THE HIGH COURT
JUDICIAL REVIEW

Record No. 2016/63 J.R.

Between

Tezaur Bita

Applicant

-and-
The Director of Public Prosecutions
and
Ireland and the Attorney General

Respondents

JUDGMENT of Ms. Justice Ní Raifeartaigh delivered on the 25th June 2018

Issue in the case
1. The net question in this case is whether the summary offence of committing an act in any thoroughfare or public place "contrary to public decency", as provided for by s. 5 of the Summary Jurisdiction (Ireland) Amendment Act 1871, is inconsistent with the Constitution by reason of being excessively vague.

Procedural History
2. The applicant was charged with the above offence (together with an offence contrary to s. 3 of the Misuse of Drugs Act 1977). It appears that, in broad terms, the factual background alleged is that in the early hours of the morning on the 27th August, 2015, the applicant urinated on a public footpath, having parked his car and exited it in order to do so. This was witnessed by a member of An Garda Síochána. There was some discrepancy within the evidence as to where precisely in relation to the footpath and some nearby bushes the applicant did this.

3. The applicant applied to the High Court for leave to bring judicial review proceedings and by order dated the 1st February, 2016, leave was refused by Humphreys J.

4. The applicant appealed this refusal to the Court of Appeal and the matter was adjourned in order to allow for the lodging of a note authenticated by Humphreys J. The latter in fact produced a detailed written judgment dated the 12th May, 2016 in which he fully explained his reasons for having refused leave. The appeal then proceeded. By order dated the 25th October, 2016, the Court of Appeal allowed the appeal and granted leave. The Court delivered a written *ex tempore* judgment on the same date.

5. The matter came on for hearing in the High Court before me in due course and I reserved judgment.

Locus Standi/Prematurity
6. In allowing the appeal against the refusal of Humphreys J. to grant leave in the present case, the Court of Appeal took the view that the State's prematurity argument did not sit easily with decisions such as *Curtis v. Ireland* [1985] IR 458*, Osmanovic v. DPP* [2006] 3 IR 504, and *S.M. v. Ireland* [2007] 4 IR 369. These authorities were cases in which the High Court entertained constitutional challenges to offences at a stage when the applicant in the judicial review proceedings stood charged with criminal offences but had not yet come to trial. The Court went on to say that its decision to grant leave did not preclude the respondent from arguing at the substantive judicial review hearing that the relief had been sought at an inappropriate stage. It also commented that "phrases such as a 'sledgehammer to crack a nut' come to mind" with regard to bringing judicial review proceedings in the circumstances.

7. The applicants contended that they did have locus standi by reason of the above-cited and certain other authorities. The respondent relied on the usual authorities concerning *locus standi* but in particular on those in which an applicant unsuccessfully sought to rely upon hypothetical factual scenarios which were not relevant to his own factual circumstances, including *A v. Governor of Arbour Hill Prison* [2006] 4 IR 88 (Hardiman J. at pp 164-5) and *Maloney v. Ireland* [2009] IEHC 291. They further sought to distinguish cases such as *Douglas* and *McInerney* on the basis that the locus standi issue was intimately connected with the very vagueness that was found to exist within the impugned offences, and which, it was argued, did not exist with regard to the offence in issue in the present proceedings.

8. In my view, the applicant has *locus standi* to bring these proceedings. He has been charged with the offence and says, on the basis of the facts (urination on a public footpath, whatever the precise location), that the offence was so vague that he could not have known in advance that what he did fell within this offence. While part of the argument and submission involved hypothetical scenarios (such as an argument advanced on the basis of freedom of expression, such as where urination might constitute part of some artistic expression of nudity), the core of his submission, as I understand it, was based on his own factual circumstances.

9. However, I agree with the views of both the Court of Appeal and Humphreys J. as to the disproportionality between the use of judicial review proceedings to achieve a result which might, through a potential acquittal, be achieved much more speedily and at much less expense, in the District Court.

The substantive issue
10. The issue of whether a criminal offence is 'void for vagueness' has arisen in a number of Irish authorities. Of these, undoubtedly the most celebrated is *King v. AG* [1981] IR 233 which concerned the "loitering" offence under the Vagrancy Act, 1824 and clearly established the principle that the trial in respect of an offence of which the ingredients are vague and uncertain is not a trial in accordance with Article 38.1 of the Constitution. More recently, in *Dokie v. DPP* [2011] 1 IR 805, Kearns P. held inconsistent with the Constitution the offence contrary to s.12 of the Immigration Act 2004 by reason of its lack of clarity and precision. Additional constitutional reasons for holding invalid offences which are too vague, including the 'principles and policies' doctrine set out in *City View Press Ltd. V. AnCO* [1980] IR 381, were identified by Hogan J. in *Douglas v. DPP* [2014] 1 IR 510 at paragraphs 27-33.

11. In recent years, there has been a flurry of challenges to both common law and statutory offences in the area of what might loosely be described as offences of "indecency". Two of these challenges were successful on the ground of vagueness, while certain others were not. In *Douglas* [2014] 1 IR 510, the High Court (Hogan J.) held inconsistent with the Constitution a portion of the statutory offence contained in s.18 of the Criminal Law Amendment Act 1935, namely the offence of committing in public an act in such a way as to "cause scandal or injure the morals of the community". In *Curtis and McInerney v DPP* [2014] 1 IR 536, the High Court (Hogan J.) also held inconsistent with the Constitution the remaining portion of the same statutory provision (s.18), namely committing an act in public in such a way "as to offend modesty".

12. The remaining challenges to a variety of offences in what might be described as this general area have been unsuccessful. In *Cox v. DPP* [2015] IEHC 642, the High Court rejected a challenge to the offence of "wilfully, openly and lewdly" exposing one's "person" in a public place with intent to insult a female, provided for by s.4 of the Vagrancy Act 1824 as applied and amended by subsequent legislation. McDermott J. was satisfied that the provisions created an offence which had a definite and precise meaning, namely that a male should not wilfully and open expose his penis in a public place with intent to insult a female. In *P.P. v. Judges of the Circuit Court*, the High Court (Moriarty J.) unreported October 2015, and subsequently the Court of Appeal [2017] IECA 82, rejected a constitutional challenge to the offence of gross indecency contrary to common law and as provided for by s.11 of the Criminal Law Amendment Act 1885. In *Douglas (No.2)* [2017] IEHC 248, the High Court (McDermott J.) rejected a challenge to the common law offence of "outraging public decency" on the basis that the offence as it continues to exist in this jurisdiction was in reality one of "committing an act of public indecency" and that this was not excessively vague.

13. Essentially, having regard to the above authorities, the applicant in the present case seeks to persuade the Court that the offence in issue in the present proceedings is more akin to the *Douglas-McInerney* type of case than to the other cases and therefore falls on the wrong side of the line separating overly vague offences from offences expressed in language of sufficient particularity.

14. It is clear from the authorities in the area, many of which were cited to me and which include the above, and indeed certain American and European Court of Human Rights authorities which have sometimes featured in the Irish judgments referred to, that there is a distinction between (1) an offence the ingredients of which are expressed in excessively vague language (which is constitutionally impermissible) and (2) an offence the ingredients of which are expressed in general terms in order to maintain appropriate flexibility to encompass the variety of factual situations which may arise but are nonetheless considered sufficiently clear notwithstanding the general language used (which is constitutionally permissible). While many criminal offences are expressed in such precise terms as to leave no room for argument, some are closer to the dividing line between the permissible and the impermissible and the line can sometimes be a fine one. Drawing attention to this distinction between overly vague and acceptably general offences, Hogan J. said in *Douglas v DPP* [2013] IEHC 343:-

> "It must be here acknowledged, however, that in a common law system such as ours, absolute precision is not possible. One may therefore have perfectly general laws which can be adapted to new sets of facts within certain defined parameters, provided that the laws themselves articulate clear and objective standards. By analogy with what was stated by the Supreme Court in The People (Director of Public Prosecutions) v. Cagney [2007] IESC 46 , [2008] 2 I.R. 111 , it must also be clear that any judicial development in the sphere of criminal law must be largely incremental in nature, based on parameters which are obvious from earlier legal doctrine and jurisprudence. I would accordingly adopt in this context that which was stated by Lord Bingham in R. v. Rimmington [2005] UKHL 63 , [2006] 1 A.C. 459 at p. 483 in the context of article 7 of the European Convention on Human Rights. (Article 7 is the ECHR provision which corresponds to Article 15.5.1° of the Constitution, which later provision is itself discussed below):-
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> > '…The starting point is the old rule nullum crimen, nulla poena sine lege (Kokkinakis v Greece (1993) 17 EHRR 397, para 52 ; SW v United Kingdom (1995) 21 EHRR 363 , para 35/33): only the law can define a crime and prescribe a penalty. An offence must be clearly defined in law (SW v United Kingdom (1995) 21 EHRR 363), and a norm cannot be regarded as a law unless it is formulated with sufficient precision to enable the citizen to foresee, if need be with appropriate advice, the consequences which a given course of conduct may entail (Sunday Times v United Kingdom (1979) 2 EHRR 245, para 49 ; G v Federal Republic of Germany (1989) 60 DR 256, 261 , para 1; SW v United Kingdom (1995) 21 EHRR 363 , para 34/32). It is accepted that absolute certainty is unattainable, and might entail excessive rigidity since the law must be able to keep pace with changing circumstances, some degree of vagueness is inevitable and development of the law is a recognised feature of common law courts (Sunday Times v United Kingdom (1979) 2 ERRR 245 , para 49; X Ltd and Y v United Kingdom (1982) 28 DR 77, 81 , para. 9; SW v United Kingdom 21 EHRR 363 , para 36/34). But the law-making function of the courts must remain within reasonable limits (X Ltd and Y v United Kingdom (1982) 28 DR 77 , para. 9). Article 7 precludes the punishment of acts not previously punishable, and existing offences may not be extended to cover facts which did not previously constitute a criminal offence (ibid.). The law may be clarified and adapted to new circumstances which can reasonably be brought under the original concept of the offence (X Ltd and Y v United Kingdom (1982) 28 DR 77 , para. 9; G v Federal Republic of Germany (1989) 60 DR 256, 261–262). But any development must be consistent with the essence of the offence and be reasonably foreseeable (SW v United Kingdom 21 EHRR 363 , para. 36/34), and the criminal law must not be extensively construed to the detriment of an accused, for instance by analogy (Kokkinakis v Greece (1993) 17 EHRR 397, para 52)."

Similarly, McDermott J. said in *Douglas v DPP (No. 2)* [2017] IEHC 248 at p. 53:-

> "78. The principle of legal certainty is essential to the rights guaranteed under the European Convention on Human Rights in Articles 5 and 7. In particular, Article 7(1) provides that no one shall be held guilty of any criminal offence on account of any act or omission which does not constitute a criminal offence under national or international law at the time when it was committed. This has been found by the European Court of Human Rights to embody the principle that only law may define a crime and prescribe a penalty from which it follows that an offence must be clearly defined. In *The Sunday Times v. United Kingdom (No. 1)* [1979-80] 2 EHRR 245 at para. 59 the court recognised that this rule was not inflexible. The court stated:
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> > '… whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep apace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice."

15. At the core of the offence in issue in these proceedings is the question of an act "contrary to public decency". It may be noted that the section, separately, requires the act to be committed "in a thoroughfare or other public place" and is therefore not concerned with behaviour or conduct taking place in private, contrary to what was asserted by the applicant in written submissions (para 36). Therefore, the key question is whether the criminal prohibition on doing an act contrary to public decency, committed in public, is an impermissibly vague prohibition.

16. It was argued on behalf of the respondents that this core ingredient of an act "contrary to public decency" puts this offence into the same category as other offences involving "indecency", such as the offence of gross indecency, and the offence of committing an act of public indecency, both of which have withstood constitutional challenge; together with the offence of indecent assault, which is a cornerstone of Irish criminal law relating to sexual offences (being incorporated by the Criminal Law (Sexual Offences) Act 1990 into the offence of sexual assault). It is argued that the ingredient of indecency is well recognised by Irish criminal law and has been recognised as falling on the right side of the generality/vagueness divide, and therefore so too should the concept of "contrary

to public decency". In essence, "contrary to public decency" is equated with "indecent" in the respondents' argument.

17. It was argued on behalf of the applicant that the supposed standard of decency assumed by the offence was 'entirely subjective, inherently, vague, dynamic and incapable of definition'. It was also submitted, relying on the comments of Hogan J. in the *Douglas* case, that because the offence is summary, the accused does not have the protection of a jury trial in assessing that notional standard, and that this was also considered to be a relevant factor by McDermott J. in the *Douglas (No.2)* case. It was also submitted that there was an important difference between an act 'contrary to public decency' and an 'indecent act', because the meaning of 'indecency' had become settled over the years and now had an acquired meaning of sexualised behaviour. It was submitted that the phrase 'contrary to public decency' was not limited in the same way as the term 'indecent' within offences such as indecent assault or gross indecency. It was submitted that the fact that the State considered that urination in public *per se* to amount to urination, as demonstrated by the charge in the present case, showed how impermissibly vague the interpretation of the offence could be and that it was not limited in any way to 'indecency' in the sense of sexualised behaviour.

18. Having regard to the ingredients of the offence in issue, it seems to me that out of the many authorities on the issue of vague offences, the most relevant are *P.P. v. DPP* and *Douglas v. DPP (No.2),* both of which involve a discussion of offences employing the terminology of "indecency".

19. In *P.P. v. Judges of the Dublin Circuit Court*, (Unreported, High Court, Moriarty J., October 2015) addressed itself to the offence of gross indecency contrary to common law and as provided for by s.11 of the Criminal Law Amendment Act, 1885. The High Court decided the case on the merits (without first dealing with the issue of *locus standi*, somewhat unusually). At para. 38 of his judgment, Moriarty J. said:-

> "Having reflected on the matter as carefully as I can, and having considered all the arguments advanced in submissions, and the authorities referred to, I have come to the conclusion that the inherent problems of formulating a precise and comprehensive definition of gross indecency, taking into account changes in social attitudes and the multiplicity of situations of potential relevance that could arise, are such that it was not incumbent upon legislatures to devise such a definition. Like the other instances propounded by Professor O'Malley in his submissions, I believe the concept of gross indecency is neither susceptible to nor requires a discursive definition. As touched upon by Mr. Hartnett S.C., it is unlikely in present social circumstances that such instances of hand-holding or mild embraces between adult males would be viewed today by law enforcement officials in the same way as their predecessors a century ago, or still less at the time of the frenetic circumstances in the 1885 Statute was enacted. What was conveyed by the provisions at the relevant time, when it was operative in this jurisdiction, in my view fulfilled the requirements specified by Hardiman J. in Cagney."

On appeal, the Court of Appeal dismissed the appeal on the ground that the applicant had no *locus standi.* However, in the course of his judgment of the Court of Appeal [2017] IECA 82, Birmingham J said: -

> "The cases of *Douglas v The Director of Public Prosecutions* [2014] I.R. 510 and *McInerney and Curtis v Director Public Prosecutions* [2014] 1 I.R. 536 which have been referred to by the appellant in this Court and in the High Court are readily distinguishable. There the offences in question, "causing scandal" and "injuring the morals of the community" in *Douglas*, and "offending modesty" in *McInerney* and *Curtis* were so inherently vague and elastic that anyone charged with the offences was affected.
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> 39. In contrast, the concept of indecency is one that is long familiar to the criminal law. The standard charge delivered by judges to juries every day of the week tells them that the offence of sexual assault was previously known as indecent assault, and defined as an assault accompanied by circumstances of indecency, the determination of indecency being a matter for them as jurors."

He also said:-

> "42. The nature of the conduct alleged does not provide scope for significant disagreement as to what is indecent. Right thinking people generally are unlikely to have any real doubt but that the alleged conduct, if it occurred, was grossly indecent. If the trial proceeds, the jury is unlikely to be troubled greatly by whether the acts alleged amounted to gross indecency, rather the issue is likely to be whether the prosecution has proved beyond reasonable doubt that the facts alleged actually occurred.
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> 43. While it may be possible to conceive of borderline or marginal cases, and such cases can safely be left to the good sense of juries if prosecuted, in the great majority of cases jurors would have no difficult in determining what is grossly indecent.
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> 44. Thus I find myself in agreement with the trial judge that the offence of gross indecency does not fall foul of the requirement for legal certainty contemplated by the Constitution and by the Convention."

20. Turning to the decision in *Douglas v. DPP (No.2)* [2017] IEHC 248 in which the offence charged was the common law offence of "outraging public decency". McDermott J. examined the English authorities starting with *R v. Mayling* [1962] 2 QB 717 and including *Knuller v. DPP* [1973] AC 435 (where one of the charges considered was conspiracy to outrage public decency), *Regina v. Hamilton* [2007] EWCA Crim 2062, and *R v. Gibson* [1990] 2 QB 619. He then went on to consider whether the offence as "declared and crystallised" in the more modern English authorities continued to exist in Ireland in circumstances where there were no authorities on the offence post-1922. He examined the Irish decision in *Regina v. Farrell* (1862) 9 Cox Circuit Court (C.C.A. Irl) and a number of criminal law texts, including Gabbett's '*Treatise on Criminal Law* ' (1835 Book 1: Chapter 39 page 744, Halsbury's Laws of England (1910) (Vol. 9), O'Connor's *Irish Justices of the Peace* (Vol. 2, 2nd Ed.(1915) at pages 242 to 243, Russell '*A Treatise on Crimes and Misdemeanours* '(1909) Vol. 1 under the heading of 'Indecent Exposure' at p. 1883, Archbold's Criminal Pleading, Evidence and Practice, 24th, 25th, 26th Editions, O'Siochan *Criminal Law of Ireland* (outlined) (3rd Ed.,(1940) a p. 103, Charleton McDermott & Bolger *Criminal Law* (Butterworths, 1999), para. 8.233, O'Malley, '*Sexual Offences* ' (2nd Ed.) 2013 at paras. 10-08 to 10-17. McDermott J. also considered a number of Law Reform Commission reports; *Report on Vagrancy and Related Offences* (LRC 11-1985) (1985), *Inchoate Offences* (LRC CP 48-2008), and *Report on Inchoate Offences* (LRC 99-2010). He reached the conclusion that under Irish common law there was a well-established indictable offence of "intentionally or recklessly committing an indecent act in public", the origin of which lay in the category of "nuisance offences" and the purpose of which was to ensure that people may venture into public without the apprehension that they or their children would be subjected to acts of indecency. He was not satisfied that there was a more wide-ranging offence of "outraging public decency" as defined in the more modern English authorities. He went on to conclude that the offence as it existed in Ireland did not suffer from unconstitutional vagueness:-

> "73. I am satisfied that the alleged behaviour of the applicant is of a similar type to that discussed in Fitzsimons and may be regarded as malum in se. It is prima facie the type of lewd, obscene and disgusting behaviour for which this offence was conceived and developed by the judges at common law. The behaviour to which the offence is directed remains of as much concern in the twenty first century as it was in the seventeenth to nineteenth centuries, if not more so, having regard to the fact that the particular object of the alleged behaviour was a nine year old child in a public restaurant in the company of her family. The rationale for the existence of the offence that reasonable people should be able to venture into public without their sense of decency being offended remains the same. Although the offence of committing an indecent act in public may be committed in different ways I am satisfied that the acts constituting the offence are easily identifiable and understood. Indeed in this case it is clear from the interview conducted by the investigating garda with the applicant that he fully understood the wrongfulness of his behaviour. It cannot be realistically argued that the applicant in this case did not, or that any other reasonable person would not know or anticipate that the behaviour alleged was indecent lewd, obscene or disgusting, was so regarded by reasonable people and was criminal. It has been considered to be so for centuries.
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> 74. I am therefore satisfied that the constitutional flaws identified by Hogan J. in s. 18 do not arise in respect of the common law offence of committing an indecent act in public. The offence is defined by well-established precedent based on readily identifiable facts and circumstances. This is one of those instances when it becomes necessary because of the wide-ranging nature of human behaviour to define an offence with a lesser degree of certainty than might be appropriate in other types of behaviour but that does not necessarily give rise to constitutional infirmity."

He also, having examined authorities from the European Court of Human Rights, namely *The Sunday Times v. United Kingdom* (No. 1) [1979-80] 2 EHRR 245, *Steel and others v. United Kingdom* (1998) 28 EHRR 603, *Hashman and Harrup v. United Kingdom* (2000) 30 EHRR 241, *Chorherr v. Austria* (1994) 17 EHRR 358, *Aydin v. Germany* (2013) 57 EHRR 3, concluded that the offence before him satisfied the test for legal certainty in Articles 5 and 7 of the Convention, commenting that "the core concept of indecency is one which is well understood but it is not possible to define every conceivable act or omission that is prohibited by the offence".

21. I note that in *Douglas v. DPP* [2014] 1 IR 510, it appears that Hogan J. was of the view that a relevant consideration in the context of analysing whether an offence is excessively vague was whether or not an offence would be tried by a jury (see paras. 43 and 55/56; see also *Curtis and McInerney v. DPP* [2014] 1 IR at paras. 36 and 44]). With the greatest of respect, I wonder whether that can be correct, particularly when one considers that a sexual assault, which is an assault in "circumstances of indecency", (as confirmed by Birmingham J. in the P.P. decision at para. 39) can be tried summarily, provided the District Judge is of the opinion the offence is "minor", that the DPP consents, and that the accused person does not object (s.12 1981 Act as amended by s.16 1990 Act). Thus, there are clearly cases in which the assessment of whether an assault was indecent or not falls to be determined by a District Judge and not a jury and it cannot be that an offence is impermissibly vague in one court and not in an another. In any event, I do not see how the fact that a jury will determine whether a matter amounts to an indecent act provides any greater predictability or certainty for a citizen than a situation where that decision is made by a District Judge.

22. The core issue, in my view, is whether or not there is an essential difference between the term "indecent" as it appears in various indictable offences, and the phrase "contrary to public decency" as it appears in this summary offence. In my view, the respondent is correct and the concept at the core of this offence is essentially the same concept of decency or indecency which is at the core of other criminal offences the constitutionality of which has been upheld in *PP.*, and in *Douglas v. DPP* (No.2). It seems to me to be rather a rather hair-splitting exercise to contend that "contrary to public decency" does not correspond with "indecent". I see no difference of substance between "indecent" and "contrary to …decency". As regards the inclusion of the word "public" within the phrase "contrary to public decency', I cannot see that this makes any difference. The word "indecent" in offences such as indecent assault is interpreted to mean indecent by the standards of an ordinary or reasonable member of the public i.e. it is intended to import some kind of objective standard into the offence. I cannot see any difference between that formulation of an objective standard and the phrase "contrary to public decency"; the "public" must correspond to the ordinary or reasonable person albeit that the reference is in the plural rather than singular. Again, it does not seem to me that there is any difference of substance but rather that in both situations, an objective standard is intended albeit that the formulation is slightly different.

23. Whether the applicant in the present case would be found guilty of the offence is an entirely different matter. In this regard, I consider that Humphreys J. in his judgment explaining his refusal to grant leave has provided a useful discussion of when the offence might be committed:-

> "15. Public urination is certainly capable of being indecent if carried out in an indiscreet manner. But there is quite a difference between the person who urinates into bushes and one who does so, say, into the public roadway. The latter may well be viewed as acting indecently. But it would be a perversion of language and biology to call public urination a necessarily indecent act. The discreet public urinator is a world away from the category of those accused of "flashing" and public masturbation, who benefitted from the decisions in Douglas and McInerney.
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> 16. Leaving indecency aside, however, it has to be acknowledged that public urination is frequently an anti-social act and may in certain circumstances breach s. 5 of the Criminal Justice (Public Order) Act 1994. All depends on context in such a situation. The person who urinates publicly (even discreetly) because he cannot be bothered to avail of a reasonable alternative is engaging in anti-social behaviour. His fellow urinator in a different and secluded location who has no reasonable alternative and acts discreetly and reasonably when confronted with an unavoidable exigency is unlikely to be contravening s. 5 of the 1994 Act or to be acting criminally at all."

24. Similarly, the respondents in their written submissions said as follows:-

> "The Respondent contends that the fact that any given act (such as urination) is capable of being carried out both in circumstances of indecency and also in circumstances of not being indecent cannot of itself inexorably lead to the conclusion that any attempt to criminalise the former is constitutional vague or uncertain. One can readily appreciate the difference between the man who urinates on top of a grave or public space whilst shouting obscenities… as opposed to the man with a urinary medical condition who gets caught short and discretely goes out of view behind a bush to relieve himself. The weakness of any prosecution of the latter man for an offence pursuant to s. 5 of the Act of 1871 relates to the inability to prove indecency on the particular facts rather than any inherent vagueness."

25. I agree with the above passages and am of the view that the act of public urination may in some circumstances amount to an act contrary to public decency and that in other circumstances it may not. This does not, however, in my view, lead to the conclusion that the offence committing an act contrary to public decency is impermissibly vague.

26. In the circumstances, I refuse the relief sought.