Public Prosecutor *v* Rangasamy Subramaniam
[2010] SGCA 40

Case Number	: Criminal Reference No 3 of 2010
Decision Date	: 10 November 2010
Tribunal/Court	: Court of Appeal
Coram	: Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Bala Reddy, Ng Cheng Thiam and Mohamed Faizal (Attorney-General's Chambers) for the applicant; S K Kumar and Krisha Morthy (S K Kumar & Associates) for the respondent.
Parties	: Public Prosecutor — Rangasamy Subramaniam

Road Traffic

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2010] 1 SLR 719.]

10 November 2010

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Introduction

1 The matter before us concerned a criminal reference that had been taken out by the Public Prosecutor ("the Applicant") pursuant to s 60 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("the SCJA"). The genesis of this application was the decision of the High Court judge ("the Judge") setting aside the conviction of Rangasamy Subramaniam ("the Respondent") under s 67(1)(*b*) of the Road Traffic Act (Cap 276, 2004 Rev Ed) ("the RTA") for driving while under the influence of drink (see *Rangasamy Subramaniam v Public Prosecutor* [2010] 1 SLR(R) 719 ("the GD")).

The Background

2 Before proceeding to consider the question reserved for our decision in the present application, it would be appropriate that we first set out briefly the specific background of the case. The facts were relatively straightforward.

3 On 2 December 2007, at about 10.00pm, the Respondent went to a coffee shop at Tanjong Pagar. He claimed that he drank a bottle of beer which he finished by 11.00pm but that he remained at the coffee shop for a while thereafter. The Respondent admitted that on 3 December 2007, at about 2.00am, he got into his car and started to drive home. [note: 1] However, whilst travelling along the Pan-Island Expressway ("the PIE"), he felt sleepy and nauseous. After stopping his car at the road shoulder, he fell asleep in his car.

4 At 3.54am, the police received a telephone call from someone who stated that "there is a car parked on the PIE with the driver's door open and he is partially coming out of the car". [note: 2] The police despatched a patrol car to the scene where they found the Respondent. His speech was found to be slurred and his eyes were bloodshot. Consequently, at 4.42am, the police proceeded to administer a breathalyser test on him. He failed the test and was arrested.

5 The Respondent was then brought back to the Traffic Police Division Headquarters where a breath evidential analyser ("BEA") test was administered on him at 5.42am pursuant to s 70(1) of the RTA. His breath alcohol content was found to be 43 microgrammes of alcohol per 100 ml of breath, which was above the legal limit of 35 microgrammes of alcohol per 100 ml of breath. Both the breathalyser test and the BEA test were administered on the Respondent more than 2 hours after he had stopped driving.

6 The police charged the Respondent for driving while under the influence of drink pursuant to s 67(1)(*b*) of the RTA. The charge read as follows: [note: 3]

> You,
>
> Rangasamy Subramaniam
>
> NRIC No.: S-[xxx]
>
> Male, 56 years old (D.O.B.: 29 Dec 1951)
>
> are charged that you, on the 3rd day of December 2007, between 2 am and 3.54 am, along Pan Island Expressway 14.5 km towards Tuas, Singapore, when driving motor car SGG 4774 D, did have so much alcohol in your body that the proportion of it in your breath, to wit, not less than 43 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit of 35 microgrammes of alcohol in 100 millilitres of breath, and you have thereby committed an offence punishable under section 67(1)(b) of the Road Traffic Act, Chapter 276.

The police relied on the results of the BEA test and the assumption in s 71A of the RTA to show that the Respondent's alcohol level exceeded the legal limit at the material time. There was no other evidence of the Respondent's alcohol level. Section 71A provides that in proceedings for an offence under ss 67 or 68, the proportion of alcohol in an accused's breath at the time of the alleged offence shall be assumed to be not less than that in the specimen of breath provided by him.

7 During trial, counsel for the Respondent submitted that there was no evidence that the Respondent's alcohol level during the material time (between 2.00am and 3.54am) exceeded the legal limits. He submitted that the assumption in s 71A of the RTA could not apply in the circumstances to show that the Respondent's alcohol level had exceeded the limit at the material time because by the time the Respondent was found by the police, he was no longer driving. He also invited the court to amend the charge to one under s 68 of the RTA for being in charge of a motor vehicle when under the influence of drink. Significantly, s 68, unlike s 67, does not provide for disqualification from driving.

8 The District Judge held that the assumption in s 71A of the RTA applied and convicted the Respondent. She sentenced him to a fine of $3,000 (in default 15 days' imprisonment) and disqualified him from holding or obtaining a driving license for all classes of vehicles for a period of 2 years (see *Public Prosecutor v Rangasamy Subramaniam* [2009] SGDC 30). The Respondent appealed against both the conviction and the sentence.

9 Before the Judge, the Respondent again submitted that under the RTA, the assumption in s 71A could only be used in support of a charge under s 67(1)(*b*) if the offender was stopped while he was driving or attempting to drive a vehicle, as opposed to a situation where he was merely in charge of a vehicle within the meaning of s 68. The Judge allowed the appeal. He quashed the Respondent's conviction with respect to the offence under s 67(1)(*b*) and set aside the sentence imposed. Instead, he found that there was sufficient evidence of the Respondent having been in charge of a motor

vehicle when under the influence of drink. Accordingly, he convicted the Respondent of a lesser charge under s 68(1)(*b*) of the RTA and sentenced the Respondent to a fine of $2,000 (in default 10 days' imprisonment). [note: 4] There were two main reasons why the Judge decided to quash the Respondent's conviction that had been imposed by the District Judge:

> (a) On a charge under s 68(1) of the RTA for being in charge of a motor vehicle when under the influence of drink, it was open to the accused (here, the Respondent) to prove the circumstances in s 68(2) of the RTA, *viz*, that at the time he was driving the vehicle, his alcohol level was not over the limit, even though by operation of s 71A(1) of the RTA, his alcohol level at the time he was apprehended would be assumed to be not less than the level found in the specimen given by him. If s 71A(1) of the RTA were applicable to a charge under s 67(1) of the RTA in the circumstances of the present case, the accused would be deprived of the defence available to him under s 68(2) if he had been charged under s 68(1) of the RTA instead (see the GD at [12]).
>
> (b) If s 71A(1) of the RTA was applicable where a person, apprehended while he was in charge of a vehicle (as opposed to while he was driving it), is charged with an offence under s 67(1) of the RTA, then it would mean that he was better off refusing to provide a breath or blood specimen. That was because without the result from the specimen, that person could only be convicted of an offence under s 68(1) of the RTA as opposed to the more severe offence under s 67(1) of the RTA (see the GD at [17]).

10 Following the decision of the Judge, the Applicant applied by way of Criminal Motion for a question of law of public interest to be referred to us. The question was phrased as follows: [note: 5]

> Whether the assumption under Section 71A of the Road Traffic Act applies to an accused charged under Section 67(1)(*b*) of the Road Traffic Act where the accused was not driving a vehicle at the time of the arrest.

Preliminary objection

11 In his Statement of Case, the Judge expressed his view that the true question that arose from his decision was, instead, more appropriately phrased as follows: [note: 6]

> [W]hether the assumption under s 71A of the Road Traffic Act ("RTA") applies to an accused person charged under s 67(1)(*b*) of the RTA where he was arrested in circumstances under which a charge of s 68(1) of the RTA was made out.

However, as the Applicant was not inclined to alter the question, and as s 60 of the SCJA required the court to certify any application by the Public Prosecutor, the Judge made an order in terms in relation to the motion and reserved the question (as set out in the preceding paragraph) for determination.

12 The Respondent submitted, as a preliminary point, that the question posed by Applicant ought to be rephrased in accordance with the Judge's wording (see above at [11]) or as a question of whether, given facts such as those in the present case, s 67 or s 68 of the RTA was the more appropriate charge.

13 The principles governing the refashioning of a question posed in a criminal reference were set out in *Public Prosecutor v Fernandez Joseph Ferdinent* [2007] 4 SLR(R) 1 as follows (at [19]):

> [A] refashioning of a question being posed by an applicant to this court in a criminal reference is neither novel nor inappropriate. The overriding task of this court in any criminal reference is to clarify questions of law of public interest. It should not be forgotten that the primary objective of such a process is to allow this court an opportunity to provide an authoritative articulation of the applicable principles for future cases. This purpose would undoubtedly be frustrated if this court is compelled to decide on questions that may be of insignificant utility as a result of the use of inappropriate nomenclature by an applicant. For that reason, where a question is couched in a manner which would inadvertently mask its true import… the court retains a discretion to pose the question in a manner which will be more appropriate and which will ensure that the substance of the question is rendered clear, save that the refashioned question has to remain within the four corners of s 60 of the SCJA.

Bearing the above principles in mind, we were of the view that the question posed by the Applicant need not be rephrased. The question as worded by the Judge simply queried whether the assumption in s 71A of the RTA ought to apply to an offence under s 67 of the RTA where an offence under s 68 of the RTA has been made out. It did not address situations where an offence under s 68 of the RTA had not been made out but where there was a time lag between the driving and the breath test. The narrowness of the Judge's question made it, in our view, less helpful than the current question posed by the Applicant which was also broad enough to cover the Judge's question. The question as phrased by the Judge would not furnish guidance in situations such as where a driver who was drunk stopped his car and walked away from the vehicle but was subsequently arrested on suspicion of either having been in charge of a car when under the influence of drink or for driving while under the influence of drink (*ie*, drink driving). We were also of the view that the question posed by the Applicant ought not to be rephrased as a question of whether, given facts similar to the present case, s 67 or s 68 was the more appropriate charge. The power to decide whether to prosecute under a particular charge lies squarely with the Public Prosecutor. In any event, the question suggested by the Respondent did nothing to clarify the true import of the public interest question posed by the Applicant, *ie*, the circumstances under which the assumption in s 71A of the RTA would apply to a driver accused of an offence under s 67 of the RTA.

14 Having heard the submissions of both parties, we held that the question posed by the applicant ought to be answered in the affirmative. We now give the detailed grounds for our decision.

The historical background and purpose of the Road Traffic Act

Analysis of the origins of the relevant modern day provisions

(i) The UK Criminal Justice Act 1925, UK Road Traffic Act 1930 and Straits Settlement Road Traffic Ordinance 1941: one provision combining drink driving and being in control while under influence of drink

15 The modern day RTA has its genesis in the Road Traffic Ordinance of 1941 (No 17 of 1941) ("RTO 1941"), which was modelled on the contemporary UK provisions of that period. In both the local and UK provisions, the offence of driving while under the influence of drink was indistinguishable from the offence of being in charge of a motor vehicle while under the influence of drink.

16 Indeed, an early provision did not even refer expressly to the specific action of driving (or attempting to drive) a motor vehicle. This is a significant point which we will return to below (at [41]) inasmuch as it accords with both logic and commonsense that when one is driving a motor vehicle, one is *necessarily* also in charge of it. However, as we shall also elaborate upon below, it does *not necessarily* follow that if one is in charge of a motor vehicle, one must simultaneously be driving it.

This (early) provision was, in fact, s 40 of the UK Criminal Justice Act 1925 (Cap 86) ("UKCJA 1925"), which read as follows:

> **Penalty for drunkenness while in charge of motor car**.
>
> **40. –** (1) Any person who is drunk while in charge on any highway or other public place of any mechanically-propelled vehicle shall, on summary conviction, be liable in respect of each offence to imprisonment for a period not exceeding four months or to a fine not exceeding fifty pounds, or to both such imprisonment and fine.
>
> (2) A person convicted under the preceding sub-section shall (without prejudice to the power of the court under section four of the Motor Car Act, 1903, to order a longer period of disqualification) be disqualified for holding a licence for a period of twelve months from the date of the conviction, and any licence held by him shall, so long as the disqualification continues, be of no effect.
>
> ...

17 However, s 40 of the UKCJA 1925 was just one isolated provision on drink driving. The first substantive UK statute dealing with road traffic offences proper appears to be the UK Road Traffic Act 1930 (Cap 43) ("UKRTA 1930"), to which our attention now turns.

18 In particular, s 15 of the UKRTA 1930 provided as follows:

> **Punishment of persons driving motor vehicles when under influence of drink or drugs**.
>
> **15. –** (1) Any person who when driving or attempting to drive, or when in charge of, a motor vehicle on a road or other public place is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle, shall be liable –
>
> (a) on summary conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding four months, and in the case of a second or subsequent conviction either to a fine not exceeding one hundred pounds or to such imprisonment as aforesaid or to both such fine and imprisonment;
>
> (b) on conviction on indictment to imprisonment for a term not exceeding six months or to a fine, or to both such imprisonment and fine.
>
> (2) A person convicted of an offence under this section shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of twelve months from the date of the conviction for holding or obtaining a licence.
>
> ...

During the second reading of the UK Road Traffic Bill on 16 December 1929, Lord Raglan proposed an amendment in favour of excluding the words "or when in charge of" from subsection (1) of the above provision. He pointed out that (see *Parliamentary Debates (Hansard) - House of Lords* (16 December 1929) vol 75 at col 1337):

> … thousands of people are left in charge every day who have never driven or had any intention of driving a car. These persons, who are merely sitting in a car to prevent any one stealing it,

would, if they are slightly under the influence of drink, be liable under this clause as it stands to four months imprisonment and a fine of £50.

Eventually, the amendment was withdrawn. However, the parliamentary speeches in relation to this proposed amendment are instructive. Earl Russell opined thus (see *Parliamentary Debates (Hansard) - House of Lords* (16 December 1929) vol 75 at cols 1337–1338):

> Without these words a great many people who cannot be properly convicted would escape conviction because you would not be able to convict unless there was actual evidence that the person had been driving or had attempted to drive. That is, unless someone has seen him doing so, whereas the policeman who found him had no doubt he was driving or intended to drive. I think I dealt with the point before. If a car was found smashed against a lamppost and a man was found asleep in the ruins of it you might then say he could properly be convicted for the words would cover his case. The Home Secretary attaches great importance to these words. His advice from the police of the country is that a great many who ought to be convicted would escape unless they were left in.

In response to a hypothetical situation by Earl Howe regarding a young lady who found herself unable to drive and was discovered asleep in the vehicle without having attempted to drive, Earl Russell replied (see *Parliamentary Debates (Hansard) - House of Lords* (16 December 1929) vol 75 at col 1338):

> I think it is perfectly clear that in such circumstances the court ought not to convict. First of all, if I were the chief constable I should not authorise a prosecution in a case of that sort, but if he has authorised it I do not know that the court is bound to convict, if she has done no act to show that she was in charge of the motor car. She might have been a stranger.

19 The above extracts reveal that, when the provision was first drafted in the UKRTA 1930, it was envisaged that a person who had been drink driving could be convicted even if he had ceased driving at the time of arrest. However, a person who had fallen asleep in the vehicle as a result of the influence of drink*, but who had no intention to operate the vehicle*, was *not* intended to be caught by that provision.

20 Section 15 of the UKRTA 1930 was imported into Singapore largely unchanged in the form of s 27 of the RTO 1941, which read as follows:

> **Driving while under influence of drink or drugs**.
>
> **27. –** (1) Any person who when driving or attempting to drive *or sitting in the driving seat of a motor vehicle* on a road or other public place is under the influence of drink or a drug to such an extent as to be incapable of having proper control of such vehicle shall be liable on conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding four months and in the case of a second or subsequent conviction either to a fine not exceeding one thousand dollars or to such imprisonment as aforesaid or to both such fine and imprisonment:
>
> Provided that no person found sitting in the driving seat of a motor vehicle shall be convicted of an offence under this section if he shall prove that he had no intention of driving the motor vehicle contrary to the provisions of this section.
>
> (2) A person convicted of an offence under this section shall unless the Court for special reasons thinks fit to order otherwise and without prejudice to the power of the Court to order a longer

period of disqualification be disqualified for a period of twelve months from the date of the conviction for holding or obtaining a driving licence.

...

[emphasis added]

For the purpose of the present analysis, the main difference between the two provisions is that in s 27 of the RTO 1941 the words "or when in charge of" were replaced with "sitting in the driving seat of a motor vehicle". The Report of the Select Committee appointed by the Straits Settlements Legislative Council to review the draft Road Traffic Bill (on 14 October 1940) as well as the Minutes of the meeting of the Straits Settlements Legislative Council (on 14 February 1941) relating to the Road Traffic Bill are silent on why these changes were made. Nevertheless, it is plausible, in our view, that the insertion of the words "sitting in the driving seat of the motor car" and (in particular) the proviso to s 27(1) were intended to avoid the conviction of an accused in situations such as that posed in the hypothetical situation suggested by Earl Howe, where persons who had taken alcohol *but had no intention to drive* were found in a motor vehicle (see above at [18]). Section 27 of the RTO 1941 was subsequently renumbered as s 26 of the Road Traffic Ordinance 1955 ("RTO 1955"), and the amount of the fine that could be imposed was raised, but otherwise the provision remained the same until the Road Traffic Ordinance 1961 ("RTO 1961") came into force.

(ii) The UK Road Traffic Act 1956, the UK Road Traffic Act 1960 and the Singapore Road Traffic Ordinance 1961: separate provisions for driving under influence of drink or drugs and being in charge of motor vehicle when under the influence of drink or drugs

(1) The UK background: the UK Road Traffic Act 1956 and the UK Road Traffic Act 1960

21 The offence of driving under the influence of drink and being in charge of a motor vehicle when under the influence of drink remained one and the same in the UK until the UK Road Traffic Act 1956 ("UKRTA 1956") was enacted. The *decoupling* of the two offences appears to have come about as a result of a growing sentiment that was aired in the UK Parliament to the effect that to treat both offences as being equally culpable offences was unreasonable. In the words of Lord Brabazon of Tara (see *Parliamentary Debates (Hansard) - House of Lords* (21 December 1954) vol 190 at col 608):

> …these words "or when in charge of" are causing great injustices up and down the country. The sort of thing which has occurred is this. A man goes out to a party, perfectly sober. At the party he may drink too much, and he comes to the conclusion that he is not fit to drive back. He sits in the back of his car and gives the ignition key to somebody else. He is prosecuted for being in charge of that motor-car. That is a travesty of justice; and, what is more, it is an encouragement to the man to drive when he has made the sound resolution in his mind that he is not capable of driving… At some stage I should like to see the words "or when in charge of" deleted from the Act, because it is a definite encouragement to people to drive when they should not.

And, as observed by Earl Jowitt (see *Parliamentary Debates (Hansard) – House of Lords* (21 December 1954) vol 190 at col 633):

> I heard of a case of a man who left his car on the road outside his house and did not turn on his lights. He proceeded to dine at his own house, not wisely but too well, and was rather drunk after dinner. He was wearing his pyjamas when the police came along and wanted to know who was the owner of the car. They wanted to have the lights turned on. Down went the gentleman

in his pyjamas to turn the lights on, the police saw he was drunk and they prosecuted him for being drunk in charge of a car. I cannot think that that kind of thing is desirable.

Finally, in the words of Earl Howe (see *Parliamentary Debates (Hansard) - House of Lords* (14 March 1955) vol 191 at col 1006):

> My Lords, since we had our last debate upon this subject, a most curious case has arisen. It was reported in various newspapers on March 9 that an undergraduate of Oxford went to a party keeping the ignition key of his car, and leaving his car outside a public place. He was charged with being drunk in charge of a car. It was urged on his behalf that he was on private property, and that he was not trying to drive the car at all. Furthermore, the moment the police arrived and found him he handed over the ignition key of the car. The report went on to say that he was none the less fined £20, ordered to pay £20 costs and disqualified from driving for twelve months. I join with everybody who has spoken on this subject: I have no use whatever for people who try to drive a motor car while under the influence of drink or drugs, and I yield to no one in my detestation of that offence. Nevertheless, I do feel that, under the existing law, it is possible for an injustice to occur, as has been so well put by the noble Lord, Lord Brabazon of Tara.

22 During the Second Reading of the UK Road Traffic Bill on 12 June 1956, the Chancellor of the Duchy of Lancaster (The Earl of Selkirk) had this to say about the decoupling of the two offences (see *Parliamentary Debates (Hansard) - House of Lords* (12 June 1956) vol 197 at col 846):

> Clause 9, a new clause, seeks to resolve a problem with which we are very much concerned – to distinguish between "driving under the influence" and "drunk in charge". This point was brought very forcefully to our attention by the noble Lord, Lord Brabazon of Tara, and the discussions which we then had have laid the foundation for the proposals now in this clause. *Broadly, the offence of being drunk in charge is now treated as a separate offence to which there is a statutory defence that the driver had not, in fact, driven the car and that there was no likelihood of his doing so*. I very much hope that this solution will commend itself to the House. It has been very carefully examined. [emphasis added]

23 Having regard to the background set out above, it appears clear that the two offences were *decoupled* in order to prevent the injustice that would result from the conflating of drink driving with (a) the situation where a person was drunk and in control of a motor vehicle but had not driven it; and (b) the situation where a person was drunk but had not driven and could not have been said to have been in control of a motor vehicle in any other than an extremely technical sense. More importantly (for the purposes of the present proceedings), it is clear that this decoupling was not intended to detract – in any way – from the need to proscribe (in no uncertain terms) the first offence, *viz*, drink driving, which, by its very nature (as demonstrated, *inter alia*, by s 40 of the UKCJA 1925 (see above at [16])), *necessarily entails* the accused being *in charge* of the motor vehicle *in the first place*. Looked at in this light, the second offence is *much narrower* inasmuch as it refers to a situation where the accused, whilst also being in charge of the motor vehicle and intending to drive it, *has not, at the time of being apprehended, yet driven it*.

24 To summarise, there was a *decoupling* of offences with the result (in substance) that whilst the accused is in charge of the motor vehicle in the case of *both* offences, the *first* offence relates to *actual* drink driving (which is obviously more serious as the danger to the safety of others would be a very real and immediate one) whereas the *second* offence relates to a situation where the accused is apprehended before he or she has actually driven the motor vehicle. However, *legislative safeguards* were required with respect to the *second* offence in order to *exclude* from prosecution persons who, whilst unfit to drive the motor vehicle concerned, had in fact *not* driven it and could be shown to

have *no intention of driving* it, lest injustice occur. *It was this injustice that was the subject of much criticism in the UK Parliament* (as set out above at [21]–[22]) and which the UKRTA 1956 in general and s 9 thereof in particular were supposed to meet. It is also important to note, at this juncture, that *the Public Prosecutor would have the discretion as to which one of these two offences it wished to charge the accused with*. Indeed, since the first offence, of actual drink driving, necessarily entails the accused being in charge of the motor vehicle in the first place, it is clear that the accused could potentially be charged with *either* offence (which was precisely the fact situation that arose in the present proceedings). How that discretion is to be exercised is a matter for the Prosecution, having regard to all the circumstances of the case (see [63] below).

25 Returning to the UKRTA 1956, the new s 9 read, in fact, as follows:

> **Punishment of persons in charge of motor vehicles when under influence of drink or drugs**.
>
> **9. –** (1) Any person who when in charge of a motor vehicle which is on a road or other public place, but not driving the vehicle, is unfit to drive shall be liable –
>
> > (a) on summary conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding four months, and in the case of a second or subsequent conviction either to a fine not exceeding one hundred pounds or to such imprisonment as aforesaid or to both such fine and imprisonment;
> >
> > (b) on conviction on indictment to imprisonment for a term not exceeding six months or to a fine or to both such imprisonment and a fine:
>
> Provided that a person shall be deemed for the purposes of this section not to have been in charge of a motor vehicle if he proves –
>
> > (i) that at the material time the circumstances were such that there was no likelihood of his driving the vehicle so long as he remained unfit to drive; and
> >
> > (ii) that between his becoming unfit to drive and the material time he had not driven the vehicle on a road or other public place.
>
> In this subsection the expression "unfit to drive" means under the influence of drink or a drug to such an extent as to be incapable of having proper control of a motor vehicle.
>
> (2) On a second or subsequent conviction of an offence under this section the offender shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of twelve months from the date of the conviction for holding or obtaining a licence; and a person disqualified by virtue of a conviction under this section or of an order made thereunder for holding or obtaining a licence shall, for the purposes of Part I of the Act of 1930, be deemed to be disqualified by virtue of a conviction under the provisions of that Part.
>
> ...
>
> (6) In subsection (1) of section fifteen of the Act of 1930 the words "or when in charge of" shall cease to have effect.

26 It can be seen that s 9 of the UKRTA 1956 attempts to capture the situation where the

accused is in charge of a motor vehicle insofar as he or she has not driven it but is apprehended at a point in time when he or she can be shown to have the intention of driving it. As a corollary, it also attempts, therefore, to *exclude* from its ambit persons who can be demonstrated not to have driven the motor vehicle *and to have no intention of driving it*. Whereas there is *potential* danger to other persons in the former situation, there is *no* danger to other persons at all in the latter situation, and this would justify the exclusion of such a situation from the ambit of s 9 altogether. It should be reiterated that s 9 did *not* appear to have been intended to impact (in any way) the *quite separate* offence of *actual drink driving* under s 15 of the UKRTA 1930 (reproduced above at [18]), which was an offence that presented *even greater potential* danger to other persons and hence entailed *more severe penalties*. Indeed, s 9(1)(*b*)(i) and (ii) capture situations such as those in the English decisions of *Jowett-Shooter v Franklin* [1949] 2 All ER 730 and *Jones v English* [1951] 2 All ER 853, which were decided pursuant to s 15 of the UKRTA 1930 and which, in order to do justice to the accused concerned, entailed the court concerned exercising its discretion under that particular provision to order that the accused *not* be disqualified from holding a driving licence.

27 Section 9 of the UKRTA 1956 was re-enacted – in substantially the same form (at least insofar as the elements of the substantive offences were concerned) – as s 6 of the UK Road Traffic Act 1960 (Cap 16) ("UKRTA 1960") that read as follows:

> **Driving, or being in charge, when under influence of drink or drugs**.
>
> **6. –** (1) A person who, when driving or attempting to drive a motor vehicle on a road or other public place, is unfit to drive through drink or drugs shall be liable –
>
> (a) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both a fine and such imprisonment;
>
> (b) on summary conviction, to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding four months or to both such fine and such imprisonment, or in the case of a second or subsequent conviction either to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.
>
> (2) A person who, when in charge of a motor vehicle which is on a road or other public place (but not driving the vehicle), is unfit to drive through drink or drugs shall be liable –
>
> (a) on conviction on indictment, to a fine or to imprisonment for a term not exceeding six months or to both a fine and such imprisonment;
>
> (b) on summary conviction, to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding four months, or in the case of a second or subsequent conviction to a fine not exceeding one hundred pounds or to such imprisonment as aforesaid or to both such fine and such imprisonment.
>
> A person shall be deemed for the purposes of this subsection not to have been in charge of a motor vehicle if he proves –
>
> (i) that at the material time the circumstances were such that there was no likelihood of his driving the vehicle so long as he remained unfit to drive through drink or drugs; and
>
> (ii) that between his becoming unfit to drive as aforesaid and the material time he had not

driven the vehicle on a road or other public place.

...

(6) In this section "unfit to drive through drink or drugs" means under the influence of drink or a drug to such an extent as to be incapable of having proper control of a motor vehicle.

(2) The Singapore position: the Road Traffic Ordinance 1961

28 Following the developments in the UK, which were also reflected in the corresponding laws of the Federation of Malaya, the *local* Road Traffic Ordinance ("RTO 1961") was amended in 1961 in order to provide for the *separate* offences of driving under the influence of drink or drugs and for being in charge of a motor vehicle when under the influence of drink or drugs. The respective provisions (*viz*, ss 27 and 28 of the RTO 1961) read as follows:

Driving while under the influence of drinks or drugs.

27. – (1) Any person who, when driving or attempting to drive a motor vehicle on a road or other public place, is under the influence of drink or a drug to such an extent as to be incapable of having proper control of such vehicle, shall be guilty of an offence under this Ordinance and shall be liable on conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, and in the case of a second or subsequent conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

...

(3) A person convicted of an offence under this section shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of not less than twelve months from the date of the conviction for holding or obtaining a driving licence.

...

Being in charge of a motor vehicle when under the influence of drink or drugs.

28. – (1) Any person who when in charge of a motor vehicle which is on a road or other public place but not driving the vehicle, is unfit to drive in that he is under the influence of drink or of a drug to such an extent as to be incapable of having proper control of a motor vehicle, shall be guilty of an offence under this Ordinance and shall be liable on conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months, and in the case of a second or subsequent conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment:

Provided that a person shall be deemed for the purpose of this section not to have been in charge of a vehicle if he proves –

(a) that at the material time the circumstances were such that there was no likelihood of his driving the vehicle so long as he remained so unfit to drive; and

(b) that between his becoming so unfit to drive and the material time he had not driven the vehicle on a road or other public place.

(2) On a second or subsequent conviction for an offence under this section, the offender shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of twelve months from the date of the conviction for holding or obtaining a driving licence.

...

29 The amendments were introduced to bring the provisions of the RTO 1961 "into line with Federation and United Kingdom legislation" (see *Singapore Parliamentary Debates*, 14 June 1961, vol 14 at col 1640 (*per* the Minister for Labour and Law, Mr K M Byrne)). Section 27(2) of the RTO 1961 was repealed in 1968 and ss 27 and 38 of the same Act were renumbered as ss 28 and 29, respectively, but otherwise these provisions remained largely the same in the Revised Edition of the Road Traffic Act of 1970 ("RTA 1970"). These sections were again renumbered, this time as ss 29 and 30, in the 1973 Reprint of the Road Traffic Act ("RTA 1973"). The fact that the local provisions *replicated*, in both letter *and* purpose, the corresponding provisions in the UK is a point of the first importance. Put simply, the distinction between the offences of drink driving and being in charge of a vehicle while under the influence of drink in the UK and the reasons for such a distinction apply with equal force locally.

(iii) The Road Traffic Act 1976: introduction of blood and urine testing

30 Prior to 1976, there was no provision in our local Road Traffic Act for blood, urine or breath testing. The statute also did not require persons to submit to medical examinations. Provisions for blood and urine testing were first introduced in the 1976 amendments to the RTA 1973. It became obligatory for a person arrested under s 29 (for drink driving) or s 30 (for being in control of a motor vehicle when under the influence of drink or drugs) of the RTA 1973 to provide a specimen of his blood or urine for a laboratory test if required to do so by the police. The relevant provisions read as follows:

Blood and urine test.

30A. – (1) A person who has been arrested under section 29 or 30 of this Act may be required to provide at a hospital a specimen of his blood or urine, or both, for a laboratory test if the police has reasonable cause to suspect such person of having alcohol or a drug in his body; but a person shall not be required to provide a specimen of his blood for a laboratory test under this subsection if a medical practitioner in immediate charge of his case is not first notified of the proposal to make the requirement or objects to the provision of such specimen on the ground that its provision would be prejudicial to the proper care or treatment of the patient.

(2) A person who without reasonable excuse fails to provide a specimen for a laboratory test in pursuance of a requirement imposed under subsection (1) of this section shall be guilty of an offence and if it is shown that at the time of any accident or of his arrest –

(a) he was driving or attempting to drive a motor vehicle on a road or other public place, he shall be liable to be punished as if the offence charged were an offence under section 29 of this Act; or

(b) he was in charge of a motor vehicle on a road or other public place, he shall be liable to be punished as if the offence charged were an offence under section 30 of this Act.

(3) For the purposes of any proceedings for an offence under section 29 or 30 of this Act or subsection (2) of this section, a certificate purporting to be signed by a medical practitioner that he took a specimen of blood or urine from a person with his consent shall be evidence of the matters so certified and of the qualifications of the medical practitioner:

Provided that such certificate shall not be accepted as evidence for the prosecution unless a copy thereof had been served on the accused not less than seven days before the hearing.

(4) A police officer shall, on requiring any person under this section to provide a specimen for a laboratory test, warn him that failure to provide a specimen of blood or urine may make him liable to imprisonment, a fine and disqualification, and if the police officer fails to do so, the court before which that person is charged with an offence under subsection (2) of this section may dismiss the charge.

Presumption of incapability of having proper control of motor vehicle.

30B. – Any person who has been arrested under section 29 or 30 of this Act shall be presumed to be incapable of having proper control of a motor vehicle if the specimen of blood provided by him under section 30A of this Act is certified by a medical practitioner to have a blood alcohol concentration in excess of 110 milligrammes of alcohol in 100 millilitres of blood.

Section 30B of the RTA 1973 (reproduced above) created a presumption that if a person's blood was tested and found to have an alcohol blood concentration in excess of 110 mg of alcohol in 100 ml of blood, that person was incapable of having proper control of a motor vehicle. This presumption, however, could be rebutted by evidence that the accused was capable of having proper control of a motor vehicle. The introduction of this provision was welcomed by Members of Parliament as certifying whether or not a person was intoxicated under the previous law was difficult and depended on the individual judgment of the medical practitioner concerned (see *Singapore Parliamentary Debates, Official Report* (25 March 1976) vol 35 at col 965 (*per* the Member of Parliament for Kim Seng, Dr Ong Leong Boon)).

(iv) The Road Traffic Act 1985: introduction of breathalyser screening

31 In the 1985 Reprint of the Road Traffic Act, ss 29, 30, 30A and 30B were renumbered as ss 68, 69, 70 and 71 respectively. Parliament made two further amendments to these provisions in the same year as a result of the increase in serious and fatal accidents involving drivers and motorcycle riders who were under the influence of alcohol (see *Singapore Parliamentary Debates, Official Report* (30 August 1985) vol 46 at col 326 (*per* the Minister for Home Affairs and Second Minister for Law, Professor S Jayakumar)). First, the blood alcohol concentration limit in s 71 was lowered from 110 mg of alcohol in 100 ml of blood to 80 mg of alcohol in 100 ml of blood. This was done because, as the Minister for Home Affairs, Professor Jayakumar explained, "[a]mending the legal blood alcohol content level from the existing 110 mg/100 ml to 80 mg/100 ml will serve to deter motorists from driving if they consume alcohol excessively" (see *Singapore Parliamentary Debates, Official Report* (30 August 1985) vol 46 at col 327). Secondly, the use of breathalysers was introduced as a screening (as opposed to an evidentiary) measure by way of s 71A. Prior to the introduction of breathalysers, where a driver was suspected to be under the influence of alcohol, he had to be brought to a hospital for blood and urine tests. Professor Jayakumar observed that this was "a troublesome as well as an unpopular procedure – both for the individual and the Police" (see *Singapore Parliamentary Debates, Official Report* (30 August 1985) vol 46 at col 326). With the introduction of breathalysers, the driver would be brought to the hospital for confirmatory blood and urine tests only where the reading of the breathalyser exceeded the legal prescribed limit. In the 1985 Revised Edition of the Road Traffic Act

("RTA 1985"), ss 68, 69, 70, 71 and 71A were renumbered as ss 67 (driving while under the influence of drink or drugs), 68 (being in charge of a motor vehicle when under the influence of drink or drugs), 69 (blood and urine test), 70 (presumption of incapability of having proper control of motor vehicle), and 71 (breath tests), respectively. Section 71 read as follows:

Breath tests.

71. – (1) A police officer may require any person driving or attempting to drive a motor vehicle on a road or other public place to provide forthwith a specimen of his breath for a breath test, if the police officer has reasonable cause –

(a) to suspect him of having alcohol in his body; or

(b) to suspect him of having committed a traffic offence while the vehicle was in motion,

but no requirement may be made by virtue of paragraph (b) unless it is made as soon as reasonably practicable after the commission of the traffic offence.

(2) If an accident occurs owing to the presence of a motor vehicle on a road or other public place, a police officer may require any person who he has reasonable cause to believe was driving or attempting to drive the vehicle at the time of the accident to provide a specimen of his breath for a breath test –

(a) except where paragraph (b) applies, either at or near the place where the requirement is made, or if the police officer thinks fit, at any police station specified by the police officer; or

(b) if that person is at a hospital as a patient, at the hospital,

but a person shall not be required to provide a specimen while at a hospital as a patient if the medical practitioner in immediate charge of his case is not first notified of the proposal to make the requirement or objects to the provision of such specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient.

(3) A person who, without reasonable excuse, fails to provide a specimen of his breath for a breath test under subsection (1) or (2) shall be guilty of an offence.

(4) If it appears to a police officer in consequence of a breath test carried out by him on any person under subsection (1) or (2) that the device by means of which the test is carried out indicates that the proportion of alcohol in that person's blood exceeds the prescribed limit, the police officer may arrest that person without warrant except while that person is at a hospital as a patient.

(5) If a person required by a police officer under subsections (1) and (2) to provide a specimen of breath for a breath test fails or refuses to do so and the police officer has reasonable cause to suspect him of having alcohol in his body, the police officer may arrest him without warrant except while he is at a hospital as a patient.

(6) In this section –

"breath test" means a preliminary test for the purpose of obtaining by means of a device of a type prescribed by the Minister, an indication whether the proportion of alcohol in a person's blood is likely to exceed the prescribed limit;

"prescribed limit" means 80 milligrammes of alcohol in 100 millilitres of blood.

32 In 1990, ss 67 and 68 were amended to increase the sentence that could be imposed for the respective offences. In 1993, s 67A was inserted to empower the courts to impose a range of punishment on persons who had been convicted multiple times for specific offences, of which drink driving was one. In Parliament, the Minister for Home Affairs, Professor Jayakumar, observed as follows (see *Singapore Parliamentary Debates, Official Report* (18 January 1993) vol 60 at col 429):

> Repeat offenders of drunken driving must be dealt with severely... Therefore, the amendments we are introducing would empower the courts to impose a range of enhanced punishments on those offenders…

(v) The 1996 round of amendments to the Road Traffic Act 1994: introduction of BEA testing and assumption of alcohol/breath levels

33 In the 1996 round of amendments to the 1994 Revised Edition of the Road Traffic Act ("RTA 1994"), a new regime of breath testing was introduced in the form of ss 67 to 71C. The material extracts are set out below:

> **Driving while under influence of drink or drugs**.
>
> **67**.—(1) Any person who, when driving or attempting to drive a motor vehicle on a road or other public place —
>
> (a) is unfit to drive in that he is under the influence of drink or of a drug or an intoxicating substance to such an extent as to be incapable of having proper control of such vehicle; or
>
> (b) *has so much alcohol in his body that the proportion of it in his breath or blood exceeds the prescribed limit*,
>
> shall be guilty of an offence...
>
> ...
>
> **Being in charge of motor vehicle when under influence of drink or drugs**.
>
> **68**.—(1) Any person who when in charge of a motor vehicle which is on a road or other public place but not driving the vehicle —
>
> (a) is unfit to drive in that he is under the influence of drink or of a drug or an intoxicating substance to such an extent as to be incapable of having proper control of a motor vehicle; or
>
> (b) *has so much alcohol in his body that the proportion of it in his breath or blood exceeds the prescribed limit*,
>
> shall be guilty of an offence...
>
> ...
>
> **Breath tests**.

69.—(1) Where a police officer has reasonable cause to suspect that —

(a) a person driving or attempting to drive or in charge of a motor vehicle on a road or other public place has alcohol in his body or has committed a traffic offence whilst the vehicle was in motion;

(b) a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place with alcohol in his body and that that person still has alcohol in his body;

(c) a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place and has committed a traffic offence whilst the vehicle was in motion; or

(d) a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place when an accident occurred—

(i) between that motor vehicle and one or more other motor vehicles; or

(ii) causing any injury or death to another person,

he may, subject to section 71, require that person to provide a specimen of his breath for a breath test.

...

(4) A person who, without reasonable excuse, fails to provide a specimen of his breath when required to do so in pursuance of this section shall be guilty of an offence and shall be liable on conviction to a fine of not less than $1,000 and not more than $5,000 or to imprisonment for a term not exceeding 6 months and, in the case of a second or subsequent conviction, to a fine of not less than $3,000 and not more than $10,000 and to imprisonment for a term not exceeding 12 months.

(5) A police officer may arrest a person without warrant if —

(a) as a result of a breath test he has reasonable cause to suspect that the proportion of alcohol in that person's breath or blood exceeds the prescribed limit;

(b) that person has failed to provide a specimen of his breath for a breath test when required to do so in pursuance of this section and the police officer has reasonable cause to suspect that he has alcohol in his body; or

(c) he has reasonable cause to suspect that that person is under the influence of a drug or an intoxicating substance,

but a person shall not be arrested by virtue of this subsection when he is at a hospital as a patient.

Provision of specimen for analysis.

70.—(1) In the course of an investigation whether a person arrested under section 69(5) has

committed an offence under section 67 or 68, a police officer may, subject to the provisions of this section and section 71, require him —

(a) to provide a specimen of his breath for analysis by means of a prescribed breath analyser; or

(b) to provide at a hospital a specimen of his blood for a laboratory test,

notwithstanding that he has been required to provide a specimen of his breath for a breath test under section 69(1).

(2) A breath test under this section shall be conducted by a police officer and shall only be conducted at a police station.

...

(4) A person who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this section shall be guilty of an offence and if it is shown that at the time of any accident referred to in section 69(1)(*d*) or of his arrest under section 69(5) —

(a) he was driving or attempting to drive a motor vehicle on a road or any other public place, he shall be liable on conviction to be punished as if the offence charged were an offence under section 67; or

(b) he was in charge of a motor vehicle on a road or any other public place, he shall be liable on conviction to be punished as if the offence charged were an offence under section 68.

...

Evidence in proceedings for offences under sections 67 and 68.

71A.—(1) In proceedings for an offence under section 67 or 68, evidence of the proportion of alcohol or of any drug or intoxicating substance in a specimen of breath or blood (as the case may be) provided by the accused shall be taken into account and, subject to subsection (2), it shall be assumed that the proportion of alcohol in the accused's breath or blood at the time of the alleged offence was not less than in the specimen.

(2) Where the proceedings are for an offence under section 67(1)(*a*) or 68(1)(*a*) and it is alleged that, at the time of the offence, the accused was unfit to drive in that he was under the influence of drink, or for an offence under section 67(1)(*b*) or 68(1)(*b*), the assumption referred to in subsection (1) shall not be made if the accused proves —

(a) that he consumed alcohol after he had ceased to drive, attempt to drive or be in charge of a motor vehicle on a road or any other public place and before he provided the specimen; and

(b) that had he not done so the proportion of alcohol in his breath or blood—

(i) would not have been such as to make him unfit to drive a motor vehicle in the case of proceedings for an offence under section 67(1)(*a*) or 68(1)(*a*); or

(ii) would not have exceeded the prescribed limit in the case of proceedings for an

offence under section 67(1)(*b*) or 68(1)(*b*).

...

[emphasis added]

34 Following the 1996 amendments, s 71A provided for the use of the results of a BEA test as evidence for offences under s 67 and s 68. Unlike s 70 of the RTA 1994, the new s 71A provided that the BEA reading was not just a rebuttable presumption but an assumption that would apply unless the exceptions in s 71A(2) were made out. New offences (for driving or being in charge of a vehicle while having so much alcohol in the body that the proportion of it in the breath or blood exceeded the prescribed limit) were created in the form of s 67(1)(*b*) and s 68(1)(*b*). The rationale for these extensive changes can be found in the following extract from the speech of the Minister for Home Affairs, Mr Wong Kan Seng (see *Singapore Parliamentary Debates, Official Report* (27 February 1996) vol 65 at cols 722–724):

Streamline procedures for drink driving

Presently, under section 70 of the Act, a person is presumed incapable of having proper control of his vehicle if he has alcohol content in his blood in excess of 80 mg of alcohol in 100 ml of blood. To ascertain this, police has to escort the motorist to the hospital for a blood test and the result will only be known after two weeks. The current procedure is therefore inefficient and manpower intensive. We thus propose using a device called Breath Evidential Analyser (BEA) to assess the alcohol level. This device measures the alcohol level in a motorist's breath and produces a printout of the result immediately. The printout can also be tendered in court as evidence. As the test can be performed by police officers at any police station, there is therefore no need to bring the motorist to the hospital for a blood test. The use of the Breath Evidential Analyser is expected to save police about 1,500 man hours per year. The breathalyser technique has been successfully used in UK, Sweden, Norway and the United States.

Clause 12 of the Bill seeks to repeal and re-enact sections 69, 70, 71, 71A, 71B, 71C to deal with drink driving. Essentially, the new sections are a re-enactment of existing sections but with suitable modifications to give effect to the new regime of Breathalyser test and to provide for its results to be admissible in court.

Other Amendments

Apart from the measures I mentioned above, we are also introducing other amendments. These are meant to tighten the various provisions of the Road Traffic Act. These are:

(*a*) *Presumption of incapability for drink-drivers*

Currently, under existing section 70 of the Act, a person is presumed to be incapable of having proper control of his vehicle if the amount of alcohol found in his blood is above the prescribed legal limit. This has given rise to a situation where the defence tries to rebut this presumption by trying to prove in each case that the defendant did not lose control of the vehicle.

To prevent unnecessary debate, clause 9 of the Bill seeks to re-enact section 67(1)(*b*) to make the presence of alcohol exceeding the legal limit in a driver's blood or breath an offence in itself without linking it to the control of vehicle. The new section 67(1)(*b*) makes it clear that an offence is committed once the driver's alcohol content exceeds the prescribed limit. This provision

is similar to the provisions in Malaysian and UK legislation.

(*b*) *Driving under the influence of intoxicating substance*

Presently, it is not an offence for a person to drive or to be in charge of a vehicle whilst under the influence of an intoxicating substance. This is an anomalous situation. To plug this loophole, the re-enactment of section 67(1)(*a*) has been expanded to make driving whilst under the influence of any intoxicating substance specified in the Intoxicating Substances Act, such as Toulene which is commonly known as glue, an offence. The same penalty for drunken driving will apply to this new offence. The presence of or an intoxicating substance in the body will be determined by a blood test in the same manner as it is currently done for alcohol or drug.

(*c*) *Testing of alcohol content by medical practitioners*

Presently, the Road Traffic Act requires consent of the motorist to be obtained before his blood can be taken to determine the alcohol content. However, in some circumstances, the consent cannot be given or sought, such as when the motorist is unconscious. In such cases, the alcohol content in the blood of the motorist cannot be ascertained and the motorist cannot be charged for driving under the influence of alcohol.

Under the new section 71B(1), the police will be given the power to direct the doctor to send a sample of the blood of the motorist taken by him while treating the injured motorist for a laboratory test to determine the proportion of alcohol or drug or intoxicating substances.

35 It is clear, from the extract reproduced in the preceding paragraph, that the BEA assumption was introduced as an evidentiary measure to enable the Prosecution to secure the conviction of persons committing offences under ss 67 and 68 of the RTA. No further material amendments to ss 67–71C were made in the 1997 Revised Edition of the Road Traffic Act ("RTA 1997") but in the (latest) 2004 Revised Edition of the RTA, s 71C was renumbered as s 72.

Purpose of RTA

36 The long title of the RTA reads as follows:

An Act for the regulation of road traffic and the use of vehicles and the user of roads and the operation of bus interchanges and for other purposes connected therewith.

The long titles of earlier versions of the Road Traffic Act, however, shed more light on the legislative intention of the statute itself. The long title of the RTO 1941, for example, stated that its purpose was, *inter alia*, "to make provision for the protection of third parties against risks arising out of the use of motor vehicles".

37 The protection of road users from the risks of harm, particularly in relation to drink driving, is a theme that has been reiterated in Parliament on numerous occasions.

38 For example, the Minister for Home Affairs, Professor Jayakumar, expressed the following view (see *Singapore Parliamentary Debates, Official Report* (28 March 1990) vol 55 at cols 958 and 960):

… we must be concerned over a group of what I term "high risk" drivers who account for a significant proportion of some 25% of accidents and who should be controlled if we want to make our roads safer for all pedestrians, riders and motorists… I make no apologies for proposing

> heavier penalties for drunk drivers. They have no business driving on the roads, because drunk drivers when involved in accidents cause needless injuries and deaths either to themselves or other road users…. We must prevent such tragic accidents, which are totally unnecessary. In fact, we must get every driver in Singapore to note that when he is issued a licence, it is in fact a very special privilege and it is granted on condition that he drives in a responsible manner bearing in mind the interest of others. And certainly no driver in Singapore who drinks can claim or should be able to claim that he was unaware of the serious consequences of driving under the influence of alcohol.

39 Professor Jayakumar reiterated his views at a subsequent session of Parliament thus (see *Singapore Parliamentary Debates, Official Report* (18 January 1993) vol 60 at col 429):

> We are concerned with offences like driving whilst under disqualification or suspension, reckless or dangerous driving, causing death by reckless or dangerous driving and drunken driving. These offences rank high amongst the most serious offences…. Despite tougher measures taken in 1990, the problem of drunken driving still persists and continues to rear its ugly head.

Our decision on the question reserved for our determination

Historical context and legislative purpose

40 We have set out a comprehensive account of both the historical context of the RTA as well as its legislative purpose as an understanding of both is, in our view, of the first importance in answering the question reserved for our determination.

41 Looking at the *historical context*, it is clear that what are now ss 67 and 68 of the RTA are *both* premised on the accused having been in charge of the motor vehicle concerned. Indeed, this is why both provisions were part of a broad provision (in s 40 of the UKCJA 1925 (reproduced above at [16])), which referred only to an offence of being drunk whilst in charge of a motor car (but which was clearly targeted at both actual drink driving as well as being in charge of a motor car, whilst drunk, with the intention of driving it). These two specific aspects were, in fact, incorporated in s 15 of the UKRTA 1930 (reproduced above at [18]). *However*, because the second offence (*viz*, being in charge of a motor car, whilst drunk, with the intention of driving it) could – in certain exceptional fact situations (see above at [21]–[24]) – catch conduct which Parliament never intended to capture (hence, resulting in injustice), s 9 of the UKRTA 1956 (reproduced above at [25]) was enacted. As we have seen, this last-mentioned provision (later re-enacted as s 6 of the UKRTA 1960 (reproduced above at [27])) formed the basis for the substantive offences in ss 27 and 28 of the (Singapore) RTO 1961 (reproduced above at [28]), which (in turn) constituted the progenitors of both ss 67 and 68 of the RTA, respectively. In the circumstances, therefore, having a common root or source, it is clear, in our view, that s 71A of the RTA ought, in principle, to apply to *both* ss 67 and 68, regardless of whether or not the accused was driving a vehicle at the time of the arrest. This conclusion is buttressed by the objectives of the provisions relating to drink driving in the RTA itself – a point to which our attention must now turn.

42 The issue that arises in the present proceedings in relation to the purpose of the RTA is neatly encapsulated in the following question: could Parliament have intended that the assumption under s 71A of the RTA would not apply to an accused charged under s 67(1)(*b*) of the RTA where the accused was not driving a vehicle at the time of the arrest? Having considered the fact that ss 67 and 68 of the RTA had been enacted (originally as ss 27 and 28 of the RTO 1961) *prior to* s 71A of the RTA which was itself enacted as an evidentiary tool to assist in securing convictions for these two offences in the appropriate fact circumstances, and having taken into account the uniform (and

strict) approach towards drink driving as demonstrated in the relevant proceedings in Parliament (see generally above at [37]–[39]), we are of the view that this could *not* have been the intention of Parliament. Further, s 67 of the RTA plainly states that any person who, when driving or attempting to drive a motor vehicle on a road or other public place, had so much alcohol in his body that the proportion of it in his breath exceeded the prescribed limit shall be guilty of an offence. There is nothing in that particular provision to suggest that the offence abates just because the drink driver stops after a particular point of time. Certainly, nothing in the Parliamentary Debates (see generally above at [34]–[35]) as well as in the relevant provisions suggest that those who drive with excess alcohol could necessarily escape punishment just because there was a lapse of time between the commission of the offence and the arrest.

43 It is now appropriate to turn to two other issues which figured prominently in the arguments of counsel for the Respondent. The first relates to the reasons given by the Judge in the court below for arriving at the decision he did. The second relates to case authorities which counsel for the Respondent sought to rely upon in support of his client's case. Let us consider each issue *seriatim*.

Reasons in the court below

44 As just mentioned, counsel for the Respondent relied on the reasons that the Judge in the court below gave for quashing the conviction imposed by the District Judge. These have already been referred to above (at [9]). To recapitulate, they were as follows.

45 First, the Judge was of the view that on a charge under s 68(1) of the RTA, it was open to the accused to prove (by way of a defence) that the circumstances in s 68(2), *viz*, that at the time he or she was driving the motor vehicle, his or her alcohol level was not over the limit, even though by operation of s 71A of the RTA, his or her alcohol level at the time he or she was apprehended would be assumed to be not less than the level found in the specimen given by him or her. In other words, if s 71A of the RTA were applicable to a charge under s 67(1) of the RTA in the circumstances of the present case, the accused (here, the Respondent) would be deprived of a defence that would have been available to him under s 68(2) of the RTA if he had been charged under s 68(1) instead (see the GD at [12]). However, where a single act could constitute the basis for more than one offence, the Prosecution has the discretion to choose which section to proceed under. If so, this particular reason is, with respect, premature as the availability of a defence to the accused becomes a relevant issue only *after* the charge is preferred. Put simply, if a charge is preferred against the accused under s 67(1) of the RTA, then no issue with regard to a defence under s 68(1) can be raised in any event. A corollary of this is that the accused is *still entitled* to (and is *not*, therefore, *deprived* of) his or her defence under s *68(2)* of the RTA if *he or she is charged under s 68(1)* of the RTA. This brings us back to the question of prosecutorial discretion which is, of course, a *quite separate and distinct* issue altogether.

46 Secondly, the Judge was of the view that if s 71A of the RTA were applicable where a person, apprehended whilst he was in charge of a vehicle (as opposed to whilst he was driving it), was charged with an offence under s 67(1) of the RTA, it would mean that he was better off refusing to provide a breath or blood specimen. This was because without the result from the specimen, he could only be convicted under s 68(1) of the RTA; if he gave a specimen and admitted that he had driven the motor vehicle earlier, he could be convicted under the more severe offence under s 67(1) of the RTA (see the GD at [17]). With respect, however, this particular reason ignores the fact that, *in addition to* a conviction under s 70 of the RTA, the failure to provide a specimen could also attract (pursuant to s 69(4) of the RTA) a fine ranging between $1,000 to $5,000 or a jail term of up to 6 months for a first time offender. In the case of a repeat offender, the fine that could be imposed is increased to between $3,000 and $10,000 and the jail term could be one of up to 12 months.

Arguably, as a person refusing to provide a specimen could be sentenced to a longer period in jail, he would not necessarily be better off refusing to provide a breath or blood specimen even if by doing so he would be charged under s 68(1) instead of s 67 and would not be disqualified from driving.

47 Therefore, we were not convinced that either of the reasons relied upon by the Judge in the court below supported a negative answer to the question referred to us in the present proceedings. On the contrary (and as we have seen), the key factors centring on the historical context as well as the legislative purpose embodied in the RTA support an affirmative answer to the said question instead.

48 It was also argued that, if the assumption in s 71A of the RTA applied even when a driver was arrested after having stopped the motor vehicle, there would be no incentive for him or her to cease drink driving once he or she had commenced. It was argued, conversely, that if the assumption in s 71A did not apply, the driver would have an incentive to stop because then he or she could only be charged with the lesser offence under s 68 of the RTA which did not provide for disqualification of driving licenses. However, an offence does not cease to be an offence just because the accused, having already committed the act constituting the offence, decides to refrain from *continuing* with the conduct concerned. Further, it is not, strictly speaking, accurate to state that a driver has no incentive to stop once he or she had commenced drink driving. If the driver voluntarily arrests the risk he or she was hitherto posing to the public in ceasing to drive, his or her initiative could well be taken into account in mitigation. One would imagine that if the accused had only driven, say, a few metres and stopped (so that there was, albeit only technically speaking, an offence committed under s 67 of the RTA), the Prosecution might even decide, in the special circumstances of the case, to prefer a charge against the driver *under s 68 of the RTA instead*. In any event, the parliamentary background (referred to above at [37]–[39]) demonstrates, in no uncertain terms, that the provisions in the RTA (in relation, *inter alia*, to drink driving) were clearly intended to have a deterrent effect. Hence, the imposition of more severe penalties as well as a strict application of the applicable provisions would serve to help achieve this deterrent effect, which consists of deterring all drivers from drink driving in the first place.

49 Let us turn now to a brief consideration of a few relevant case authorities cited in both the local as well as English contexts.

Case law

50 Counsel for the Respondent cited two local decisions for the proposition that in situations such as the present (in which the accused had ceased driving at the time of the arrest), a charge under s 68 of the RTA (and *not* one under s 67) ought to be preferred against the accused.

51 Turning to the first decision, in *Ho Chun Kow v Public Prosecutor* [1990] 1 SLR(R) 575, one of the issues that arose was whether s 68 of the RTA 1985 (*ie*, being in charge of a vehicle when under the influence of drink or drugs) was "an offence in connection with the driving of a motor vehicle" within the meaning of s 42 which provided that any court "before which a person is convicted of any offences in connection with the driving of a motor vehicle may, in any case except where otherwise expressly provided by this Act and shall, where so required by this Act, order him to be disqualified from holding or obtaining a driving licence for life or for such period as the court thinks fit". Chan Sek Keong J held that it was not.

52 The basis of Chan J's holding was essentially that not all factual circumstances in which a s 68 offence could be made out would fall within the context of being "in connection with" the driving of a motor vehicle even though there may be some overlap between the two. He rightly observed (at [7])

that to hold otherwise "would mean that the existence of the discretionary power of disqualification [in s 42] is dependent not on the nature of the offence but on the circumstances in which the offence is committed". The case, however, should not be taken to stand for the entirely different proposition that where the accused has ceased driving and a s 68 offence can be made out, a s 67 offence should not be preferred.

53 Chan J observed thus (at [8]):

> A s 68(2) offence may be committed by a person in a situation where just before he takes or is in charge of the vehicle, he (a) has driven it whilst unfit to drive due to the influence of drink, (b) has driven it but [*sic*] fit to drive even though under the influence of drink or (c) has not driven it for a substantially long period. *Of course, a person who is driving a motor vehicle is, ipso facto, in charge of it, but in that case, if he is unfit to drive whilst under the influence of drink, he should be charged under s 67 and not s 68(1)*. [emphasis added]

This passage in fact buttresses our view that even where the accused has ceased driving at the time of his or her arrest, he or she may nevertheless be convicted for the offence of driving under the influence of drink or drugs under s 67 of the RTA, notwithstanding the fact that the elements constituting an offence under s 68 of the RTA may also be made out. Indeed, this is not surprising for, as the learned judge pertinently points out, an offence committed under s 67 must *necessarily* entail the accused being in charge of the motor vehicle which, *ceteris paribus*, constitutes an offence under s 68 as well.

54 In the second decision, *Chong Pit Khai v Public Prosecutor* [2009] 3 SLR(R) 423, the appellant pleaded guilty at trial to a charge of drink driving under s 67 of the RTA. In sentencing the appellant, the district judge took into consideration an antecedent, *viz*, a prior conviction under s 68 of the RTA for being in charge of a motor vehicle while intoxicated. The appellant then appealed on the ground that the district judge should not have given any consideration to his earlier conviction under s 68 of the RTA for the purpose of sentencing him for an offence under s 67 of the RTA. Chan Sek Keong CJ allowed the appeal. He held that while a conviction for an offence under s 67 was deemed, under the RTA, to be a previous conviction for an offence under s 68, the RTA did not deem a conviction for an offence under s 68 as a previous conviction for an offence under s 67. It was in *that particular context* that Chan CJ observed thus (at [18]):

> The following points may be noted on a plain reading of the two sections. First, the penalty prescribed for a s 67 offence is about *twice as serious* as a s 68 offence. In fact, the prescribed penalty for a *first* s 67 offence is the same as the penalty for a *second* s 68 offence. The reason for the different treatment can be explained on the basis that, in a scenario involving a s 67 offence, the risk of injury to life and limb as well as damage to property is current (as he is driving or about to drive) whereas for a s 68 offence, the risk is past and gone. The offender of a s 68 offence is being punished for *having driven* even though he might not have caused any injury to life and limb. The s 68 offence is ***to deter people from driving in those two situations prescribed by the section*** . [emphasis in italics in original; emphasis in bold italics added]

55 As already mentioned, the learned Chief Justice was *illustrating* the difference in culpability between an offence under s 67 of the RTA and an offence under s 68 of the RTA for the purposes of explaining why a conviction under s 68 of the RTA could not be treated as a prior conviction for the purposes of sentencing for an offence under s 67 of the RTA. The above extract should therefore not be misread to stand for the proposition that, once a drink driver has stopped driving, he or she cannot be charged under s 67 any longer but can only be charged under s 68 instead. Indeed, the *converse* is true. As already noted (above at [24]), the Prosecution has the discretion to choose between

preferring a charge under s 67 or, instead, under s 68. Further, one should also note the reference by the Chief Justice to the *purpose* of s 68 as centring on the need "to *deter* people *from driving* in those two situations prescribed [in s 68(1)(*a*) and (*b*)]".

56 Finally, we turn briefly to two English decisions which were cited and (more importantly) distinguished in the court below, *viz*, *DPP v Williams* [1989] Crim LR 382 ("*Williams*") and *Millard v DPP* [1990] Crim LR 601 ("*Millard*"), respectively.

57 In *Williams*, police officers found a car parked near to an address where they found the respondent at around 4am. The respondent admitted that he had driven the car and said his last drink had been some 5 hours earlier. The respondent failed the breath test that was administered and was charged for drink driving. The respondent submitted that by his imprecise admission of having driven that night he could have been indicating that he had driven before he drank and as such the Prosecution had not proven that at the time of driving the respondent was in excess of the prescribed limit. This was rejected by the High Court who held that the respondent bore the burden of displacing the assumption that his breath/alcohol proportion had exceeded the statutory limit. Once he had admitted driving and once the specimen he gave showed that he was over the prescribed limit at the time of sampling, s 10(2) operated to transfer the burden to the respondent. Since that burden had not been discharged, the assumption applied and the respondent was guilty of drink driving.

58 In *Millard*, the defendant ate sandwiches and drank a bottle of white wine for lunch between 1.15pm and 3.45pm before returning to his office where he remained until 5.30pm. After leaving his office, he drove his car to a public house where he drank nearly all of a large whisky. He then left, returned to his car and, at about 6.10pm, drove to another parking place before returning to the public house. After he had drunk most of a pint of beer there, police officers spoke to him and invited him outside. He was asked to take a roadside breath test, which he did. The test was positive and so he was arrested and taken to a police station. At the police station, between 7.15pm and 8.15pm, he provided specimens of breath and blood which were found to contain alcohol above the prescribed limit. He was charged. At the conclusion of his evidence, it was submitted on his behalf that the court should hear expert evidence for the purpose of calculating retrospectively the effect of the whisky drunk by the defendant prior to driving and the beer drunk by him after driving. The court held that it was not open to the defendant to introduce evidence of such retrospective calculation. The defendant chose not to adduce evidence relating to the beer he had drunk after driving (by doing so he might have brought himself within the exceptions of the UK equivalent of s 71A of the RTA so that the assumption would not apply) and he was convicted of the drink driving offence.

59 The Judge was of the view that the respective accused in *Williams* and *Millard* were not arrested *whilst driving* a motor vehicle (see the GD at [23]). This stems, in fact, from the Judge's observation that s 68 of the RTA "caters for the situation where a person is not apprehended while driving or attempting to drive a vehicle, but where he can be said to be in charge of the vehicle, such as in the present case where he had stopped it at the road shoulder and had fallen asleep in it" (see the GD at [5]). Whilst this last-mentioned observation is correct, this does not meet the argument that, if the accused has *already driven* under the influence of alcohol or drugs, then he or she would, *ex hypothesi*, have *already committed* an offence under s *67(1) of the RTA*. *More importantly*, as we have already explained above*, such an offence does not thereby cease to be an offence just because the accused had literally stopped driving the motor vehicle*.

60 More importantly, perhaps, the Judge was also of the view that the respective courts in both *Williams* and *Millard* had not considered the reasons referred to in the preceding section of this judgment. However, we have already explained why those reasons ought not to be accepted. Indeed, it would appear to us that both *Williams* and *Millard* are, indeed, relevant and buttress the decision

which we have arrived at in the context of the present proceedings.

Miscellaneous issues

61 The Respondent had suggested that a police officer had to determine whether a 67 offence or a s 68 offence was going to be proceeded with before the police officer procured the breath specimen. We do not agree. Pursuant to s 69(5) of the RTA, all the police officer needs is reasonable cause to suspect that either offence has been carried out. A person arrested pursuant to s 69(5) may be required to take a BEA or a blood test pursuant to s 70. The results of that test form the basis of the assumption in s 71A of the RTA. On a literal reading, there is nothing in s 71A stating that if the police officer initially procured a breath specimen for a BEA with reasonable cause to suspect drink driving, it could not subsequently be assumed that the accused had the same alcohol levels as the breath specimen if a charge of being in charge of a vehicle when under the influence of drink was preferred instead. Of course, as a threshold requirement, it must first be shown that the accused had driven at the time of the alleged offence before the s 71A assumption can apply to a charge pursuant to s 67. The assumption can hardly apply to an offence if the preliminary act forming the offence itself (*viz*, that the accused had *driven or was driving* the vehicle) is not made out in the first place. However, once the preliminary act has been proved, the assumption regarding the results of a breath or blood test under s 71A ought to apply regardless of whether it was procured in the course of investigation into an offence under s 67 or s 68 of the RTA. In the English House of Lords decision of *DPP v Butterworth* [1994] 3 WLR 538, the accused refused to provide a breath sample and contended that his conviction for failure to provide a sample was unsound because at the time the request was made to furnish the sample, the police were still uncertain as to which particular offence he had committed. The House of Lords held that the police was entitled to investigate generally whether an offence had been committed, and to contend that the police had to have a particular offence in mind before a request for a sample could be made would impose, on the police, an unnecessary burden at a point before they even knew whether the person had exceeded the limit of whatever statutory offence they were investigating. We would adopt the same approach in the local context. It would be unduly restrictive to require the police to decide in advance what offence an accused was going to be charged with when the whole purpose of the taking of the breath and blood specimen was to determine whether an offence under s 67 or 68 of the RTA was likely to have taken place in the first place.

62 Counsel for the Respondent also suggested that the phrase "at the time of the alleged *offence*" [emphasis added] in s 71A of the RTA referred to the time the accused was *arrested*. In other words, the assumption is that the proportion of alcohol in the accused's breath or blood is not less than in the specimen at the time of the arrest rather than at the time of the driving for the purposes of an offence under s 67 of the RTA. We find this argument to be wholly without merit. First, it equated (or, rather, conflated) the meaning of "offence" with that of "arrest". This cannot be correct as the act which constitutes the "offence" is not the arrest as such but, rather, the drink driving. Secondly, the purpose of establishing an assumption was to assist the Prosecution in surmounting the (otherwise extremely difficult) evidential hurdle of demonstrating that an accused was unfit to drive. This purpose would be entirely frustrated if "time of the offence" were interpreted to mean the point or time of arrest.

Exercise of discretion

63 As there is an overlap in the ingredients of a s 67 offence and a s 68 offence, the Prosecution has an absolute discretion to decide which offence it will charge the offender with in any particular case. The court cannot interfere with its decision, but we would imagine that if the Prosecution invariably uses s 67 of the RTA for every case where a driver is found sitting or sleeping in a motor

vehicle by the side of the road, it may actually encourage drink drivers not to stop driving and continue on his or her journey in the hope that he or she would arrive safely at his destination. This is obviously a situation the Prosecution may want to avoid and therefore we would think that it would take this consideration into account in exercising its discretion in the circumstances of each case.

Conclusion

64 For the reasons set out above, we answered the question posed by the Public Prosecutor in the affirmative and restored the sentence of the District Judge.

[note: 1] Record of Proceedings ("ROP"), vol 1 at p 64.

[note: 2] The First Information Report (Exhibit P5).

[note: 3] ROP, vol 1 at p 7.

[note: 4] ROP, vol 2 at p 139.

[note: 5] ROP, vol 2 at p 134.

[note: 6] ROP, vol 2 at p 140.