

08/09; [2009] VSC 106

SUPREME COURT OF VICTORIA

***DOLHEGUY v BECKER***

Kyrrou J

26, 27 March 2009 — (2009) 52 MVR 462

MOTOR TRAFFIC – SPEEDING – PROVED BY SPEED CAMERA – OWNER OF MOTOR VEHICLE FINED BUT NO ORDER MADE IN RELATION TO HIS DRIVER LICENCE – WHETHER COURT IN ERROR – STATUTORY INTERPRETATION – PRINCIPLES TO BE APPLIED – PURPOSIVE APPROACH – PRINCIPLE THAT ALL WORDS IN A STATUTE MUST BE GIVEN SOME MEANING AND EFFECT – PRINCIPLE THAT A GENERAL PROVISION IS SUBJECT TO A SPECIFIC PROVISION – PRINCIPLE THAT MOST RECENT PROVISION PREVAILS – PRINCIPLE THAT AMBIGUITY IN A PENAL STATUTE IS TO BE RESOLVED IN FAVOUR OF ACCUSED: *ROAD SAFETY ACT 1986*, ss28(1), (6), 66(1), (3), (6).

1. The effect of s28(6) of the *Road Safety Act 1986* ('Act') is that where an owner of a vehicle is convicted of a speeding offence on the basis of s66(1), the owner's licence cannot be suspended under s28(1) unless the prosecution establishes that the owner was the actual driver. Section 28(6) of the Act operates according to its terms and is an exception to s66(6).

2. A fundamental principle of modern statutory interpretation is that, where there is a choice between an interpretation that would promote the purpose of a statute and an interpretation that would not, the former is to be preferred. While the purposes of the Act are clear, a Court cannot give effect to them as if s28(6) did not exist. The purposive approach to statutory interpretation allows both the purpose and language of s28(6) and the purposes of the Act as a whole to be given effect.

3. Another principle of statutory interpretation is that Parliament intends all statutory provisions to have some meaning and effect. It is generally presumed that Parliament does not include in a statute a provision which is to be treated as not being there. The Court's task is to ascertain the meaning of each statutory provision that is relevant to the matter before the Court and to give effect to it. This means, in the context of this case, that, unless a contrary Parliamentary intention is shown, the Court must endeavour to give effect to both ss28(6) and 66(6) of the Act.

4. In view of the interpretation that s28(6) operates according to its terms and is an exception to s66(6), the court was not in error in failing to make an order in respect of the defendant's driver licence.

**KYROU J:**

**Introduction and summary**

1. This is an application for judicial review under Order 56 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) in relation to a decision by the County Court made on 19 October 2007 to convict the first defendant, Conrad Becker, of a speeding offence and impose a fine of \$500 without making any order in relation to his driver licence.

2. The plaintiff in this proceeding is Peter Dolheguy, the police informant. The second defendant is the County Court, which did not participate in the proceeding.

3. The plaintiff seeks an order quashing the orders of the County Court and a declaration to the effect that the County Court erred in law in that it was required to suspend Mr Becker's licence at least for a minimum period specified in the *Road Safety Act 1986* (Vic) ("RS Act").

4. For the reasons set out in this judgment, I have decided that the County Court did not err in law and that the relief sought by the plaintiff should be refused.

**Facts, procedural history and relevant statutory provisions**

5. By a "Charge and Summons" dated 31 January 2007, Mr Becker was charged with the offence of exceeding the prescribed speed limit by driving at an alleged speed of 136 kilometres per

hour in a 100 kilometres per hour zone, as detected by a speed camera. The offence was alleged to have occurred on 4 July 2006 and involved a motor vehicle which was at that time registered in the name of Mr Becker.

6. The summons was heard by the Magistrates' Court at Geelong on 12 July 2007. That Court found the charge proved on the basis of s66(1) of the RS Act as in force at the time of the alleged offence, convicted Mr Becker, fined him \$300, and suspended his licence for six months in accordance with s28(1) of the RS Act. At the time, s66(1) provided that, for speeding and certain other offences, the owner of a vehicle involved in the offence was guilty as if that person had been the driver unless the court was satisfied that the vehicle or number plates were stolen (see paragraph 10 of this judgment).

7. The matter then went on appeal to the County Court by way of rehearing. That Court held that the charge was proved under s66(1) and upheld the conviction. It set aside the penalties imposed by the Magistrates' Court, substituted a fine of \$500 and made no order in relation to Mr Becker's licence. The critical provisions of the RS Act considered by the County Court in making its decision on penalties were ss28 and 66 (as in force at the time of the alleged offence).<sup>[1]</sup>

8. Section 28 of the RS Act provides:

**28 Power of court to cancel, suspend or vary licences and permits**

(1) If a court convicts a person of, or is satisfied that a person is guilty of, an offence against this Act or of any other offence in connection with the driving of a motor vehicle, the court—

(a) in the case of an offence of driving a motor vehicle at a speed—

(i) of 130 kilometres per hour or more; or

(ii) of 25 kilometres per hour or more in excess of that permitted, whether generally or in relation to the particular vehicle or circumstances—

must suspend for such time as the court thinks fit (not being less than the period specified in Column 2 of Schedule 5 ascertained by reference to the speed at which the vehicle was driven as specified in Column 1 of that Schedule), all driver licences and permits held by that person; and

(b) in any case but subject to paragraph (a), may suspend for such time as it thinks fit or cancel all driver licences and permits held by that person and, whether or not that person holds a driver licence, disqualify him or her from obtaining one for such time (if any) as the court thinks fit. ...

(6) Sub-section (1) does not apply to an offence to which section 66 applies unless the court is satisfied that the person convicted or found guilty of the offence was the actual driver of the motor vehicle at the time of the offence.

9. Column 2 of schedule 5 to the RS Act relevantly provides that where the vehicle exceeds the speed limit by 35 kilometres per hour or more, but less than 45 kilometres per hour, the minimum period is 6 months.

10. At the date of the offence, namely 4 July 2006, s66 of the RS Act provided:<sup>[2]</sup>

**66 Offences detected by a photographic detection device**

(1) If—

(a) a prescribed offence occurs; and

(b) the offence is detected by a prescribed detection device or by a prescribed process—

the person who at the time of the occurrence of the offence is the owner of the motor vehicle ... involved in the offence is guilty of an offence as if that person were the driver of the motor vehicle ... at the time of the offence unless the court is satisfied that the motor vehicle ... was a stolen motor vehicle ... or that the number plates displayed on the motor vehicle ... were stolen.

...

(3) Notwithstanding anything in sub-section (1) ... an owner of a motor vehicle ... is not by virtue of sub-section (1) guilty of an offence if—

(a) before or within 28 days after the service on the owner of a summons in respect of the offence, the owner supplies to an enforcement official in a sworn statement in writing or in a statutory declaration the name and address of the person who was driving the motor vehicle ... at the relevant time; ...

...

(5) In this section, "**owner**" means—

(a) the person in whose name the motor vehicle ... is registered at the time of the offence ...

...

(6) For the avoidance of doubt, the owner of a motor vehicle ... who, by virtue of sub-section (1), is

taken to be guilty of an offence is liable to the same penalties and subject to the same consequences to which he or she would have been liable and subject had he or she been the actual driver at the time of the occurrence of the offence.

11. In the County Court, the prosecution submitted that s28(1)(a)(i) of the RS Act required the Court to suspend Mr Becker's licence for at least six months. Mr Becker relied on s28(6) in arguing that s28(1)(a)(i) did not apply unless the Court was satisfied that he was the "actual driver" of the vehicle. The County Court accepted Mr Becker's arguments on this point. This is evident from the transcript of the proceeding, including the following comments made by the Court:

The clear intention is to make the owner of the car liable as if he were the driver. That's what 66 does and then they chuck in this 28(6) ... which ... says that ... sub-s. (1) does not require me to suspend his licence if he be exceeding 130 unless I am satisfied that he was the actual driver of the motor vehicle at the time of the offence. ... It's not a matter of discretion. The section does not apply unless I am satisfied that he was the driver so 28(1) doesn't apply. ... Well I find the charge proven by virtue of s28(6) and I am unable to be satisfied to the requisite standard that [Mr Becker] was the driver. There is simply not enough material for me to say so. ... by virtue of [s66(1)] he is guilty of the offence as the owner and I convict and fine him \$500. ... I make no order in relation to his licence.

12. Accordingly, the County Court set aside the orders of the Magistrates' Court and, as appears from the above extracts, imposed a fine of \$500 but made no order regarding Mr Becker's licence.

13. It was common ground before me that the offence of which Mr Becker has been convicted is a prescribed offence which was detected by a prescribed detection device for the purposes of s66(1). It was also common ground that Mr Becker was the owner of the relevant vehicle at the time of the occurrence of the offence. According to the transcript of the hearing before the County Court, Mr Becker's counsel (Mr Hardy, who also appeared for Mr Becker before me) acknowledged that Mr Becker did not nominate another person as the driver in accordance with s66(3). It follows from s66(1) that Mr Becker was guilty of the offence as if he were the driver of the vehicle.

14. The specific issue raised in the current proceeding by the plaintiff's originating motion is whether the County Court erred in law in deciding that s28(6) of the RS Act precluded it from suspending Mr Becker's licence for a minimum of six months under s28(1) unless it was satisfied that he was the actual driver at the time of the offence. This requires a close examination of the meaning and effect of ss28 and 66 and, in particular, the interrelationship of ss28(6) and 66(6).

### Parties' submissions

15. Mr Priest, who appeared with Mr Taylor for the plaintiff, submitted that in light of the objectives of the statutory regime, particularly the intention of the legislation to impose an "owner-onus scheme" which appears from the explanatory memorandum and second reading speech to the *Transport Legislation (Amendment) Bill 2004* (Vic) ("Bill"), which inserted s66(6) into the RS Act, and the plain words of s66(6) itself, the County Court was required to suspend Mr Becker's licence. Mr Priest relied heavily upon the abovementioned extrinsic parliamentary materials, the relevant parts of which are set out in paragraphs 32 and 33 of this judgment, in support of his submission that parliament intended to achieve that result with the enactment of s66(6). He also submitted that it cannot have been parliament's intention to frustrate the objects sought to be achieved by s66 through an earlier inconsistent provision, if s28(6) was indeed such a provision.

16. Mr Priest also submitted that had Mr Becker sought to avoid the consequences flowing from s66(1) it was incumbent upon him to comply with the requirements of s66(3), which provides a mechanism for escaping liability where s66(1) would otherwise be enlivened. He submitted that s28(6) could not operate where the mechanism afforded by s66(3) was available.

17. Mr Hardy submitted that since the commencement of the RS Act, s28(6) has excluded licence suspension as a penalty for persons who have not been proved to have been actually driving a motor vehicle. He submitted that the effect of s66(6) is that the owner can be liable to a fine and demerit points together with any other available sentencing options, but cannot be liable to licence suspension under s28(1) because that provision is expressly excluded by s28(6). He noted that, when s66(6) was inserted into the RS Act, parliament did not amend s28(6), that the interpretation proposed by the plaintiff would leave s28(6) with no effect at all, and that parliament's failure to repeal s28(6) when it enacted s66(6) gives rise to the presumption that the section has some effect.

18. Mr Hardy also submitted that ss28(6) and 66(6) are not so ambiguous or confusing that recourse to extrinsic materials is required to interpret them. He submitted that the meaning of s28(6) is clear and unambiguous, that s28(6) is consistent with the purpose of the RS Act, and that the express purpose of s66(6) was to clarify the law and not to add to it or change it. Mr Hardy also referred to the principle that if there is any ambiguity in the meaning and effect of a penal provision, such as s66(6), it should be resolved in favour of a defendant. He also submitted that s28(6) is a safety net, the benefit of which is not lost by a failure to utilise any mechanism under s66(3).

19. Mr Hardy also referred to s86 of the RS Act, which deals with owner-onus for parking offences (as opposed to camera offences, which were dealt with by s66). At the time of the alleged offence, s86(1) provided:<sup>[3]</sup>

The owner of a vehicle in relation to which a parking infringement occurs is guilty of an offence against the Act ... contravened, in all respects as if that person had been the actual offender who was guilty of the infringement, unless the court is satisfied that the vehicle was a stolen vehicle or that the number plates displayed on the vehicle were stolen.

20. Mr Hardy submitted that owners of vehicles in respect of which a parking infringement occurred were to be treated “in all respects” as if they were the actual driver, whereas owners who receive traffic infringement notices were not to be treated in all respects as if they were the driver.

### **Decision**

21. In order to determine the proper construction of ss28 and 66 of the RS Act and their interrelationship, it is necessary to apply the principles of statutory interpretation having regard to the history, purpose and effect of the relevant provisions.

### **History, purpose and effect of s28(6) of RS Act when enacted**

22. Section 28(6) has been in the RS Act from its enactment in 1986. The explanatory memorandum and the second reading speech for the RS Act do not refer to it. However, it is obvious from its wording and the context in which it appears that its purpose is to provide an exception to the suspension of licence provisions of s28(1) where an owner of a vehicle is convicted of a speeding offence on the basis that the owner is taken to be the driver under s66(1) in the absence of the owner nominating the actual driver in accordance with s66(3).

23. The effect of s28(6) is that where an owner of a vehicle is convicted of a speeding offence on the basis of s66(1), the owner’s licence cannot be suspended under s28(1) unless the prosecution establishes that the owner was the actual driver.

### **History, purpose and effect of s66 of RS Act prior to enactment of s66(6)**

24. Section 66(1) of the RS Act has been in the RS Act since its enactment in 1986. It has the effect of imposing liability on an owner of a vehicle as if he or she was the driver where the vehicle is detected by a prescribed detection device as exceeding the speed limit. Section 66(3) provides an exception to s66(1) where the owner nominates the actual driver.

25. As prescribed detection devices such as speed cameras will detect a vehicle’s speed and its number plate, but will usually not produce an image of the driver, it would be difficult for the prosecution to prove that a particular person committed a speeding offence in the absence of a provision such as s66(1). Proving the identity of the owner of a vehicle is easy because of the motor vehicle registration regime. Given the ease with which ownership can be proved and the difficulties associated with proving the identity of a driver, the obvious purpose of s66(1) is to treat the owner as being the driver in connection with speeding offences detected using prescribed detection devices, and to place the onus on the owner to provide evidence of the actual driver if he or she wishes to escape liability.

### **Interrelationship between ss28(6) and 66 of the RS Act before enactment of s66(6)**

26. Looked at in isolation, s66 of the RS Act is a general provision which treats the owner as if he or she were the driver and renders the owner liable for a speeding offence unless the owner nominates the actual driver in accordance with s66(3). Accordingly, one would expect that the provisions of the RS Act and other legislation, such as the *Sentencing Act* 1991 (Vic), which impose

penalties or attach other consequences to the commission of a speeding offence by a person, would apply to an owner who falls within s66(1) and does not comply with s66(3). Where s66(3) applies, s66(1) does not apply.

27. Section 28 of the RS Act deals specifically with a particular penalty for speeding and other offences involving the driving of a vehicle. In the case of such an offence, s28(1) provides that the licence of the offender must be suspended for the minimum period set out in schedule 5 to the RS Act in certain circumstances and may be suspended in other circumstances.

28. In the absence of s28(6) of the RS Act, where s66(1) treats the owner as the driver, the suspension provisions of s28(1) would apply. Section 28(6) negates this consequence. It has the effect that an owner's licence cannot be suspended where the owner is treated as being the driver under s66(1) unless the prosecution establishes that the owner was the actual driver.

29. This is the only sensible interpretation of s28(6) and its interrelationship with s66(1). One cannot read s28(6) as being subject to s66(1), as this would have the opposite result to what is obviously intended. Nor can one read s28(6) as applying only where s66(3) is invoked because, where s66(3) is invoked, s66(1) does not apply and therefore an owner does not need the protection of s28(6).

### **History, purpose and effect of s66(6) of RS Act**

30. As stated in paragraph 15 of this judgment, s66(6) was inserted in the RS Act by the Bill. It is clear from the explanatory memorandum (see paragraph 32 of this judgment) that the purpose of s66(6) was to overcome the decision in *Roads Corporation v Magistrates' Court of Victoria*.<sup>[4]</sup> That case dealt with the scope of the appeal rights in s26(2) of the RS Act as in force at the relevant time in a situation where an owner's licence is suspended through the accumulation of more than the prescribed number of demerit points and the owner alleges that he or she was not the driver at the time the most recent demerit points were accrued. In the course of deciding the scope of the appeal rights, Smith J made a comment that suggested that the provisions of the RS Act dealing with suspension of licences through the accumulation of more than the prescribed number of demerit points were intended to operate against the actual driver of the vehicle committing the offence.<sup>[5]</sup>

31. The perceived mischief that s66(6) was enacted to remedy flowed from the abovementioned suggestion in *Parsons' Case*. The opening words "For the avoidance of doubt" in s66(6) make it clear that parliament was seeking to clarify the intended effect of s66(1), namely that an owner falling within s66(1) is subject to all of the penalties of a driver committing a speeding offence, including accumulation of demerit points and suspension of licence through the accumulation of more than the prescribed number of demerit points.

32. The explanatory memorandum stated the following in relation to cl 32 of the Bill which inserted s66(6) in the RS Act:

This is one of the amendments that arises out of the decision referred to in *Parson's Case* ... The new section 66(6) clarifies that the registered operator of a motor vehicle is liable for penalties and other consequences (including demerit points) flowing from offences detected by photographic detection devices and involving a vehicle registered in the operator's name. This reflects the "owner onus" principle, namely, that the registered operator of a vehicle must take full responsibility for a traffic camera, parking or tolling offence involving his or her vehicle unless and until he or she nominates the actual driver.

33. In the second reading speech for the Bill, the Minister for Transport stated:<sup>[6]</sup>

[T]his bill clarifies and reinforces the existing principles of the owner-onus scheme, namely, that the registered operator of a vehicle is responsible for offences committed through use of that vehicle and is liable for any penalties resulting from those offences, including demerit points and licence suspension, unless he or she nominates the person who was actually driving.

34. The explanatory memorandum accurately states that s66(6) clarifies that an owner who is found liable in accordance with s66(1) will lose demerit points. There has never been a provision in the RS Act that is similar to s28(6) in relation to demerit points. In other words, the RS Act



has never provided that an owner who is treated as being the driver under s66(1) cannot accrue demerit points unless the prosecution establishes that the owner was the actual driver of the relevant vehicle at the time of the offence.

35. Unlike the explanatory memorandum, the Minister's second reading speech suggests that the Bill clarifies that an owner who is found liable in accordance with s66(1) can have his or her licence suspended. Neither the second reading speech nor the explanatory memorandum refers to s28(6). The second reading speech is discussed further below.

### **Interrelationship of ss28(6) and 66(6) of RS Act**

36. In broad terms, there are two competing interpretations regarding the interrelationship of ss28(6) and 66(6). The first is that s66(6) operates according to its terms and overrides s28(6) ("first interpretation"). The second is that s28(6) operates according to its terms and is an exception to s66(6) ("second interpretation"). The choice between these interpretations will determine whether the enactment of s66(6) has deprived s28(6) of any further operation.

### **Principles of statutory interpretation without reference to extrinsic material**

#### *Purposive approach to statutory interpretation*

37. A fundamental principle of modern statutory interpretation is that, where there is a choice between an interpretation that would promote the purpose of a statute and an interpretation that would not, the former is to be preferred.<sup>[7]</sup>

38. Section 1 of the RS Act sets out the purposes of the Act, including "to provide for safe, efficient and equitable road use," and "to set out the general obligations of road users in relation to responsible road use". Section 28 is in Part 3 of the RS Act which is headed "Licensing of Drivers". Section 17 states that one of the purposes of licensing is "to ensure that people who are, or who become, unsuited to drive are not permitted to drive on highways".

39. While the above purposes are clear, the Court cannot give effect to them as if s28(6) did not exist. Section 28(6) is in the Act and has been there since its inception. Its purpose has been discussed in paragraph 22 of this judgment. As the first interpretation does not allow both the purpose of s28(6) and the purposes of the Act as a whole to be given effect, the purposive approach to statutory interpretation does not warrant adoption of the first interpretation.

40. The leading High Court case on the purposive approach to statutory interpretation is *Project Blue Sky Inc v Australian Broadcasting Authority*.<sup>[8]</sup> In that case, the majority stated:<sup>[9]</sup>

A legislative instrument must be construed on the prima facie basis that its provisions are intended to give effect to harmonious goals. Where conflict appears to arise from the language of particular provisions, the conflict must be alleviated, so far as possible, by adjusting the meaning of the competing provisions to achieve that result which will best give effect to the purpose and language of those provisions while maintaining the unity of all the statutory provisions. Reconciling conflicting provisions will often require the court ... to determine which is the leading provision and which the subordinate provision, and which must give way to the other ... Only by determining the hierarchy of the provisions will it be possible in many cases to give each provision the meaning which best gives effect to its purpose and language while maintaining the unity of the statutory scheme.

41. Applying the above principle, the second interpretation would give effect to the purpose and language of the RS Act and maintain the unity of all the statutory provisions whereas the first interpretation would not because it would eviscerate s28(6).

#### *Principle that all the words of a statutory provision must be given effect*

42. Another principle of statutory interpretation is that parliament intends all statutory provisions to have some meaning and effect.<sup>[10]</sup> It is generally presumed that parliament does not include in a statute a provision which is to be treated as not being there. The Court's task is to ascertain the meaning of each statutory provision that is relevant to the matter before the Court and to give effect to it. This means, in the context of this case, that, unless a contrary parliamentary intention is shown, the Court must endeavour to give effect to both ss28(6) and 66(6) of the RS Act.

43. Under the first interpretation, s66(6) will operate according to its terms but s28(6) will

not have any operation. Under the second interpretation, both provisions will continue to have operation, although s66(6) will have a reduced scope. The second interpretation would still enable s66(6) to continue to remedy the “mischief” that it was enacted to deal with (see paragraphs 30 and 31 of this judgment). It follows that the second interpretation is consistent with the principle discussed in paragraph 42 of this judgment whereas the first interpretation is not.

*Principle that general provisions are subject to specific provisions*

44. Another principle of statutory interpretation is that general provisions are subject to specific provisions.<sup>[11]</sup> Section 66(6) is a general provision because it refers to penalties in general whereas s28(6) is a specific provision because it deals only with the penalty of suspension imposed by s28(1) of the RS Act. It follows that this principle supports the second interpretation.

*Principle of implied repeal of legislation*

45. Another principle of statutory interpretation is the principle of implied repeal of a statutory provision. Mr Priest relied upon this principle in his written submissions but abandoned it in his oral submissions. Mr Hardy, on the other hand, referred me to a number of cases dealing with the principle in order to demonstrate that the principle does not apply and that the non-application of the principle supported his primary submission that s66(6) should be construed as being subject to s28(6).

46. The principle of implied repeal of legislation was stated as follows by Barton J in *Goodwin v Phillips*:<sup>[12]</sup>

Before coming to the conclusion that there is a repeal by implication [the Court must] ... be satisfied that the two enactments are so inconsistent or repugnant that they cannot stand together, before they can from the language of the latter imply the repeal of an express prior enactment, *i.e.*, the repeal must, if not express, flow from necessary implication ... If, therefore, there is fairly open on the words of the later Act, a construction by adopting which the earlier Act may be saved from repeal, that construction is to be adopted.

47. Under the second interpretation, ss28(6) and 66(6) can “stand together” and both have effect. Accordingly, s66(6) cannot be held to have impliedly repealed s28(6). The fact that the test for implied repeal of legislation is not satisfied tells strongly against adoption of the first interpretation, as that interpretation would deprive s28(6) of any operation and thus have the same result as an implied repeal of s28(6).

48. The following statement of Gaudron J in *Saraswati v The Queen*<sup>[13]</sup> aptly describes why the second interpretation should be adopted in this case:

It is a basic rule of construction that, in the absence of express words, an earlier statutory provision is not repealed, altered or derogated from by a later provision unless an intention to that effect is necessarily to be implied. There must be very strong grounds to support that implication, for there is a general presumption that the legislature intended that both provisions should operate and that, to the extent that they would otherwise overlap, one should be read as subject to the other. More particularly, an intention to affect the earlier provision will not be implied if the later is of general application ... and the earlier deals with some matter affecting the individual ... Nor will an intention to affect the earlier provision be implied if the later is otherwise capable of sensible operation.

*Principle that most recent statutory provision prevails*

49. Another principle of statutory interpretation, which was not expressly relied upon by Mr Priest, is that if there is an inconsistency between two statutory provisions, the most recent will prevail.<sup>[14]</sup> On the basis of this principle, s66(6) would prevail over s28(6), as it is the most recent. However, the principle only applies where provisions are inconsistent such that they cannot both operate, and only applies as a last resort.<sup>[15]</sup> To the extent that ss28(6) and 66(6) are inconsistent, that inconsistency is not so great that they cannot both operate. As the application of other principles of statutory interpretation can result in both provisions having operation, one cannot rely on the principle that the last in time prevails.

*Principle that ambiguity in a penal statute should be resolved in favour of an accused*

50. Another “last resort” principle of statutory interpretation is that where there is an ambiguity about the meaning of a penal statute, the ambiguity is to be resolved in favour of the accused.<sup>[16]</sup> As I have concluded that neither s28(6) nor s66(6) is ambiguous, this principle has no application in this case. If the principle had applied, it would have favoured the second interpretation.

51. It follows from the above discussion that if one does not have regard to any extrinsic material, the principles of statutory interpretation favour the second interpretation.

***Effect of extrinsic material***

52. Section 35(b) of the *Interpretation of Legislation Act* 1984 (Vic) permits the Court to have regard to extrinsic material, such as explanatory memoranda and parliamentary debates, as an aid to statutory interpretation.

53. When regard is had to the second reading speech for the Bill, the relevant part of which is set out in paragraph 33 of this judgment, it becomes apparent that the Minister believed that s66(6) would apply to suspension of an owner's licence. There are two interpretations of the Minister's statement. The first is that he was referring to the suspension of a licence not under s28(1) but through the accumulation of demerit points, in which case the Minister's statement is accurate. The second interpretation is that the Minister was referring to all suspensions of licence, including a suspension under s28(1). If the second interpretation is correct, the Minister's statement can only be accurate if one ignores s28(6). The question then arises whether the Minister's statement can be used to determine what interpretation to give to s66(6) and its interrelationship with s28(6) of the RS Act.

54. I favour the first interpretation of the Minister's statement because *Parsons' Case*, which s66(6) was introduced to overcome, dealt with licence suspension resulting from the accumulation of demerit points. However, if the second interpretation is the correct interpretation, as I have found that the meanings of s28(6) and 66(6) and their interrelationship can be readily ascertained by applying the principles of statutory interpretation, it is not appropriate to use the Minister's statement as a means of altering the interpretation of these provisions.<sup>[17]</sup>

***Conclusion on interrelationship of ss28(6) and 66(6) of the RS Act***

55. For the reasons set out in paragraphs 22 to 54 of this judgment, I have concluded that the second interpretation of the interrelationship between ss28(6) and 66(6) referred to in paragraph 36 of this judgment is correct, namely that s28(6) operates according to its terms and is an exception to s66(6).

56. The above conclusion has not been influenced by the differences in language between ss66(6) and 86 of the RS Act which Mr Hardy relied on (see paragraphs 19 and 20 of this judgment).

***Proposed order***

57. I propose to make an order dismissing the application for judicial review.

58. I will hear from the parties on the precise form of the order and on costs.

[1] Section 28 has not been amended at any relevant time but the relevant version of s66 is that which was in force at the time of the offence, namely 4 July 2006. In this judgment, all references to s66 are references to the provision as in force on 4 July 2006.

[2] On 1 July 2007, the *Road Legislation (Projects and Road Safety) Act* 2006 (Vic) substituted a new s66 in the RS Act. However, that amending Act also inserted s103L into the RS Act. Section 103L(5) of the RS Act, as inserted by the amending Act, provides that s66 of the RS Act as substituted by the amending Act only applies to offences alleged to have been committed on or after the commencement of the section in the amending Act inserting s66, namely 1 July 2007. The old s66, as in force at the date of the offence (4 July 2006), continues to apply to that offence.

[3] Section 86 has since been substituted. This was done by the *Road Legislation (Projects and Road Safety) Act* 2006 (Vic) and took effect on 1 July 2007.

[4] [2004] VSC 384; (2004) 42 MVR 105 (*"Parsons' Case"*).

[5] *Parsons' Case* [2004] VSC 384 [38]; (2004) 42 MVR 105, [38].

[6] Victoria, *Parliamentary Debates*, Legislative Assembly, 18 November 2004, 1736 (Peter Batchelor).

[7] *Interpretation of Legislation Act* 1984 (Vic) s 35(a); *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28; (1998) 194 CLR 355, 381-2 [69]-[70], 384 [78]; 153 ALR 490; 72 ALJR 841; (1998) 8 Leg Rep 41 (*"Project Blue Sky"*); *Alinta Asset Management Pty Ltd v Essential Services Commission* [2008] VSCA 273, [70]-[75]; (2008) 22 VR 275 (*"Alinta"*); *Austwide Institute of Training Pty Ltd v Dalman* [2009] VSCA 25, [35]; (2009) 23 VR 45 (*"Austwide"*).

[8] [1998] HCA 28; (1998) 194 CLR 355; 153 ALR 490; 72 ALJR 841; (1998) 8 Leg Rep 41.

[9] [1998] HCA 28; (1998) 194 CLR 355, 381-2 [70]; 153 ALR 490; 72 ALJR 841; (1998) 8 Leg Rep 41 (citations omitted).



- [10] *Project Blue Sky* [1998] HCA 28; (1998) 194 CLR 355, 382 [71]; 153 ALR 490; 72 ALJR 841; (1998) 8 Leg Rep 41; *Alinta* [2008] VSCA 273, [73]; (2009) 23 VR 45; *Austwide* [2009] VSCA 25, [35]; (2009) 23 VR 45.
- [11] *Saraswati v R* [1991] HCA 21; (1991) 172 CLR 1, 17-18; (1991) 100 ALR 193; 65 ALJR 402; 54 A Crim R 183; *R v Pepe* [2000] VSCA 208; (2000) 2 VR 412, 417-18 [23]; (2000) 116 A Crim R 564; *R v Mihaló* [2002] VSCA 217, [39]; (2002) 136 A Crim R 588.
- [12] [1908] HCA 55; (1908) 7 CLR 1, 10.
- [13] [1991] HCA 21; (1991) 172 CLR 1, 17-18; (1991) 100 ALR 193; 65 ALJR 402; 54 A Crim R 183 (citations omitted).
- [14] *Ross v R* [1979] HCA 29; (1979) 141 CLR 432, 440; (1979) 25 ALR 137; 53 ALJR 517.
- [15] *Mount Isa Mines Ltd v Federal Commissioner of Taxation* (1976) 10 ALR 629, 639; 6 ATR 334; *Lyons v Registrar of Trade Marks* [1983] FCA 236; (1983) 78 FLR 217; (1983) 50 ALR 496, 508; 1 IPR 416; [1983] AIPC 90-111; 1 TPR 416.
- [16] *Beckwith v R* [1976] HCA 55; (1976) 135 CLR 569, 576; (1976) 12 ALR 333; 51 ALJR 247; 28 ALT 39; *Krakouer v R* [1998] HCA 43; (1998) 194 CLR 202, 223 [62]; (1998) 155 ALR 586; (1999) 13 Leg Rep C1; (1998) 72 ALJR 1229; (1998) 102 A Crim R 490; *R v ACR Roofing Pty Ltd* [2004] VSCA 215; (2004) 11 VR 187, 202-3 [43]; (2004) 142 IR 157.
- [17] *Metropolitan Fire Brigades Board v St Catherine's School* [1993] VicRp 25; [1993] 1 VR 351, 358; (1992) 78 LGERA 245; *Transport Accident Commission v Clarke* [1994] VicRp 7; [1994] 1 VR 117, 121-2.

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