Trinity Term
[2024] UKPC 17
Privy Council Appeal No 0050 of 2022

JUDGMENT

Zachary De Silva (Appellant) *v* Licensing Authority of Trinidad and Tobago and another (Respondents) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Reed
Lord Sales
Lord Hamblen
Lord Leggatt
Lady Rose

JUDGMENT GIVEN ON
25 June 2024

Heard on 20 March 2024

Appellant
Christophe R Rodriguez
Devvon Corey Williams
Kimaada Ottley
(Instructed by Allum Chambers (Trinidad))

Respondents
Rowan Pennington-Benton
(Instructed by Charles Russell Speechlys LLP (London))

LADY ROSE:

1. Mr de Silva was notified on 23 October 2020 by the Transport Commissioner that he had been disqualified from driving and his driving licence suspended for a period of six months. This was the result of his having accumulated 10 demerit points on his licence for infringements of the Motor Vehicles and Road Traffic Act, Chap 48.50 ("the Traffic Act"). Mr de Silva wanted to appeal against the suspension on the grounds that it was unreasonable and disproportionate. Mr de Silva brought his appeal by way of Fixed Date Claim form filed in the High Court on 6 November 2020. The High Court decided that it was not the correct forum; the appeal should have been lodged in the Court of Appeal. The Court of Appeal agreed. The question that the Board has to decide is whether Mr de Silva's appeal should be brought before the High Court or the Court of Appeal.

The Traffic Act as amended

2. The Traffic Act dates back to 1934. Section 4, as amended, establishes the Transport Commissioner to be the Licensing Authority charged with "responsibility for the registration and inspection of all motor vehicles and issue of driving permits and such other matters as are assigned to him by this Act or any Regulations made thereunder". Section 42 makes it an offence to drive a motor vehicle on the road without a valid driving permit.

3. Before the Traffic Act was amended in 2017, as described below, Part VI of the Traffic Act included section 82(1). This provided that the Court before which a person was convicted of a traffic offence could order, in addition to any other penalty provided for the offence, that the offender be disqualified from driving for a stated period or permanently. A person so disqualified could apply to the Court after six months for his driving permit to be reinstated. Section 83 provided that a person who was disqualified from driving by an order under section 82 "may appeal against the order in the same manner as against a conviction" and the Court could suspend the operation of the order pending that appeal. It was common ground before the Board that under the old Part VI of the Traffic Act, traffic offences other than the most serious offences, were tried in the Magistrates' Court so it was that Court which exercised the power in section 82. Further, it was common ground that the court to which an appeal against disqualification was made under the old section 83 was the Court of Appeal: see section 128 of the Summary Courts Act, Chap 4:20.

4. The Traffic Act was amended extensively by the Motor Vehicles and Road Traffic (Amendment) Act (Act No 9 of 2017) ("the Amending Act"), the amendments coming into effect on 26 May 2020. Section 35 of the Amending Act repealed Part VI and substituted a new Part VI headed "Fixed Penalty Enforcement and Administration"

and a new Part VIA headed "Legal Proceedings, Demerit Points, Suspension and Cancellation of Driving Permits".

5. Section 81(1) provides that where a constable has reason to believe that a person is committing or has committed a traffic violation, the constable may issue the driver with a fixed penalty notice. That offers the driver the opportunity either to pay the fixed penalty within the time specified in the fixed penalty notice and discharge any liability for the traffic violation or to file a notice to contest the fixed penalty notice issued to him.

6. The contents of the fixed penalty notice were prescribed by section 82 which provided that the notice must specify, among other things:

(i) the date, time and place that the fixed penalty notice was issued or affixed;

(ii) the section of the written law creating the traffic violation and the specified particulars of the traffic violation;

(iii) the amount of the penalty and the applicable number of demerit points for the traffic violation;

(iv) that the person may contest the fixed penalty notice by filing a notice to contest in accordance with section 85; and the date, time and address of the Court where the person should appear if he or she files a notice to contest.

7. "Court" is defined for this purpose by reference to the Summary Courts Act: section 80. That definition refers to "any Magistrate or Justice when sitting in open Court to hear and determine any matters within his power and jurisdiction, either under this Act or under any other written law, and such Magistrate or Justice when so sitting as aforesaid…".

8. Section 83 provides that if the driver does not contest the notice and pays the penalty within 30 days, "a person shall not be liable to any sanction for the traffic violation in respect of which the fixed penalty notice was issued or affixed": section 83(2). Where a person files a notice to contest the fixed penalty and does not pay the penalty then the matter is listed for trial in Court: section 87. The constable who affixed the notice must attend Court and the Magistrate will hear and determine the case.

9. The amounts of the penalties imposed for various traffic violations and the number of demerit points for each violation are set out in the Ninth Schedule to the Traffic Act. The Minister has power under section 88D to add or remove violations and vary the number of points or the amount of the penalty. The Ninth Schedule lists 96 traffic violations, ascribing to each a value of the fixed penalty and a number of demerit points. They include many familiar contraventions including driving whilst using a hand-held mobile device, driving in a bus lane, failing to park as close as possible to the side of the road and overtaking traffic at a place where it is dangerous to do so.

10. Section 88J provides that the Licensing Authority shall establish and maintain a register to be known as the Demerit Points Register. Where a fixed penalty notice is issued under section 81 for a traffic violation that carries demerit points and the notice is not contested, then the number of demerit points prescribed in the Ninth Schedule is recorded against the driving permit record of that person: section 88K(3). Section 88M provides for the accumulation of demerit points and disqualification. It provides that where a driver has held a driving permit for more than a year and accumulates a specified number of demerit points, they are disqualified from driving for a specified period. 10 to 13 demerit points lead to a disqualification for six months, 14 to 19 disqualify the driver for a year and 20 or more for two years. Section 88M(3) and (4) provide:

> "(3) The Licensing Authority shall, before disqualifying a person under subsection (2), give that person notice in writing of its intention to do so, and shall specify a date not less than fourteen days after the date of the notice, upon which the suspension shall be made and call upon the person to show cause why he should not be disqualified.
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> (4) Where a person fails to show cause under subsection (3) and the Licensing Authority after taking into consideration any facts in mitigation, decides to disqualify that person from holding or obtaining a driving permit, the Authority shall forthwith, in writing, notify that person of the disqualification."

11. The disqualification takes effect 14 days after the person has been informed and the person must surrender his driving permit to the Licensing Authority. When the disqualification period expires, all the demerit points are expunged. Further, all demerit points are expunged if a person does not accrue any points for a period of two years: section 88O.

12. The key provision for the purpose of this appeal is section 88M(9):

> "(9) A person who is disqualified from holding or obtaining a driving permit under this section may, within fourteen days of the receipt of the notice under subsection (4), appeal to a Court of competent jurisdiction against that decision and the decision of that Court shall be final."

13. There is another group of sections which are relevant to this appeal. They deal with the more serious offences of:

(i) driving whilst under the influence of drugs: section 70 as amended;

(ii) driving or attempting to drive under the influence of alcohol: section 70A;

(iii) causing death by dangerous driving: section 71;

(iv) dangerous driving: section 71A; and

(v) careless driving: section 72.

14. The first four of those offences are punishable by substantial fines, periods of imprisonment and prescribed periods of disqualification from driving. However, section 29 of the Amending Act amended the careless driving offence in section 72 so that it was a summary offence. The punishment is a fine and disqualification from driving "for such period as the Court thinks fit", though this must be not less than one month on a second or subsequent conviction. Section 88F, introduced by the Amending Act, provides, broadly, that where a person is charged with driving whilst under the influence of drugs or of dangerous driving and the Court determines that the offence is not proved, the Court can proceed instead with a charge of careless driving. Section 88H then provides:

> "88H A person who, by virtue of an order of a Court under section 88F is disqualified from holding or obtaining a driving permit may appeal against the order in the same manner as against a conviction, and the Court may, if it thinks fit, pending the appeal, suspend the operation of the order."

15. The Appellant relies on the difference between the wording of section 88M(9) and section 88H in support of his construction of the statute.

The facts and the proceedings below

16. During the period May to September 2020 Mr de Silva was issued with three fixed penalty notices. In his affidavit lodged with his appeal he describes the circumstances of each violation:

> (i) In May 2020 he was driving with his cell phone in his lap and was issued with a fixed penalty notice and three demerit points, although he says that, as he explained to the constable who stopped him, he was not using the phone but just had it in his lap.
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> (ii) On 3 July 2020 he was driving in an area which was unfamiliar to him and the navigation app he was using directed him to turn right to get to his destination. He was stopped by a police officer for breaching a traffic sign and given a further three points.
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> (iii) On 8 September 2020 he was driving with a co-worker who removed his seatbelt to reach for something on the back seat and failed to put the seat belt back on despite being requested to do so by Mr de Silva. This resulted in another four demerit points being issued for driving a vehicle with a person in the front seat who is not wearing a seatbelt.

17. Mr de Silva paid all the penalties. He received a letter dated 7 October 2020 from the Transport Commissioner notifying him that because he had accumulated 10 demerit points within a period of three years, he had 14 days to give notice or provide reasons to the Licensing Authority why he should not be disqualified from driving for six months. He wrote to the Licensing Authority on 19 October, emphasising that he respects the law and never intended to violate it in any way. He stressed that he would ensure in future that he always remained vigilant and would observe the law. He provided supporting letters from his co-workers, including from the co-worker who failed to wear his seatbelt and who said in his letter that it was his mistake and no fault of Mr de Silva. Nevertheless, he was informed by the Licensing Authority that it had decided to disqualify him for six months. He explains in his affidavit that his work requires him to drive and he fears that he will lose his job if he is disqualified and may be unable to support his family.

18. Mr de Silva lodged his appeal by Fixed Date Claim form dated 6 November 2020 at the High Court. The court of its own motion ordered the parties to file submissions addressing the issue whether the High Court was the proper forum before which the case should proceed. The case was heard before Seepersad J on 9 February 2021. Both Mr de Silva and the Licensing Authority were represented by counsel. In his judgment, Seepersad J noted that the phrase "Court of competent jurisdiction" used in section 88M

of the Traffic Act was not adequately defined in the interpretation section or any other part of that Act: para 7. He said:

> "In practice however the offences created under the Act were dealt with, almost exclusively, by the Summary Courts and the Act specified the serious offences which had to be determined on indictment."

19. The judge described the intention of the Amending Act as being to streamline traffic offence procedures and to reduce the number of traffic related offences which formed a significant part of the magisterial workload. The Amending Act specifically vested jurisdiction over enforcement of traffic offences exclusively in the summary courts except for the serious offences triable on indictment which are heard by the High Court. He noted that section 128 of the Summary Courts Act expressly provides that an appeal is to be made to the Court of Appeal and all magisterial convictions for traffic offences under the Traffic Act were subject to appeal before the Court of Appeal. He concluded at para 29:

> "Given the finality of the wording of Section 88M(9) on appeal, this Court is resolute in its view that the appropriate forum for the determination of this manner of appeal is the Court of Appeal and not the High Court. The appellate jurisdiction of the Court of Appeal existed from the inception of the Act and in relation to traffic offences the High Court never exercised an appellate jurisdiction. Its involvement with traffic related matters was always confined to trials of indictable traffic offences."

20. The judge deprecated the poor drafting of the provision which had created the uncertainty which required the court's interpretation. Mr de Silva could not be criticised for having brought his claim in the High Court and Seepersad J departed from the usual order that costs follow the event and ordered that both sides bear their own costs.

21. Mr de Silva appealed to the Court of Appeal which handed down judgment on 12 August 2021 (A Yorke-Soo Hon JA, P Rajkumar JA and R Boodoosingh JA). Boodoosingh JA gave the judgment with which the other judges agreed. He noted that it was common ground that the Magistrates' Court was not the correct route of appeal so that it must be either the High Court or the Court of Appeal rather than both. He referred to section 99 of the Constitution of the Republic of Trinidad and Tobago, Chap 1:01, which establishes the High Court and the Court of Appeal and to the statutes which vested jurisdiction in those courts. None of these assisted in solving the problem created by section 88M(9).

22. He noted that a person who contests the issue of a fixed penalty notice does so before the Magistrate. If the Magistrate determines the person is guilty of the violation, the Magistrate can impose the same penalty or an increased penalty. The penalty may include disqualification from driving. An appeal from that decision of the Magistrate lies to the Court of Appeal. He went on:

> "28. It would be odd in those circumstances for the Parliament to have intended the appeal forum for appeals from the Authority to lie to the High Court without expressly saying so in the legislation. This is particularly so since section 88M(9) provides that no appeal lies from that Court. Both the Supreme Court of Judicature Act and the Judicature Ordinance, provided for the Court of Appeal to hear appeals from a High Court judge. It would be odd again if Parliament had, in effect, impliedly amended this section to prohibit appeals from the High Court where the High Court was making a decision on an appeal from the Authority."

23. Boodoosingh JA then went on to make a further point which Mr Pennington-Benton appearing for the Licensing Authority before the Board accepts was not correct. This was the supposed absurdity which could be created if a driver contested the issue of the fixed penalty notice before the Magistrate and also appealed against the Licensing Authority's disqualification decision based on the demerit points arising from that notice. Boodoosingh JA posited a situation where the High Court might dismiss the appeal against the disqualification decision but the Magistrates' Court might then overturn the issue of the notice. There would then, he thought, be no appeal available to challenge the disqualification. In fact, this point – referred to by the parties as the "bifurcation point" – was wrong. The Court of Appeal had not been taken to section 88K(2) of the Traffic Act. This provides that where a person appeals against conviction for an offence that carries demerit points, "no demerit points shall be recorded against the driving permit record of the person unless the conviction is confirmed on appeal". That provision means that there is no risk that the High Court could disqualify a driver on the basis of demerit points that were then removed from the driver's permit when the Court of Appeal overturned the conviction for the relevant offence.

24. That was not, however, the main reason for the Court of Appeal's conclusion that it was the correct forum. Their primary reason was that the Court of Appeal had always been the forum for appeals from convictions for traffic violations determined in the Magistrates' Court before the revisions of the Amending Act came into effect. There was nothing in the Amending Act to indicate a policy decision to affect the respective jurisdictions of the High Court and the Court of Appeal in relation to appeals from traffic cases. On the contrary, appeals from unsuccessful notices to contest before the Magistrates still went to the Court of Appeal:

> "There is no justification for this Court to infer that by using the term 'Court of competent jurisdiction' those far reaching changes to the existing process of appeals of traffic matters could have been intended. A simple application of statutory criteria by the Authority could not lead to such a complicated process for the hearing of the appeal without this being clearly expressed."

25. Boodoosingh JA also attached significance to the fact that the imposition of demerit points involved imposing a penalty and, given the historical context, the Court of competent jurisdiction for an appeal involving the imposition of a penalty could only be the Court of Appeal unless the statute stated that it was to be some other body.

26. The single issue before the Board is, therefore, whether the Court of Appeal was right to construe section 88M(9) as it did. Before the Board, Mr de Silva explained that the route of appeal is important to him and to others in his position because the costs of appealing to the three judge panel of the Court of Appeal are, he submits, much higher than the costs of appealing to a single judge of the High Court. Further, the delays in the listing of cases before the Court of Appeal mean that the period of disqualification is likely to have expired by the time the appeal comes on for hearing.

27. Despite the cogent and helpful arguments put forward by Mr Rodriguez on behalf of Mr de Silva, the Board agrees with the courts below that the Court of Appeal is the correct forum for Mr de Silva's appeal.

28. The only definition of the word "Court" that might apply is that in section 80 of the Traffic Act (as amended). That defines "Court" as having the meaning assigned by the Summary Courts Act. The Licensing Authority initially argued before Seepersad J that the reference to "Court" in section 88M(9) must be to the summary court: see para 41 of their written submissions at first instance. They submitted in the alternative that the appropriate court was the Court of Appeal rather than the High Court: para 70 of those submissions. It is clear to the Board that the summary court is not the correct court; the choice is between the High Court and the Court of Appeal, as is now accepted by the Licensing Authority.

29. As explained earlier, the power to disqualify in section 82 of the Traffic Act prior to the Amending Act was exercised by the Magistrates' Court and appeals from there went to the Court of Appeal. It is true that there is much that is new in the regime brought in by Part VI and VIA inserted by the Amending Act. But the reference to "a Court of competent jurisdiction" is, in the Board's opinion, apt to refer back to the existing regime in so far as appeals are concerned. As the Court of Appeal said in its judgment in this case, there is nothing in the Amending Act which indicates that section

88M(9) was intended to make a fundamental change to the regime allocating appellate roles in this regard. The Board agrees with the reasoning of Boodoosingh JA that if the legislature had intended to make such a fundamental change to the appellate regime for driving disqualification, it would have made this much clearer. Further, the wording of section 88M(9) was not new in the Amending Act. Section 86A of the Traffic Act as amended in 2000 (before the Amending Act came into force) gave the Licensing Authority power to suspend a driving licence for no more than six months "where the person's record as a driver of motor vehicles or his conduct or habits as a driver establishes that it would not be in the interests of the public safety for him to hold a driving permit issued under this Act or that the person is not competent to drive a motor vehicle." Section 86B provided for the driver to "show cause" and for an appeal against the suspension to be made to a Court of competent jurisdiction which decision would be final. Mr Pennington-Benton told the Board that, so far as the Licensing Authority was aware, there was no case law construing that phrase in that earlier provision. The introduction of penalty points which could be imposed by the Licensing Authority or the Magistrate seems to date back further to the Motor Vehicles and Road Traffic (Enforcement and Administration) Act, Chap 48:52 of 1978.

30. Further, section 88M(9) provides expressly that an appeal to the court of competent jurisdiction is final. That also indicates that the Court of Appeal is the appropriate court. Mr Rodriguez countered this argument by relying on a passage in the speech of Lord Diplock in *In re Racal Communications Ltd* [1981] AC 374, 384. The House of Lords was considering whether there was a right to challenge a decision of the High Court by way of judicial review where the relevant statute provided that the decision "shall not be appealable". Lord Diplock referred to a presumption that where a decision making power is conferred on a tribunal or authority that is not a court of law, Parliament did not intend to confer on that body the power to decide questions of law without the possibility of review. There was no similar presumption, Lord Diplock said, where a statute confers a decision making power on the High Court. If the statute then said that the High Court's decision was unappealable, there was no room to imply a right of judicial review. Mr Rodriguez then also drew the Board's attention to instances where the legislature has indeed provided expressly for High Court decisions to be final. Section 68 of the Cooperative Societies Act, Chap 81:03, provides for the referral of a question of law for the opinion of the High Court and states that the opinion "shall be final and conclusive". The Board does not agree that that is a helpful analogy. Sections 67 and 68 of that Act deal with the resolution by the Commissioner for Co-operative Development of disputes "touching the business of a [cooperative] society" among its members or between the members and the board or officers of the society. That is a very different jurisdiction from the appeals under section 88M(9). Perhaps more relevant is section 21(4) of the Pharmacy Board Act, Chap 29:52, which provides that a person who is aggrieved by a decision of the Council of the Pharmacy Board may appeal to a Judge in Chambers and a decision of a Judge under that section "shall be final": section 21(4). But again, the Board does not consider this a close comparison. It may well be appropriate to minimise the involvement of the ordinary courts in regulating the conduct of members of a profession by leaders of that profession. The Board considers that the

finality of the decision of the court in an appeal under section 88M(9) is an important indication that it is the Court of Appeal and not the High Court on which this jurisdiction is conferred.

31. Thirdly, appeals from other disqualification powers conferred by the Traffic Act as punishment for traffic offences are brought in the Court of Appeal and not the High Court. If a person is convicted on indictment of causing death by dangerous driving under section 71 or by the summary court of dangerous driving under section 71A, the appeal will go to the Court of Appeal. It would be undesirable for there to be two different appellate routes since this may lead to inconsistencies in the application of the factors to be taken into account when considering whether the disqualification should stand or not. There is an advantage in a single court acquiring expertise in handling such appeals and in giving authoritative guidance to the Licensing Authority and to Magistrates exercising the power to disqualify as to the factors that are or are not relevant in making that decision.

32. Mr Rodriguez put forward two main arguments in support of his contention that section 88M(9) refers to the High Court and not the Court of Appeal. First he argued that the phrase "Court of competent jurisdiction" is a free-standing term which has a legal meaning independent of any legislative context. He relied on the definition referred to by the Canadian Supreme Court in *R v Hynes* [2001] 3 SCR 623. The Court there defined a court of competent jurisdiction as "one that possesses jurisdiction over the subject matter, jurisdiction over the person, and jurisdiction to grant the remedy": para 26. The test for the third element was whether the court or tribunal is "suited to grant the remedy sought … in light of its function and structure": para 27. Mr Rodriguez argues that the Court of Appeal lacks subject matter jurisdiction over these appeals because it is a court of limited jurisdiction conferred by statute, namely the 1950 Judicature Ordinance. None of the statutes conferring appellate functions on the Court of Appeal refers to appeals from disqualification decisions of the Licensing Authority. The High Court by contrast, he submitted, has unlimited inherent jurisdiction.

33. The Board does not accept that the difference in the scope of jurisdiction between the High Court and the Court of Appeal provides the answer in this case. The inherent jurisdiction of the High Court does not extend to an inherent appellate jurisdiction – the High Court has only those appellate jurisdictions that are conferred on it by statute. There are a number of statutes which expressly provide for an appeal from a licensing body to go to the High Court. For example, if the Pilotage Authority suspends or revokes a pilot's licence, the pilot "may appeal to a Judge of the High Court": see Pilotage Act, Chap 51:02, section 14. There are several statutes which expressly confer a right of appeal from an inferior tribunal to the High Court or to a Judge in Chambers. See for example section 14A of the Adoption of Children Act, Chap 46:03 (appeals against decisions of the Children's Authority on suitability of a person to adopt a child) or section 10(1) of the Friendly Societies Act, Chap 32:50 (appeal by a friendly society from the refusal of the Registrar of Friendly Societies to register it). The Board regards

these examples as neutral as regards the question for decision here. Clearly there are circumstances where the legislature has conferred an appellate jurisdiction on the High Court. That does not solve the problem of whether it has done so in section 88M(9).

34. Mr Rodriguez points out that where the legislature intends an appeal to go to the Court of Appeal it typically uses a different form of words. There are examples of legislation which expressly allocates an appeal from an inferior court or tribunal to the Court of Appeal, for example section 26 of the Representation of the People Act, Chap 2:01 (appeals against the Chief Election Officer) or section 16(8) of the Town and Country Planning Act, Chap 35:01 (appeals from a decision of the Magistrates' Court to impose a planning control enforcement notice). He relies particularly on section 88H of the Traffic Act, set out earlier, where the route of appeal is specified by stating that the driver "may appeal against the order in the same manner as against a conviction". Mr Rodriguez argues that since a conviction is appealed to the Court of Appeal, that is the correct forum for an appeal under that provision. But the language of section 88M(9) is different. He relies on the statement in *Bennion, Bailey and Norbury on Statutory Interpretation*, 7th ed (2017), para 21.3 that:

> "Same words, same meaning; different words, different meaning
>
> (1) There is a presumption that where the same words are used more than once in an Act they have the same meaning.
>
> (2) There is a presumption that where different words are used in an Act they have different meanings."

35. The sentence in *Bennion* stating that "It is generally presumed that the drafter did not indulge in elegant variation, but kept to a particular term when wishing to convey a particular meaning" has, according to the learned editors been judicially approved in *Omagh District Council, Re Judicial Review* [2007] NIQB 61, para 50. However, the editors also recognise that:

> "Like all linguistic canons of construction this is no more than a starting point. These presumptions may be rebutted expressly or by implication. The presumption that different words have different meanings will generally be easiest to rebut since 'the use of the same expression is more likely to be deliberate' [citing *Plevin v Paragon Personal Finance Ltd (No 2)* [2017] UKSC 23; [2017] 1 WLR 1249 at para 22]."

36. The use of different language comparing section 88H and 88M(9), cannot, in the Board's view counter the stronger indication that the legislature intended that appeals should go to the same court as appeals against disqualification orders imposed by the Magistrates' Court under the pre-2017 regime.

37. Finally, Mr Rodriguez argued that the High Court was a more suitable forum for disposing of an appeal against the Licensing Authority's decision because it was more readily able to assess evidence if there was a conflict of fact, for example between the constable who issued the notice and the driver. Section 88M(3) provides that the driver can "show cause why he should not be disqualified" in response to the initial notification from the Licensing Authority, and that the Authority is bound by section 88M(4) to take into consideration any facts in mitigation. But, the Board was told, the Licensing Authority never decides not to disqualify on the basis of the "show cause" representations; everyone is disqualified once they have accumulated the requisite number of points. Mr Pennington-Benton did not respond to this description of the Authority's practice. The appeal is therefore said to be the first occasion on which a driver really has an opportunity to put forward his explanation of what happened.

38. The Board recognises that generally the High Court is more accustomed to hearing evidence than the Court of Appeal. But in most cases the Court of Appeal will consider the representations that were made to the Licensing Authority in the form of letters or, for example, medical certificates or letters from an employer or passenger as happened in this case. In the rare case where oral evidence is needed, the Court of Appeal has sufficient powers to manage the case appropriately. Mr Pennington-Benton submitted that Part 64 of the Civil Proceedings Rules gives the Court of Appeal "all the powers and duties of the High Court" in relation to an appeal: see r 64.17(1) and (2) which provides:

> "The court may receive further evidence on questions of fact, either by oral examination in court, by affidavit, or by deposition taken before an examiner, but, in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) may be admitted except on special grounds."

39. Finally, Mr Rodriguez argued that the legislature cannot have intended that every appeal against a six month driving disqualification would take up so much resource in terms of court time and judicial seniority and expertise of a three judge panel of the Court of Appeal – particularly since this is an appeal as of right with no permission threshold. However, the Board concludes that if the judges of the Court of Appeal in this case did not regard that as a potent factor, the Board should not arrive at a different

view. Although the question raised by the appeal is one of statutory construction, it is also a question concerning the procedural allocation of responsibilities within the Trinidad and Tobago court system. The Board will be slow to interfere with the Court of Appeal's assessment of whether this is a jurisdiction which belongs in its own case load rather than one which it considers the statute is likely to have allocated to the lower court.

40. The Board therefore dismisses the appeal. The Court of Appeal rightly deprecated the lack of clarity in the legislation: see para 38 of their judgment. Because of the issue generated by section 88M(9), there has not as yet been a substantive consideration of the explanations Mr de Silva put forward in his "show cause" letter and of the evidence of his colleague as to how it came about that he accumulated these demerit points and why he should not have been disqualified: see para 16 above. The question whether and when Mr de Silva can now pursue the substance of his appeal against his disqualification is a matter for the Court of Appeal to consider.