SUPREME COURT OF QUEENSLAND

CITATION:	*Townsville City Council v McIntyre* [2013] QCA 173
PARTIES:	**TOWNSVILLE CITY COUNCIL** (applicant) **v** **McINTYRE, Phillip Ernest** (respondent)
FILE NO/S:	CA No 185 of 2012 DC No 99 of 2012
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave s 118 DCA (Criminal)
ORIGINATING COURT:	District Court at Townsville
DELIVERED ON:	9 July 2013
DELIVERED AT:	Brisbane
HEARING DATE:	29 April 2013
JUDGES:	Margaret McMurdo P and Holmes JA and Henry J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**The application for leave to appeal is refused with costs.**
CATCHWORDS:	TRAFFIC LAW – TRAFFIC REGULATION – RESTRICTIONS ON STOPPING AND PARKING – PERMISSIVE PARKING SIGNS AND PARKING FEES – where respondent's car was parked in a metered parking space beyond the length of time for which a ticket was purchased – where the respondent convicted in the Magistrates Court of breaching s 106 of the *Transport Operations (Road Use Management) Act* 1995 (Qld) – where respondent appealed his conviction to the District Court – where the appeal was allowed and the complaint dismissed – where applicant seeks leave to appeal the decision of the District Court Judge – whether primary Judge correctly construed provisions of the *Transport Operations (Road Use Management) Act* – whether primary Judge erred in failing to dismiss the appeal or remit the matter to the Magistrates Court for determination – whether leave to appeal should be granted *District Court of Queensland Act* 1967 (Qld), s 3, s 118 *Justices Act* 1886 (Qld), s 222, s 225 *Transport Operations (Road Use Management) Act* 1995 (Qld), s 101, s 102, s 103, s 105, s 106, s 107

ACI Operations v Bawden [2002] QCA 286, applied
Arnold Electrical & Data Installations Pty Ltd v Logan Area Group Apprenticeship/Traineeship Scheme Ltd [2008] QCA 100, applied
De Bortoli v Kenny (1948) 76 CLR 453; [1948] HCA 12, cited
Driclad Pty Ltd v Federal Commissioner of Taxation (1968) 121 CLR 45; [1968] HCA 91, cited
Pickering v McArthur [2005] QCA 294, applied
Smith v Ash [2011] 2 Qd R 175; [2010] QCA 112, cited

COUNSEL: R Douglas QC for the applicant
The respondent appeared on his own behalf

SOLICITORS: Townsville City Council for the applicant
The respondent appeared on his own behalf

[1] **MARGARET McMURDO P:** I agree with Henry J that this application for leave to appeal under s 118 *District Court of Queensland Act* 1967 (Qld) should be refused. As Henry J has set out the relevant issues and the scheme under the *Transport Operations (Road Use Management) Act* 1995 (Qld)[1] ("The Act"), my reasons, which follow a different path to his Honour's, can be briefly stated.

[2] The magistrate convicted the respondent of a parking offence under the Act. The judge allowed the respondent's appeal, set aside the magistrate's orders and dismissed the complaint and summons.

[3] I agree with Henry J's reasons for concluding that the judge erred in considering that, on the evidence before the magistrate, s 106(1)(a)(i) of the Act was relevant, rather than s 106(1)(a)(ii). I also agree with his Honour's construction of s 105.[2]

[4] I would reach the following conclusions from the evidence before the magistrate. The respondent's vehicle was parked in a designated parking space in terms of s 106(1). Neither the respondent nor his partner Ms Renshaw, who had driven him to and dropped him at an appointment,[3] had done what was "required by an authorised system that applies in relation to the space" in terms of s 106(1)(a)(ii). Under s 103(3)(d) of the Act, an authorised system was "a system… for the payment of a parking fee for paid parking" on an official traffic sign. There was, however, nothing in the Act which required the actual parking fee to be stated on the official traffic sign. Mr Burton's affidavit exhibited a photograph of the relevant traffic sign[4] which is replicated in Henry J's reasons at [16]. The only rational construction of the sign is that it allows the parking of a vehicle in the parking spaces to which it refers between 9 am and 5 pm for up to two hours only when a ticket is purchased for a prescribed fee from a nearby readily ascertainable facility and displayed on the vehicle.

[5] Ms Renshaw gave uncontentious evidence that she parked the vehicle in the parking space before purchasing a ticket which she then displayed on the dash. In the

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1 Reprint 11L.
2 Set out in Henry J's reasons at [34].
3 The case was not conducted on the basis that Ms Renshaw rather than the respondent was responsible for the alleged offence.
4 Ex 1 (RJB 3).

absence of contrary evidence, I would infer that she obtained the ticket from a nearby machine. A copy of the ticket was tendered.[5] It clearly stated that it was issued at 9.23 am; "EXPIRY TIME 10:59 AM"; and "PARKING PAID $1.60". The fee was therefore approximately $1.00 per hour, or slightly less than 2 cents a minute. The only rational inference from the evidence is that, in terms of s 105(2)(b), the prescribed parking fee was that set out on the ticket to which the traffic sign made clear reference. Ms Renshaw's evidence was to the effect that, having paid $1.60, she understood she was authorised to park the vehicle in a parking space to which the sign referred until 10.59 am. At 12.08 pm, the vehicle was parked in a relevant space when a parking officer issued the parking infringement notice.[6] Like the magistrate, I would have been satisfied on that evidence beyond reasonable doubt that the respondent committed an offence against s 106.

[6] But the applicant has not sought to appeal from the judge's conclusion that the magistrate erred in admitting Mr Burton's affidavit. In the absence of Mr Burton's evidence exhibiting the traffic sign, the prosecution case is not made out. It follows that the judge's order allowing the appeal and setting aside the magistrate's orders was rightly made, despite his Honour's flawed construction of the Act.

[7] In those circumstances I am unpersuaded this is a suitable case in which to grant leave to appeal. I agree with the orders proposed by Henry J.

[8] **HOLMES JA:** I agree with the reasons of Henry J and the orders he proposes.

[9] **HENRY J:** On 1 April 2011 the respondent's vehicle was parked in a parallel parking space outside the Townsville Courthouse while he was inside defending himself on a parking infringement charge. He was at court longer than expected, overstayed his period of paid parking and was issued with a parking infringement notice.

[10] He did not pay the $20 fine nominated in the notice and went to trial in the Magistrates Court on a complaint alleging a breach of s 106 of the *Transport Operations (Road Use Management) Act* 1995 (Qld) ("the Act"). He was convicted, fined $20 and ordered to pay costs.

[11] He appealed his conviction to the District Court under s 222 of the *Justices Act* 1886 (Qld). His appeal was allowed and the complaint dismissed.

[12] The applicant seeks leave to appeal the decision of the District Court Judge.

[13] Pursuant to s 118(3) of the *District Court Act* 1967 (Qld) a party dissatisfied with a judgment of the District Court may appeal to the Court of Appeal, "with the leave of that court". Prior to 1997 the discretion to grant leave was exercisable only if the applicant established that the appeal involved an important point of law or some question of general public importance. Those matters are no longer prerequisites to a grant of leave to appeal. The general discretion conferred by s 118(3) to grant or refuse leave to appeal is exercisable according to the nature of the case.[7]

[14] In considering whether the nature of this case warrants the granting of leave it is appropriate to first consider the background of the case and the grounds for which leave is sought.

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5 Ex 4.

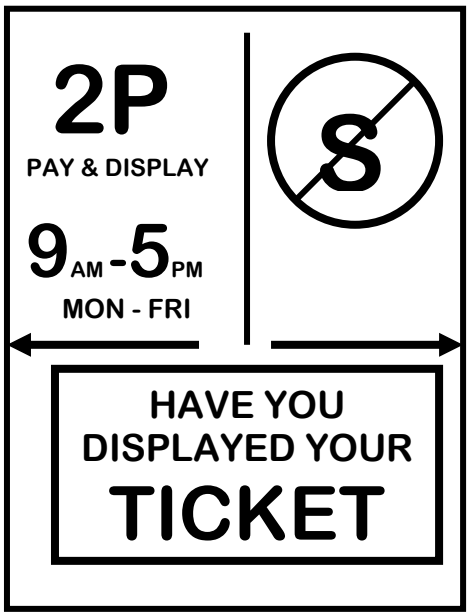
6 Ex 2.

7 *Arnold Electrical & Data Installations Pty Ltd v Logan Area Group Apprenticeship/Traineeship Scheme Ltd* [2008] QCA 100, [5]; *Smith v Ash* [2010] QCA 112, [50].

Background

[15] The respondent's wife drove the respondent in his vehicle and dropped him off at the front of the Townsville Courthouse. She parked the respondent's vehicle in a parallel parking space at the front of the Courthouse.

[16] Parking in the vicinity was purportedly regulated by a so-called "pay and display" system. An official street sign in the vicinity contained this information about the system:



[17] The only evidence as to the content of that sign was contained in an affidavit by the applicant's Chief Executive Officer, Mr Burton. The learned District Court Judge found that affidavit, tendered as an exhibit by the prosecution, had been wrongly admitted into evidence.

[18] Under the pay and display system users were apparently required to pay money for a period of parking into a nearby ticket machine and display the ticket issued by the machine in their vehicle. The display ticket, endorsed as a tax invoice, contained details including the amount paid, the time of payment and the "expiry time".

[19] No evidence was led as to whether there was a sign on the ticket machine providing information about the system additional to the above information in the official street sign. Therefore there was no evidence that any signage about the system explained what amount of money ought be paid.

[20] The respondent's wife paid for a display ticket from a ticket machine. She left it displayed on the dashboard of the vehicle and went into the Courthouse. The information printed on the display ticket revealed that it was issued at 9.23 am on the payment of $1.60 and had an expiry time of 10.59 am. The respondent and his wife were at the Courthouse longer than expected and the vehicle remained in the car park beyond the display ticket expiry time of 10.59 am. At 12.08 pm a Townsville City Council parking officer detected that the vehicle was parked beyond the expiry time indicated in the display ticket and issued a parking infringement notice, leaving it on the vehicle's windscreen.

[21] The infringement notice described the offence as, "Parking in a designated space longer than ticket issued", and imposed a "penalty" of $20. The rear of the notice

explained that if the payment of the "correct fee" was received within 28 days no further action would be taken.

[22] The notice was addressed to the registered owner of the vehicle. The respondent was the registered owner of the vehicle who, in that capacity, was deemed by s 107 of the Act to have committed the parking offence.

[23] The respondent paid the applicant a cheque for one dollar later that day in purported payment of the parking fee he calculated should have been paid for his vehicle's unpaid period of occupation of the parking space. He argued unsuccessfully at trial that this payment meant he had actually paid the correct fee as required by the infringement notice, notwithstanding that the fee to be paid under the infringement notice was obviously intended to be the $20 penalty stipulated in it.

[24] The respondent did not pay the $20 penalty and was prosecuted under the Act on the complaint of the applicant:

> "…that on the first day of April 2011, at Townsville at the Magistrates Court District of Townsville in the State of Queensland, and within the City of Townsville as constituted under the Local Government Act 2009,
>
> Phillip McIntyre being the owner of the vehicle Toyota utility registered 846-BJG during the fixed hours, at the hour of 12.08pm on a road within the Townsville Central Traffic Area, namely Walker Street between Denham Street and Stokes Street they (sic), or their (sic) servant or agent did park that vehicle in a designated space for a period longer than that shown on the parking ticket issued in respect of that parking."

[25] His Honour found:

> "It is, in my view, appropriate that the appeal be allowed on three bases.
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> First, that the adjournment was refused when it ought not to have been. Second, that the affidavit of Mr Burton was wrongly admitted and thirdly, that overstaying is not, in my view, a failure to comply with the authorised system of payment. Because of the third of those [matters] it is not appropriate in my view to give any consideration to ordering a rehearing. Even if I had not made that finding I would have been inclined to think that enough time and effort has gone into this matter and that on that basis a rehearing would not be warranted."[8]

Grounds

[26] Notwithstanding that there were three separate reasons given for allowing the appeal the applicant's grounds for seeking leave to appeal to this court are largely, if not exclusively concerned only with the third of those reasons, which relates to the proper construction of the Act.

[27] Grounds 1 and 2 are concerned with his Honour's construction of the Act. Ground 3 is concerned with the orders which should have been made by his Honour.

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[8] R374 L49 – R375 L9.

Grounds 1 & 2: Proper construction of the Act

[28] Grounds 1 and 2 of the application are:

> 1. The primary Judge erred in considering the *Transport Operations (Road Use Management) Act* 1995, in construing that s 106(1)(a)(ii) thereof had no application to the circumstances of the respondent, in him overstaying parking in Townsville on 1 April 2011, in circumstances where the authorized system in use was one requiring parking to be paid by "Pay & Display".
>
> 2. His Honour erred in construing that the provision of the said Act applicable in such circumstances was s 106(1)(a)(i) thereof.

[29] Those grounds are specifically concerned with his Honour's interpretation of the offence provision, s 106 of the Act. They cannot be properly understood without some consideration of the other legislative provisions regulating parking and their interpretation and application to the facts by the learned District Court Judge.

[30] The Act provides that a local government may regulate parking in its area and may require the payment of a fee for a vehicle to be parked.[9] A local government may regulate parking by installing official traffic signs indicating how parking is regulated.[10] The definition schedule of the Act provides:

> "***official traffic sign*** means a sign, marking, light or device placed or erected to regulate, warn or guide traffic."

That definition is broad enough to include signage placed on a streetside ticket machine but there was no evidence of any such signage in this case.

[31] Official traffic signs may define or indicate where paid parking is authorised.[11] Section 103(3) provides:

> "(3) Official traffic signs installed by a local government may specify for a place or a traffic area-
>
> (a) the hours and days when parking is only allowed for a specified maximum time; and
>
> (b) the fixed hours for paid parking; and
>
> (c) for specified designated parking spaces—the maximum time for which a vehicle may be paid parked; and
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> (d) a system (the **authorised system**) for the payment of a *parking fee* for paid parking including, for example, by the use of a coin, token, card or credit card; and

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9 *Transport Operations (Road Use Management) Act* 1995 (Qld) s 101.

10 Ibis s 102(1).

11 Ibid s 103(2)(a).

> (e) the denomination or number of coins to be inserted in a parking meter or parkatarea in payment of a *parking fee*."
>
> (emphasis by italics added)

[32] Section 103(3)(d) provides the only definition of what the Act means by an "authorised system". The applicant properly concedes this therefore means an "authorised system" for the payment of a parking fee for paid parking must be specified in official traffic signs installed for a place or traffic area.

[33] The learned District Court Judge reasoned that an "authorised system" was limited by s 103(3) to "a system for the payment of the relevant fees".[12] He reasoned a system of the kind defined by s 103(3)(d) did not extend to the prohibition of "overstaying" the period paid for by the fee because of that limitation. However that reasoning overlooks the question of what the "parking fee" to be paid should be and assumes in effect that the payment of any fee is sufficient.

[34] The references in s 103(3)(d) and (e) to the payment of a "parking fee" in connection with an authorised system and a parking meter or parkatarea are explained by s 105's provision for paid parking. Section 105 relevantly provides:

> **"105 Paid parking**
>
> (1) Fixed hours start for a designated parking space after a local government has installed the appropriate official traffic signs for the space.
>
> (2) A person may park a vehicle in a designated parking space during the fixed hours only if-
>
> (a) the person does not park the vehicle in the space for longer than the maximum time indicated on the official traffic sign installed in relation to the space; and
>
> (b) the person *pays the parking fee* for the space *as prescribed* immediately on parking the vehicle.
>
> (3) The person may pay the parking fee-
>
> (a) if a parking meter or parkatarea is installed for the space—by inserting coins of the number and denomination appropriate to the parking fee in the parking meter or parkatarea; or
>
> (b) if an authorised system applies in relation to the space—by doing what is required by the system.
>
> (4) Nothing in this section prevents a person from making more than 1 payment while a vehicle is parked in a designated parking space, if the total time of continuous paid parking does not exceed the maximum time indicated on the official traffic sign installed in relation to the space."
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> (emphasis by italics added)

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12 R373 L49.

[35] At first blush s 105(2) may wrongly convey the impression that as long as a parking fee is paid when the vehicle is first parked then the vehicle may remain parked there beyond the period paid for, as long as the vehicle does not stay longer than the maximum time indicated on the relevant traffic sign.

[36] Such a misinterpretation assumes the act of parking is restricted to the act of arrival whereas the Act clearly contemplates parking is an ongoing act. For instance the definition schedule of the Act relevantly provides:

> "**park** a vehicle includes stop the vehicle and *allow the vehicle to stay*, whether or not the driver leaves the vehicle."
>
> (emphasis by italics added)

[37] The above interpretation also ignores the context of the balance of s 105, particularly s 105(4), which would serve no purpose if the interpretation were correct. Most fundamentally the above interpretation of s 105(2) ignores the presence in the language of that provision of the words "as prescribed".

[38] It is well known that fees for parking spaces are ordinarily prescribed by reference to periods of time, for example, 20 cents per 12 minutes or one dollar per hour. Where the prescribed fee is prescribed by reference to periods of time then it follows from the language of s 105(2) that a vehicle may not continue to remain parked beyond the period paid for because that would mean the prescribed fee has not been paid, whether on immediately parking the vehicle, see s 105(2)(b), or subsequently, see s 105(4). However questions such as what the prescribed parking fee is and whether it is prescribed by reference to periods of time are questions of fact falling for consideration from case to case. As will be seen, it was the inadequacy of evidence of those factual matters that was the real problem with the prosecution's case here.

[39] In this case the section allegedly breached was nominated in the complaint's heading as s 106 of the *Transport Operations (Road Use Management) Act* 1995 (Qld) ("the Act"). The only relevant part of that section is s 106(1), which provides:

> "**106 Paid parking offences**
>
> (1) During the fixed hours, a person must not park a vehicle in a designated parking space—
>
> (a) unless—
>
> (i) a parking meter or parkatarea installed for the space indicates that the parking fee has been paid; or
>
> (ii) the person has done what is required by an authorised system that applies in relation to the space; or
>
> (b) for a time longer than the maximum time indicated on the official traffic sign installed for the space; or
>
> (c) if another vehicle is parked in the space; or
>
> (d) so that the vehicle is not wholly within the space, unless the vehicle—

(i) is longer than the length of the space; and

(ii) is parked within a space in relation to which a parkatarea is installed; and

(iii) is engaged in loading or unloading goods; and

(iv) is as nearly as practicable wholly within the space.

Maximum penalty—40 penalty units."

[40] It is common ground that no misconduct as described in s 106(1)(b), (c) or (d) occurred here. The only possible foundation for liability under s 106(1) here was that the vehicle was parked in a designated parking space at which a parking meter or parkatarea was installed or to which an authorised system applied, during a period for which the relevant parking fee had not been paid.

[41] Sub-paragraphs (i) and (ii) of s 106(1)(a) have the effect of excusing the prima facie liability imposed by s 106(1) for parking a vehicle in a designated space during fixed hours. The learned District Court Judge's reasons below and the grounds for which leave is sought arguably imply that either sub-paragraphs (i) or (ii) of s 106(i)(a) impose liability in a case like the present. However they are exculpatory in nature.

[42] The existence of either of the factual possibilities posited in (i) and (ii) of s 106(1)(a) create exceptions to liability for parking a vehicle in a designated parking space during fixed hours. The Act does not reverse the onus in respect of the existence of those possibilities. Proof of a charge brought under s 106(1), without reliance on the misconduct described in s 106(1)(b), (c) or (d), necessarily requires the prosecution to exclude both of the factual possibilities posited in s 106(1)(a). To the extent sub-paragraph (i) or (ii) thereof can be said to "apply" it is not in the sense of imposing liability but in the sense of describing the type of payment method applicable for the relevant carpark, that is, (i) a parking meter or parkatarea or (ii) an authorised system. It is a necessary part of proof of the case that the payment method relevant to the parking space be identified in order to prove it was not complied with.

[43] Whether the complaint should therefore have specifically referred to the possible methods of payment mentioned by sub-paragraphs (i) and (ii), and averred which was present and was not complied with, was not argued and does not require determination in considering leave.

[44] Exclusion of the possible methods contemplated by sub-paragraph (i) should be simple in that in any case it will be readily apparent whether the designated space is one which has a parking meter or parkatarea installed for it. Parking meters and parkatareas are not fully defined by the Act and are merely defined as including the stand on which they are installed.[13] However it is apparent from that definition read in conjunction with s 105(3) and s 106(1)(a)(i) that they are devices installed on stands, for designated parking spaces and they indicate that a parking fee, paid for by inserting coins into them, has been paid. Because parking is an ongoing activity the manner in which such a device "indicates" the fee has been paid is necessarily also ongoing, that is, the device continues to indicate the fee has been paid for the entirety of the time paid for.

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13 Schedule 4 of the Act.

[45] There was little description given of the nearby ticket machine in this case. However the fact that it issued a display ticket, for display at the vehicle rather than at the machine, and the absence of evidence and inherent improbability that the machine itself continued to give any outward indication during the period paid for that the fee for the relevant parking space had been paid, strongly suggests it was not a parking meter or parkatarea within the meaning of the Act. The learned District Court Judge erroneously favoured the view that the ticket machine in this case was a parking meter and that s 106(1)(a)(i) therefore applied for exclusion by the prosecution.[14] However he found it unnecessary to rule whether the ticket machine in this case was a parking meter or parkatarea in the absence of more extensive argument on the point.[15] Ground 2 is therefore inaccurate in alleging his Honour erred in construing that s 106(1)(a)(i) applied. His Honour fell short of expressing a concluded view. Ground 2 is destined to fail.

[46] In this case the prosecution proceeded on the basis that there was no parking meter or parkatarea installed for the parking space. That is unremarkable. There was no evidence of the presence of either.

[47] The case was advanced on the basis that an authorised system applied, namely the pay and display system referred to in the streetside sign. The prosecution alleged the respondent's vehicle had been parked in the designated parking space at a time when he had not done what was allegedly required by the system, namely pay for and display a ticket for parking during that time. Thus, it was in effect contended, the only potentially relevant excusal from liability was that referred to in s 106(1)(a)(ii) and it had been excluded on the basis the respondent had not done what was required by the system.

[48] The learned District Court Judge doubted the streetside sign specified sufficient detail to prohibit overstaying:

> "The offence is failing to do what is required by the system. The system requires that one pay the fee and arguably, at least, display the ticket when parking the vehicle. It does not in terms, at least, require removal of the vehicle or payment of further fees or deal in any way with what happens at the expiry of the relevant time. I'm also not sure that a failure to remove the vehicle and/or permitting the vehicle to remain perhaps best called "overstaying" could constitute a failure to do what is required by the authorised system having regard to the terms in which the authorised system is expressed."[16]

[49] His Honour went on to say:

> "The official signs do not by their terms prohibit overstaying nor could they having regard to the terms of section 103 which limits the system to a system for payment of the relevant fees. Overstaying cannot, in my view, constitute a failure to comply with the authorised system."[17]

[50] Ground 1 complains his Honour erred in construing that s 106(1)(a)(ii) had no application. As already explained it misconceives sub-paragraphs (i) or (ii) of

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14 R374 L20.
15 R374 L40.
16 R370 L20-40.
17 R373 L45.

s 106(1)(a) to speak of them as applying; they are matters to be excluded. The intended effect of Ground 1 is to complain that his Honour erred in concluding there had not been a failure to comply with the requirements of the authorised system referred to in s 106(1)(a)(ii).

[51] His Honour's reasoning involved mixed conclusions of law and fact. He erred in concluding as a matter of law that overstaying could not be prohibited by an authorised system as defined under the Act. An authorised system may require payment of a fee for parking. As already explained, parking is not restricted to the act of arrival. It is an ongoing activity. Where the fee prescribed by the authorised system is prescribed by reference to periods of time then a vehicle may not continue to remain parked beyond the period paid for because that would mean the fee prescribed under the authorised system has not been paid.

[52] His Honour also concluded as a matter of fact that the authorised system in the present matter did not prohibit overstaying. He found the terms in which the system was expressed did not "deal in any way with what happens at the expiry of the relevant period" and that overstaying was not a failure to comply with the terms in which the authorised system was expressed.

[53] The only evidence of the terms in which the authorised system was expressed were contained in the roadside sign evidenced by Mr Burton's affidavit. The applicant did not challenge his Honour's finding that the affidavit was wrongly admitted into evidence. A difficulty not addressed in argument is that the absence of admissible evidence of the sign's content and thus of the authorised system was of itself apparently fatal to proof there had been a failure to do what was required by the authorised system. However it is unnecessary to resolve that difficulty because, even if the evidence in Mr Burton's affidavit of the sign's content had been admissible, the sign's content did not specify what parking fee was to be paid.

[54] It may well be that signage on the ticket machine specified what parking fee was to be paid and that it did so by reference to periods of time but there was no evidence led of any such sign. The ticket issued by the machine refers to an expiry time and it is possible to infer from its references to times and the fee paid that the fee charged by the machine was $1.60 for one hour and 36 minutes. It can therefore be inferred from the ticket purchased for display from the machine that the machine imposed a parking fee rate of 20 cents per 12 minutes and one dollar per hour. However it does not follow that the parking fee rate imposed by the machine was specified in a sign on the ticket machine. The evidence is silent on the point.

[55] As earlier discussed, s 103 has the effect of requiring the authorised system "for the payment of a parking fee for paid parking" to be specified in official traffic signs. The roadside official traffic sign evidenced by Mr Burton's affidavit, through its reference to "pay and display", indicated in effect that the system required some payment of a parking fee. However it did not indicate what parking fee was required to be paid for any particular period of time.

[56] His Honour's conclusion of fact was, in effect, that the authorised system did not prohibit a vehicle staying longer than the period said to be paid for on the face of the displayed ticket. That conclusion was reasonably open to his Honour given the obviously deficient state of the evidence as to the requirements of the authorised system advanced in this particular case.

[57] It was open to his Honour to decide to uphold the appeal by reason of the particular deficiencies of proof in this case. The errors of legal reasoning complained of were not determinative of the outcome. Proposed Ground 1 appears destined to fail.

Ground 3: Failure to dismiss or remit

[58] The third proposed ground of appeal is:

> 3. His Honour erred, further, in failing either to dismiss the appeal in light of the abovementioned proper construction, or alternatively remitting the matter to the Magistrates Court for hearing and determination according to law.

[59] It will be recalled the first two grounds related to the third of the reasons given by the learned District Court Judge for allowing the appeal. To the extent the third ground appears to be premised on the success of the earlier two grounds it is doomed to fail.

[60] The third ground of the application might additionally be read as contending that the first two reasons, the wrongful refusal of the adjournment and the wrongful admission of the affidavit, only warranted a re-hearing rather than a dismissal of the complaint. However s 225(1) of the *Justices Act* 1886 (Qld) empowered the learned District Court Judge to make any order he considered "just" and s 225(2) provided that in setting aside an order the judge "may", not must, send the proceeding back for re-hearing. His Honour expressed the view that even in the absence of the third of his reasons he was "inclined to think that enough time and effort has gone into this matter and that on that basis a rehearing would not be warranted". His Honour's reference to the "time and effort" which had already gone into the matter was effectively an acknowledgement of the disproportionality involved in putting a citizen through the strain and the community to the cost of a retrial in respect of a mere parking offence. The decision not to send the matter back for re-hearing was a quintessential exercise of the broad discretion conferred by s 225. No argument of substance has been advanced as to why it was not reasonably open to his Honour to conclude in the exercise of his discretion, that the matter did not warrant remitting for re-hearing.

[61] There is no prospect of Ground 3 succeeding.

Leave?

[62] While the need to correct error may warrant the granting of leave it will ordinarily be more likely to do so where it is accompanied by the need to correct a substantial injustice.[18] Here there is no challenge to two of the learned District Court Judge's three reasons for upholding the appeal. There is therefore no prospect of the judgment, as distinct from the reasons for judgment,[19] being disturbed. There were some errors of statutory construction connected with the third of the learned District Court Judge's reasons for upholding the appeal but those errors did not occasion any substantial injustice to the applicant as a party in the proceeding.

[63] The applicant meets the absence of any substantial injustice to it in the outcome of this individual case by contending that the importance of correcting the errors of

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[18] *ACI Operations v Bawden* [2002] QCA 286, 3; *Pickering v McArthur* [2005] QCA 294, [3].

[19] Section 3 of the *District Court Act* 1967 (Qld) defines "judgment" as including "a judgment, order, or other determination or decision of the court". While only an inclusive definition this suggests judgment" refers to operative judicial acts, not reasons for judgment. See *De Bortoli v Kenny* (1948) 76 CLR 453, 461; *Driclad Pty Ltd v Federal Commissioner of Taxation* (1968) 121 CLR 45, 64.

reasoning below transcends the importance of the outcome of the case. The applicant submits the errors of construction are relevant to the regulation of paid car parking throughout the State and if not corrected the decision will otherwise be binding in the Magistrates Court.

[64] However his Honour's reasons involved mixed conclusions of law and fact and the errors of law were not determinative of the eventual conclusion that the evidence did not prove a failure to comply with the requirements of the authorised system. This undermines the force of the applicant's argument that leave should be granted because of the importance of the case as a precedent.

[65] In all of the circumstance I would refuse leave.

[66] Costs should follow the event. The respondent was self represented but he should have the benefit of a costs order in case he has any allowable costs.

[67] The application for leave to appeal should be dismissed with costs.