IN THE COURT OF APPEAL **[1993] QCA 395**

SUPREME COURT OF QUEENSLAND

C.A. No. 209 of 1993

Brisbane

[Lawler v. Prideaux]

DANIEL RALPH LAWLER

v.

SAMUEL GEORGE PRIDEAUX

The Chief Justice
The President
Mr Justice Cullinane

Judgment delivered 19/10/93

SEPARATE REASONS FOR JUDGMENT OF THE CHIEF JUSTICE, THE PRESIDENT AND CULLINANE J. ALL AGREEING AS TO THE ORDER TO BE MADE

APPEAL ALLOWED. SET ASIDE THE CONVICTION.

CATCHWORDS:	**CRIMINAL LAW - DRUGS - appellant convicted of possession of heroin after police entered premises and found appellant with syringe and 2 needles and friend with drug in hand - wh s. 57(c) attributes possession to appellant**
	Drugs Misuse Act, s. 57(c)
Counsel:	**Mr B. Devereaux for the appellant** **Mr M. Byrne for the respondent**
Solicitors:	**Legal Aid Office for the appellant** **Director of Prosecutions for the respondent**

Hearing date: 15 September, 1993

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Before The Chief Justice
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v.

SAMUEL GEORGE PRIDEAUX

(Appellant)

REASONS FOR JUDGMENT - THE CHIEF JUSTICE

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The facts involved in this matter and the issues to which argument has been directed are set out in the reasons prepared by Cullinane J. I agree with the conclusion which he states but shall add some observations.

The prosecution in the present case attempted to make use of s. 57(c) of the Drugs Misuse Act 1986 for the purpose of attributing to the appellant possession of a drug which was being held in the hand of his friend Pickett in circumstances

where the magistrate concluded that Pickett was or may have been asserting his own independent possession of the drug. The magistrate accepted the prosecution's argument giving a wide effect to the subsection and he did this because Pickett was at the relevant time standing within a flat of which it was accepted the appellant was the occupier or concerned in the management and control. However, the more the consequences of such a wide construction of the subsection are considered the greater becomes the conviction that the subsection was not intended to have that effect.

A simple example may be taken for the purpose of illustration of some of the problems which, on the prosecution's argument, arise. Someone enters the house of another and reveals to the owner that he is holding a quantity of drug in his hand. At the very moment that knowledge of the presence of the drug is acquired the householder is, according to the argument, constructively taken to be possessed of it and this will be so although he may have no wish at all to play host to it and may earnestly desire its removal. There will be a difficulty in redeeming the situation of the owner by resorting to s. 23 of the Criminal Code as was suggested by the Crown because it is not for any "act" of the owner that a criminal liability will arise but because of a statutory attribution of possession to him: see also R. v. Brauer (1990) 1 Qd. R. 332 at 360. Whatever is the exact effect in the circumstances of s. 23 it should be accepted as sufficiently clear that the intended operation of s. 57(c) of the Drugs Misuse Act is confined to cases where there is no immediate relationship of physical

possession demonstrated by a person in proximity to the item, that is where there is no immediately obvious possessor, and the legislature has thought it necessary or desirable to attribute possession to someone. For this purpose it selects the occupier or controller of the place where the item is found. Yet it is not to be accepted that the legislature has intended to construct a new offence in the case of occupiers (although not non-occupiers) who without complicity are simply aware of the location of drugs in the possession of another person. Further, it is a more natural meaning of the words "in or on a place of which (a person) was the occupier or concerned in the management or control of" to say that they do not extend to the case where the item is in the hand or pockets of another person who is the owner and possessor.

I agree that the appeal should be allowed and the conviction set aside.