reasonable cause to suspect that a person with alcohol above the prescribed limit, on a road or other public place,
- (i) is driving, attempting to drive or is in charge of a vehicle;
Section 34B (1) (a).
 - (ii) has been driving, attempting to drive or has been in charge of vehicle and still has alcohol in his breath; Section 34b (1) (b).
 - (iii) has been driving, attempting to drive or has been in charge of a vehicle, and has committed a road traffic offence.
Section 34B (1) (c).
- (c) In situations b(ii) and (iii) the breath test must be taken as soon as practicable after the commission of the offence. Section 34B (2).
- (d) In the case of an accident a Constable referred to in (a) may require any person he has reasonable cause to believe was the driver to provide a specimen of breath, Section 34B (3). The vehicle does not have to be damaged or involved, so long as the accident occurred due to its presence on the road. **Quelch v Phipps** (1955) 2 AER 302 (a case involving failure to report an accident).

Note: Reasonable cause In relation to paragraph (b) is not defined but, the manner of driving slurred speech, the smell of alcohol on the motorist's breath or

the motorists unsteady gait will provide reasonable cause. The English Courts have held that reasonable cause may arise from information received from another Police Officer or a private citizen in relation to the motorist's driving. In addition, reasonable suspicion may arise after the motorist is stopped and also after he has ceased driving. There is a difference between "**believe**" and "**suspect**". See generally Wilkinson on Road Traffic 195 and 201.

The second method of obtaining evidence is by a Breath Analysis. This is the quantitative measuring of the proportion of alcohol in a persons breath by means of a device approved by the Minister, Section 34G (1).

Preconditions for a breath analysis

The breath analysis may only be required by a Constable in either of the following situations:-

- (i) The person had failed to undergo a breath test after being required to do so or; Section 34(c) (1) (a).
- (ii) If the breath test revealed a level of alcohol in the breath above the prescribed limit, Section 34(c) (1) (b).

After the breath analysis the Police Officers must give to the person on whom it is carried out a Certificate stating the level of alcohol in his breath and the date and time of the analysis, Section 34(c) (b).

The third method of obtaining evidence for this offence is by the taking of a Blood sample.

Preconditions for the taking of a blood sample:

- (i) The person must be physically unable by reason of his physical condition to provide a specimen of breath, Section 34 D(1).
- (ii) No breath analysis for which the result is available should have already been carried out. Section 34 D(3).
- (iii) The blood sample must only be taken with the consent of the person, Section 34 D(5).
- (iv) The sample must be taken at a hospital, Section 34 D(5) (b).
- (v) The sample must be taken by a Medical Practitioner or qualified Lab technician, Section 34 D (5) (c).
- (vi) The lab test is not to be required if the person is at a hospital and his doctor is not notified or objects on the ground that the specimen could be prejudicial to the care of his patient, Section 34 D(2).

A person cannot be compelled to give a blood sample but the unreasonable refusal to give a blood sample may be used as supporting evidence for the prosecution or to rebut a defence, Section 34 E (1) and (2).

Note: Unlike England we have no provision for a Urine Test.

The mere fact that evidence is obtained illegally does not make it inadmissible, although the Court has a discretion to exclude it if the prejudicial effect outweighs the probative value, **Fox v Chief Cons. Of Gwent** [1984] RTR 402 applying **R v Sang** [1980] AC 402. Therefore if a breath test or analysis is obtained unlawfully it is unlikely that the evidence will be excluded. However, if the refusal to submit is made while the officer is trespassing or if the officer is unable to show reasonable cause for the

request, no offence of refusing to submit is committed, **Fox v Chief Constable of Gwent** (1984) RTR 402, citing Diplock LJ in **Morrin v Beadmore** [1980] RTR 321,

“I find it quite impossible to suppose that Parliament intended that a person whose common law right to keep his home free from unauthorized intruders had been violated in this way should be bound under penal sanctions to comply with a demand which only the violation of that common law right had enabled the constable to make to him.”

The Act is specific as to the places where testing may be done or samples taken.

The Breath Test

- (i) At the scene where the motorist is stopped.
- (ii) In the case of an accident either
 - (a) At or near the scene; or; Section 34 B (1).
 - (b) At the Police Station nearby, or; Section 34 B (3).
 - (c) At a hospital where the person is a patient, Section 34 B (4).
 - (d) At the persons usual place of abode but only if the Constable has reasonable cause to believe that within the preceding two hours the person was involved in an accident on a road or public place which resulted in death or serious injury, and had alcohol in his breath above the prescribed limit; Section 34 (c) (3) (c) and the proviso and that a breath test at the scene was not feasible.

The Breath Analysis

- (i) at the Police Station by a member of the Constabulary Force authorized by the Minister; Section 34 (c) (2).
- (ii) at a hospital where the person is a patient; Section 34 C (3) (a).
- (iii) at a persons usual place of abode **but only** in the circumstances outlined above at paragraph (iii) (d); Section 34 C (3) and the proviso thereto.

The Blood Sample

This must be taken at a hospital; Section 34 D 5 (b)

3. The Collateral Offences:

If a person fails without reasonable excuse to provide a specimen of breath for a breath test when required by a Constable then he may be arrested by a Constable without a warrant, provided that the Constable has reasonable cause to suspect that he or she has alcohol in his or her breath or blood above the prescribed limit, Section 34 B (7).

Note: (a) An arrest for this offence cannot be made at a hospital;

(b) A person arrested for this offence must be given an opportunity to provide a specimen of breath for a breath test while at the Police Station. In other words the person is given another chance to do a breath test, Section 34 B (8).

(c) If a person does not inflate the bag or gives a specimen insufficient for a breath test he is deemed to have failed to provide a specimen, Section 34 G (2).

An offence is also committed if a person wilfully does anything to alter the

concentration of alcohol in his breath or blood between the time of the event giving rise to him being required to do a breath test and the time the test or analysis is done, Section 34 C (4) (b).

4. Possible Defences:

Assuming that the preconditions for requiring a person to give a specimen of breath to submit to a breath analysis or to give a blood sample have been satisfied the following are some defences created by the Act.

- (a) That there was no likelihood that the offender would drive the vehicle whilst the alcohol in his breath or blood exceeded the prescribed limit, Section 34A (3). For example if he gave up the keys to someone else and told the person to drive the vehicle home or otherwise relinquished control, or if the vehicle was involved in an accident before he consumed the alcohol, **R v Jephcott** (1966) 110 Sol Jo. 812.
- (b) The Breath analyzer was inaccurate. The Act creates a presumption that the concentration determined by the breath analyzer is the concentration at the relevant time but this is rebuttable if the defendant proves otherwise, Section 34 C (7) (b).

In an interesting case convictions were quashed where the accused had pleaded guilty but had not known that cleansing swabs with ethanol had been used when samples were taken, **R v Bolton Magistrates Court exp. Scully** (1991) RTR 84. Evidence may be lead as to the amount of alcohol consumed with a view to challenging the reliability of the

instrument, Cracknell v Willis (1988) RTR 1. A conviction has been upheld notwithstanding substantially different readings by the same machine on the same individual, Maharaj v Solomon (1987) RTR 295.

(c) That there is a reasonable excuse for not supplying a specimen of breath. In R v Lennard (1973) 1 WLR 483 it was held that there is no reasonable excuse unless:

- (a) the person is physically or mentally unable to provide it or
- (b) the provision of a specimen would entail a substantial risk to his health.

THE SEIZURE OF VEHICLES PRIOR TO CONVICTION:

Section 61 (1) of the Road Traffic Act prohibits the use of motor vehicles as public passenger vehicles unless the user is the holder of a licence to use it as a vehicle of that class. Section 61 (5) provides:

“If any person uses or causes or permits a vehicle to be used in contravention of this section, he shall be guilty of an offence and shall be liable on conviction thereof to a penalty not exceeding one thousand dollars and the vehicle shall be liable to be seized and kept in the possession of the Police until the licence required by this Part has been obtained and produced.”

Section 13 (2) (a) of the Transport Authority Act similarly provides,

“An Inspector or a constable shall have power - to seize any vehicle where the

owner, driver, or operator of such vehicle operates or uses the vehicle as a public passenger vehicle without a road licence being issued in respect of that vehicle to be so operated or used”.

It is arguable that Section 61 (5) is to be read conjunctively and that seizure is one component of a two fold penalty being the fine and seizure. Hence, seizure is to follow conviction.

On the other hand the section may be read disjunctively. This would allow seizure prior to conviction. This in practice has been the approach of the police and the Road Traffic Authority which routinely empties and seizes motor vehicles suspected of being used illegally as taxis.

This activity appears to offend the spirit and intendment of Section 13 and Section 20 (5) of the Constitution, that is the right to the enjoyment of property and the presumption of innocence. Section 20 (5) reads:

“Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty....”

If the seizure of property is a penalty for a criminal offence then it would be a breach to impose it. In this regard see **Commissioner of Police v Potter and De La Rosa** Unreported Suit No. Of 1980 Bah. 7.1.81 which concerned forfeiture of an aircraft prior to conviction. [I have been unable to obtain the case but it has ben footnoted].

Furthermore, the provisions offend the principles of Natural Justice and the right to a hearing before rights are affected. As such, the right to be heard is to be implied

before such action by the Authority or the Police. In the matter of Smith v Commissioner of Police [1980-83] CILR 126 certiorari and Prohibition were granted to the applicant who sought to quash the decision of the Acting Commissioner of Police who revoked her taxi driver's licence. The statute on the face of it gave such a discretion to the police and he did so after the applicant was convicted of possession of ganja.

The court held that she was entitled to a fair hearing before her licence would be revoked.

Some passages from the judgment of The Honourable Justice of Appeal Carberry are worth quoting in full:

'The situation also arises when a licensing authority has the duty of deciding whether a licence that it has issued ought to be revoked or suspended. It is clear that a duty to act 'judicially' is as applicable here as when it was engaged in granting the licence." p. 153.

"This case shows that there is a right to a hearing in all licence cases but that the principles do not apply to the full extent in all situations: in cases of applications, those applying may be entitled to only 'mini natural justice' - the right to be dealt with fairly - but, by clear implication, in cases of revocation those being dealt with are entitled to the full extent of the rules, not only a hearing, but formulation of charges and a full opportunity to answer them and the evidence on which they are based." P. 166.

“We are further of the opinion that the statute being silent on the matter, the common law imports into the exercise of the Commissioner’s powers in this respect the need to observe the tenets of natural justice, and in particular the three features which stand out, as highlighted by Lord Hodgson in **Ridge v Baldwin** [1964] AC at 132, ‘(1) the right to be heard by an unbiased tribunal; (2) the right to have notice of charges of misconduct; (3) the right to be heard in answer to those charges’” p. 179.

Seizure of a motor vehicle which is licenced to be driven on the road, it is submitted is wrongful and in breach of the Constitution. So also is suspension of a licence without a fair hearing before an impartial tribunal.

THE SEATBELT ACT:

On the 26th March, 1999 Act No. 13 of 1999 to amend the Road Traffic Act came into force.

The Act makes it mandatory for all motor vehicles to be fitted with seat belts unless excepted. The seat belt law has the following noteworthy features:-

- (a) “child” is defined to include any person whose size, height or build is such that the person is likely to experience problems or difficulty with the upper anchorage point of a seat belt.

In the United Kingdom the legislature speaks to “children under the age of 14 years”.

Quere: Whether an adult dwarf will render the driver liable if he refuses to wear a seat belt.

- (b) It is an offence to use a vehicle on the road which is not equipped with seat belts, Section 43(B)(3).
- (c) It is an offence to drive or ride in a vehicle without using a seat belt, Section 43(B)(1).
- (d) The exceptions in our Act include, a child in a child restraint system; a driver reversing; a person with a certificate of exemption prescribed by the Minister and signed by a registered Medical Practitioner; a person riding in a vehicle "being used for fire brigade or police purposes; a person in a vehicle adapted for the delivery of goods or mail while engaged in such delivery or collection from premises or consumers not 60 metres from each other.

In the United Kingdom certain taxis are exempted, and the only police exempted are those on protection and escort duty. Firemen while donning operational equipment are also exempted in the United Kingdom.

- (e) In respect of children it is the driver who commits the offence, Section 43(C).
- (f) Persons riding a motor bike are obliged to wear a protective helmet of a quality prescribed, Section 43(D).

The ^{penalties} particulars under the Act are:-

- (a) Using a motor vehicle not fitted with seat belts, a fine not exceeding \$2,000.00 - on first offence \$5,000.00, on subsequent offences demerit

points - 2.

- (b) Driving or riding in a vehicle without wearing seat belt. First offence not exceeding \$2,000.00, subsequent offences \$5,000.00 - 2 demerit points.
- (c) Driving with a child without seat belts, a fine not exceeding \$5,000.00 - 4 demerit points.
- (d) Not wearing a protective helmet - first offence a fine not exceeding \$2,000.00, subsequent offences \$5,000.00 - 2 demerit points.

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