SUPREME COURT OF QUEENSLAND

CITATION:	*Renwick v Bell* [2001] QCA 316
PARTIES:	**JASON SCOTT RENWICK** (appellant/applicant) v **MATTHEW TREVOR BELL** (respondent/respondent)
FILE NO/S:	CA No 34 of 2001 DC 2038 of 2000
DIVISION:	Court of Appeal
PROCEEDING:	Application for leave s 118 DCA (Criminal)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	10 August 2001
DELIVERED AT:	Brisbane
HEARING DATE:	11 July 2001
JUDGES:	McMurdo P, Davies and Thomas JJA Separate reasons for judgment of each member of the Court each concurring as to the orders made
ORDER:	**1. Grant the application for leave to appeal.** **2. Dismiss the appeal.** **3. The parties are invited to make submissions on costs in writing within seven days.**
CATCHWORDS:	CRIMINAL LAW - GENERAL MATTERS - OTHER GENERAL MATTERS - CONSTRUCTION OF CRIMINAL CODES - whether s 7 of the *Criminal Code* has general application to all statutory offences - review of the case authority on the application of s 7 - discussion of the historical context in which the *Criminal Code Act* was enacted - whether s 2 of the *Criminal Code Act* and s 2, s 3, s 16 and s 36 of the *Criminal Code* indicate an intention that provisions of the *Criminal Code* were intended to apply only to offences under the *Code* - meaning of "simple offences" under the *Criminal Code* CRIMINAL LAW - GENERAL MATTERS - ANCILLARY LIABILITY - COMPLICITY - STATUTORY PROVISIONS - OTHER CASES - whether s 7 applies to offences under s 104 of the *Corrective Services Act* - where the *Corrective Services Act* contains complementary offences by persons other than prisoners and by prisoners

Acts Interpretation Act 1954 (Qld), s 14(1)
Corrective Services Act 1988 (Qld), s 93, s 104, s 104(10)(f)
Criminal Code Act 1889 (Qld), s 2
Criminal Code (Qld), s 2, s 3, s 7, s 16, s 36

Connolly v Meagher (1906) 3 CLR 682, considered
Giorgianni v The Queen (1984) 156 CLR 473, applied
Hunt v Maloney; ex parte Hunt [1959] QdR 164, considered
Jackson v Horne (1965) 114 CLR 82, considered
Kiely v R [1974] WAR 180, considered
Lewkowski v Lilly [2000] WASCA 14, considered
Mallan v Lee (1949) 80 CLR 198, applied
The Poultry Farmers Co-operation Society Limited v The Grain Sorghum Marketing Board [1963] QWN 3, considered
R v Cook, Hartigan and McCart [1995] 2 QdR 77, considered
R v Maroney [2000] QCA 310, applied
Simms v West (1962) 107 CLR 157, referred to
Snow v Cooper (1944) 57 WALR 92, considered
West v Perrier; ex parte Perrier [1962] QWN 5, considered
West v Suzuka [1964] WAR 112, considered
Wilson v Dobra (1955) 57 WALR 95, considered
Winton Transport Pty Ltd v Horne (1966) 115 CLR 322, considered
Young v Bryan [1962] Tas SR 323, referred to

COUNSEL: C Heaton for applicant
A W Moynihan for respondent

SOLICITORS: Legal Aid Queensland for applicant
Director of Public Prosecutions (Queensland) for respondent

[1] **McMURDO P:** I agree with Davies JA that for the reasons he has given s 7 *Criminal Code* ordinarily applies to the statute law of Queensland but does not apply to s 104 *Corrective Services Act*1988 (Qld) to make prisoners liable under it. I agree with the orders proposed by Davies JA.

[2] **DAVIES JA:** This is an application for leave to appeal from a judgment in the District Court dismissing an appeal from the Magistrates Court. The question in issue, if leave were granted, would be whether s 7 of the *Criminal Code* applied to an offence under s 104(10)(f) of the *Corrective Services Act* 1988. The learned District Court judge held that it did not.

[3] In reaching that conclusion his Honour appeared to hold that s 7 was of general application to all statutory offences. However his Honour then concluded that s 104(10)(f), read in context, indicated that the legislature did not intend that s 7 should apply to it. It was for this reason that he dismissed the Crown's appeal from the learned stipendiary magistrate's decision to the same effect.

[4] Before this Court Mr Moynihan for the respondent sought to support his Honour's decision on two bases. First he submitted that, contrary to decisions or at least dicta

in this State and Western Australia, s 7 did not apply to statutory offences. And secondly he submitted that, if that proposition was not correct, nevertheless the learned District Court judge was correct for the reasons which he gave. Both of these, in my opinion, are important questions which this Court should resolve and consequently leave should be granted to appeal. And whilst it is correct that this Court could decide the second question in the respondent's favour without having to decide the first, I think that the first question is of such importance that we ought to decide it. Both counsel were content to proceed to argue the appeal on the basis that, if leave were granted, we should also decide the appeal without further argument and, subject to some further written submissions which the Court required from the parties, that course was adopted.

[5] It is convenient to consider the questions now in issue in the order in which I have stated them.

Whether s 7 applies to statutory offences

[6] Before turning to the authorities in which this question has been discussed and the historical context of the enactment of the *Criminal Code Act* 1889 it is convenient to look at the relevant provisions of the *Criminal Code* and the *Criminal Code Act*. In the first place Mr Moynihan submitted that s 2 of the *Criminal Code Act* indicated an intention that the provisions of the *Criminal Code* were intended to apply only to offences under the *Code*. That section provided that:

> "On and from the first day of January, one thousand nine hundred and one, the provisions contained in the Code of Criminal Law set forth in the First Schedule to this Act, and hereinafter called "the Code", shall be the law of Queensland with respect to the several matters therein dealt with."

The submission was that the phrase "with respect to the several matters therein dealt with" indicated an intention that the provisions of the *Criminal Code*, at least unless they specifically indicated otherwise, were intended to apply only to offences under that *Code*. That submission appears to assume that the phrase "the several matters" meant substantive offences rather than all of the matters dealt with by the *Code* including Chapter II, which contains s 7 and, for example, Chapter III which includes provisions dealing with offences wholly or partially committed in Queensland, offences procured in Queensland to be committed out of Queensland and the prevention of a person being twice punished for the same act or omission. There is no reason, in my opinion, to construe s 2 in the limited way in which Mr Moynihan submitted it should be. Consequently that section appears to me to be either neutral on this question or supportive of the contrary submission.[1]

[7] Similarly s 2 and s 3 of the *Criminal Code* appear to me to be neutral on this question. The first of these sections defines an offence as an act or omission which renders the person doing the act or making the omission liable to punishment and the second, in its original form, divided offences into crimes, misdemeanours and simple offences, providing that an offence not otherwise designated is a simple offence. That was the form in which that section was at the time when most of the cases on this question were decided. Section 3 now divides offences into criminal offences and regulatory offences, the first category being subdivided into crimes,

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1 See, for example, *Hunt v Maloney; ex parte Hunt* [1959] QdR 164 at 179, 184.

misdemeanours and simple offences. The reference to regulatory offences is a reference to offences created under the *Regulatory Offences Act* 1985.

[8] I do not think that s 3, in its original form, which remained substantially unchanged until 1985 when the *Regulatory Offences Act* came into force, assists the respondent's argument. Again it seems to be neutral in that simple offences could equally be offences under the *Criminal Code* not otherwise designated or offences under some other statutory provision, not otherwise designated. It is arguable, however, that in its present form the section does assist that argument in that, by specifically including offences under the *Regulatory Offences Act* in the ambit of offences defined in the *Code*, it indicated a statutory intention that, otherwise, offences to which the *Criminal Code* applied did not include offences under other statutory provisions unless there was some specific provision which so applied it.

[9] There are other provisions in the *Criminal Code* which specifically extend its operation to offences other than offences under that *Code*. Section 16 provides that a person cannot be twice punished either under the provisions of the *Code* or under the provisions of any other law for the same act or omission. If the provisions of the *Code* applied generally to offences under other laws it is arguable that it would have been unnecessary to say "under the provisions of this *Code* or under the provisions of any other law". On the other hand it may be that this provision was inserted in order to ensure, so far as it was possible, that a person was not punished under the *Code* where he had been punished for the same act or omission, whether under the law of Queensland or of some other jurisdiction. The contrast between this wide wording and, for example, the wording of s 36, support this rationale and meaning.[2]

[10] The most important of these provisions, for the respondent's argument, is s 36 which specifically applies the provisions of Chapter V of the *Code* to all persons charged with any criminal offence against the statute law of Queensland. It is plainly arguable that, if the *Criminal Code* provisions apply generally to all offences against the statute law of Queensland that provision would be unnecessary. On the other hand, it is arguable that, because Chapter V represented such a fundamental change in the law of criminal responsibility, eliminating offences of strict liability, it was thought necessary to emphasize that the whole of the relevant law is contained in its provisions.[3]

[11] It is s 36 which, in my opinion, provides the strongest argument in support of the respondent's contention in this respect. But, as I also indicated, the 1985 amendment to s 3 also supports it. However it is necessary, before accepting that argument, which is by no means conclusive, to consider both the course of authority on this question and the historical context in which the *Criminal Code Act* was enacted.

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2 There are a number of provisions in the *Criminal Code* which make breach of a statutory provision an offence (see, eg s 14A, s 106, s 204, s 242, s 358 and s 475) but these are neutral on the question whether what otherwise appear to be general provisions of the *Code* apply to offences against the statute law of Queensland. See also s 539 which makes it an offence to procure another to do an act or make an omission which, if done or omitted, would be an offence under the laws of Queensland.

3 Cf *Young v Bryan* [1962] Tas SR 323.

[12] At least since *Hunt v Maloney; ex parte Hunt*[4] it has been accepted in this State that s 7 applied to all offences against the statute law of Queensland. Indeed I note that in that case, Stanley J[5] said that this had "hitherto been universally accepted in Queensland". In that case Mack J held that, by s 2 of the *Criminal Code Act* 1899, s 7 of the *Criminal Code* was of general application and was not confined to offences created by the *Code*.[6] He referred to *Wilson v Dobra*[7] for this proposition. Hanger J[8] also said that s 7 was the law of Queensland in respect of the matter before the court (a prosecution under the *Health Act*) relying on s 2 of the *Criminal Code Act*. The third member of the court, Stanley J, seemed less convinced, referring to the fact that s 36 of the *Code* did not extend to Chapter II which contains s 7.[9] However his Honour was prepared to assume for the purposes of the appeal that it did so apply. As Mr Moynihan has pointed out, the opinions on this question were obiter, the decision in the case being that s 23 of the *Criminal Code*, which plainly applied to offences against the statute law of Queensland because of s 36, applied on the facts of this case to justify the dismissal of the complaint. Neither Mack J nor Hanger J in that case considered the effect of s 36 of the *Code* on the operation of s 7.

[13] *Wilson v Dobra* was a decision of the Full Court of Western Australia which held that s 7 of the Western Australian *Criminal Code*, which is in materially identical terms to s 7, applied to an offence under the *Marketing of Onions Act* (Western Australia). In reaching that conclusion the court gave as its reason only that that conclusion had been reached by Wolff J in *Snow v Cooper*.[10] In that case Wolff J held that s 7 of the Western Australian *Criminal Code* applied to offences under the *Illicit Sale of Liquor Act* (Western Australia). His Honour reached this decision, it seems, for two reasons.

[14] His Honour's first reason for that conclusion was that s 7 was in much the same terms as s 5 of the *Justices of the Peace Ordinance* which had been in force before the *Criminal Code* but which was repealed by the *Justices Act* enacted several months after the *Criminal Code* came into force and that the *Justices Act*, which applied to offences to which the *Justices of the Peace Ordinance* would formerly have applied, did not contain similar provisions to s 5. From that his Honour inferred that s 7 was intended to apply to offences to which s 5 would formerly have applied.

[15] I interpose in this discussion of his Honour's reasoning to note that a similar legislative course took place in Queensland. The *Justices Act* 1886 contained a

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4 [1959] QdR 164.

5 At 169.

6 At 179.

7 (1955) 57 WALR 95.

8 At 184.

9 At 169.

10 (1944) 57 WALR 92.

provision, s 41, which made any person who aided, abetted, counselled or procured the commission of any simple offence liable on conviction to the same punishment to which the principal offender was by law liable. Section 41 was repealed by the *Criminal Code Act*.

[16] It is also significant to this question of interpretation that the term "simple offence" in the *Criminal Code* was plainly intended to have the same meaning as that term bore in the *Justices Act*. There it meant any offence punishable on summary conviction before justices by fine, imprisonment or otherwise. There was no definition of a simple offence in the *Code*, s 3 simply stating that a person guilty of a simple offence may be summarily convicted by two justices in petty sessions (now a Magistrates Court) and that an offence not otherwise designated is a simple offence. However in his explanatory letter to the Attorney-General dated 29 October 1897 Sir Samuel Griffith said:

> "At present the principal division of offences is into felonies, misdemeanours and simple offences (a term introduced by *'The Justices Act of* 1886', and meaning offences punishable on summary conviction)."

Sir Samuel then went on to say why he was changing the term "felonies" to "crimes". But it is plain that he intended to give "simple offences" the same meaning as that given to it by the *Justices Act* and, unsurprisingly, the definition in that Act survived the enactment of the *Criminal Code Act*. It seems therefore to have been intended that "simple offences" in the *Code* would include all offences punishable on summary conviction by fine, imprisonment or otherwise.

[17] His Honour's second reason was that in *Connolly v Meagher*[11] the High Court accepted that s 16 of the Queensland *Criminal Code* applied to a statutory offence, in that case an offence under the *Licensing Act* (Queensland). That is correct but, as already mentioned, s 16 provided and still provides that a person cannot be twice punished under the provisions of the *Code* "or under the provisions of any other law" which, whatever else it includes, must include statutory offences against the law of Queensland. However the High Court also assumed in *Connolly v Meagher* that s 19(8) of the *Code* applied to a conviction under the *Licensing Act*.[12] Under that section a person convicted of any offence on summary conviction may, at the discretion of the justices, instead of being sentenced to the punishment to which he is liable, be discharged upon his own recognizances. That is of much greater significance for if s 19(8) applies to statutory offences so must s 7. It is also significant that the judgment of the High Court in that case was delivered by Sir Samuel Griffith.

[18] Those matters, the apparent substitution of s 7 for a similar provision in the *Justices Act*, an intention that "simple offences" should be given the same meaning in the *Code* as they bore in the *Justices Act* and the apparent opinion of Sir Samuel Griffith that s 19(8) applied to statutory offences, in my opinion, provide support for the conclusion in *Snow v Cooper*, *Hunt v Maloney* and those cases which followed them. Unfortunately, however, none of those cases contained reasoned judgments. The first of them appears to have been *West v Perrier; ex parte Perrier*

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11 (1906) 3 CLR 682.

12 But see contra *Davissen v Sklavos, ex parte Sklavos* [1942] St R Qd 219 at 222.

(1962)[13] a decision of the Full Court of the Supreme Court of Queensland which held that s 7 applied to offences under the *State Transport Facilities Act*. However there the court simply applied *Hunt v Maloney* and *Wilson v Dobra*.

[19] In *The Poultry Farmers Co-operation Society Limited v The Grain Sorghum Marketing Board* (1963),[14] because a conviction under a statute was quashed on appeal, it was not necessary to decide whether s 7 applied. However Philp J, with whom Stanley and Mack JJ agreed, said, after referring to *Hunt v Maloney*, "Under our law (subject to any special statutory provision) the criminal responsibility of a principal for his servant's act must be determined solely by the provisions of the Code".

[20] The next reported case appears to have been *West v Suzuka* (1964)[15] a decision of the Full Court of the Supreme Court of Western Australia. The views expressed on s 7 were obiter because the court dismissed an appeal quashing a conviction against an offence under the *Mining Act* (Western Australia). However Wolff CJ adhered to the opinion which he had earlier expressed in *Snow v Cooper* and *Wilson v Dobra* that s 7 applied to all summary offences created by statute. For the first time, it seems, it was submitted that those earlier cases were wrong because s 36 was overlooked. To this Wolff CJ said no more than that it was bad reasoning to argue that because s 36 was not stated to apply to Chapter II, that Chapter cannot apply to summary offences created by statutes other than the *Code*.[16] His Honour did not explain why. Hale J simply noted the earlier cases to which I have referred and said that he did not doubt the correctness of the conclusion reached in those cases.[17] Negus J preferred not to express any view as to the correctness or otherwise of the conclusions reached in the earlier cases.[18]

[21] In *Jackson v Horne* (1965)[19] the High Court allowed an appeal and set aside a conviction under the *State Transport Act* (Queensland) which could only have been upheld if s 7 applied.[20] Several of their Honours noted this[21] but only Menzies J[22] ventured the view that, if the use of the vehicle in the circumstances constituted an

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13 [1962] QWN 5.

14 [1963] QWN 3 at 12.

15 [1964] WAR 112.

16 At 117.

17 At 120.

18 At 122.

19 (1965) 114 CLR 82.

20 Earlier, in *Simms v West* (1962) 107 CLR 157 the High Court had upheld an appeal and quashed a conviction under the *State Transport Facilities Act* which would have required the application of s 7. But the application of s 7 was not considered.

21 Barwick CJ at 88, Kitto J at 90.

22 At 95.

offence by the company the appellant manager could properly be convicted of that offence by virtue of s 7.[23]

[22] In *Winton Transport Pty Ltd v Horne* (1966)[24] the High Court upheld a conviction under the *State Transport Act* without relying on s 7, holding that the appellant company had itself used a vehicle for the carriage of goods on a road without a permit. Reference was made to s 7 but not in a way which assists on this question.

[23] In *Kiely v R* (1974)[25] Burt J, obiter, used s 36 in support of the view that "offence" in the *Criminal Code* means an act or omission liable to punishment under the *Criminal Code*. His Honour did not refer to and does not appear to have been referred to the cases to which I have just referred.

[24] And finally, in *R v Cook, Hartigan and McCart* (1995)[26] Byrne J in this Court, and in *Lewkowski v Lilly* (2000)[27] Murray J, with whom Kennedy and Pidgeon JJ agreed in the Full Court of the Supreme Court of Western Australia, expressed conclusions consistent with previous authorities.

[25] These cases show that, at least since the decision in *Hunt v Maloney*, it has been accepted in this State that s 7 applies to all offences against the statute law of Queensland. The historical context of the enactment of the *Code* and the opinions of Sir Samuel Griffith support that construction.

[26] As already indicated when discussing *Snow v Cooper*, that context yields two significant indicia. The first is that the term "simple offence" in the *Code* appears to have been intended to have the same meaning as that term had in the *Justices Act*; and that, in the *Justices Act*, the term applied generally to all offences against the statute law of Queensland. And the second is the repeal, by the *Criminal Code Act*, of s 41 of the *Justices Act* which dealt with aiders and abettors the intention being, it may be inferred, that s 7 was to cover that field.

[27] The view that the term "simple offence" in the *Code* was intended to have the same meaning as that which it had in the *Justices Act* is supported by the letter of Sir Samuel Griffith of 29 October 1897. And the view that provisions of general application in the *Code*, such as s 19(8) (since repealed) and, it would follow, s 7, apply to statutory offences is supported by the judgment of Sir Samuel in *Connolly v Meagher*.

[28] For these reasons I would not be prepared to depart from the view hitherto accepted in this State that s 7 applies to all offences against the statute law of Queensland.

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23 At 95.

24 (1966) 115 CLR 322.

25 [1974] WAR 180.

26 [1995] 2 QdR 77.

27 [2000] WASCA 14.

Whether s 104(10)(f), read in context, indicates an intention that s 7 should not apply to it[28]

[29] That provision is in the following terms:

> "(10) A person who –
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> …
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> (f) without the authority of the chief executive, interviews a prisoner (within the meaning of section 10) or obtains a written or recorded statement from such a prisoner, whether within or outside of a prison; …
>
> …
>
> commits an offence against this Act."

[30] Section 104 is in Subdivision 1 of Division 8 of the *Corrective Services Act*. Division 8 is headed "Control of persons other than prisoners" and Subdivision 1 is headed "Offences by persons other than prisoners". These headings are part of the Act.[29]

[31] The immediately preceding division, Division 7, is headed "Offences and breaches of discipline by prisoners" and Subdivision 2, which contains s 93, is headed "Prisoner offences". There are offences in s 104 by persons other than prisoners which complement offences in s 93 by prisoners. Some of these are set out in the following paragraph.

[32] By s 93(1)(c) a prisoner who makes or attempts to make or conceals or has in the prisoner's possession an article or substance prescribed under the Corrective Services Rules as a prohibited article commits an offence. And by s 104(5) a person who, without lawful authority takes or causes to be introduced into a prison any prohibited article or delivers any prohibited article to a prisoner or causes any prohibited article to come into the possession of a prisoner commits an offence. By s 93(1)(k) a prisoner who wilfully and unlawfully destroys, damages, removes or otherwise interferes with any part of the security system or any part of the communications system of a prison commits an offence. And by s 104(9)(c) any person who wilfully and unlawfully destroys, damages, removes or otherwise interferes with any part of the security system or any part of the communications system of a prison commits an offence. By s 93(1)(h) a prisoner who unlawfully kills or injures or attempts unlawfully to kill or injure a prison dog commits an offence. And by s 104(10)(b) a person who kills or injures a prison dog commits an offence. By s 93(1)(l) a prisoner who without lawful authority, abstracts information from, destroys information in or makes a false entry in any record kept pursuant to this Act or the *Corrective Services (Administration) Act* 1988, in whatever form the record is kept commits an offence. And by s 104(10)(e) a person who, without the authority of the chief executive, abstracts information from, destroys information in or makes a false entry in any record kept pursuant to this Act or the *Corrective Services (Administration) Act* 1988, in whatever form the record is kept, commits an offence.

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[28] The principles to be applied in answering this question are not in doubt. See *Mallen v Lee* (1949) 80 CLR 198; *Giorgianni v The Queen* (1984) 156 CLR 473; *R v Maroney* [2000] QCA 310.

[29] Section 14(1) of the *Acts Interpretation Act* 1954.

[33] These complementary provisions show, in my opinion, that whilst s 93 in each of these respects, creates offences only in respect of prisoners, s 104 creates complementary offences in respect of persons other than prisoners. In the light of these it would be almost inconceivable, in my opinion, that s 7 of the *Criminal Code* could apply to any of these offences under s 93 so as to make a person other than a prisoner liable for it, or apply to any of these offences under s 104 to make a prisoner liable in respect of it. And it follows, in my opinion that the better construction of s 104 is that it is intended to apply only to persons other than prisoners.

[34] However the most striking set of complementary provisions relates to escape. Section 93(1)(a) provides that a prisoner who escapes, attempts to escape or prepares to escape from lawful custody commits an offence. This is complemented by two provisions in s 104(3) and (4).[30] The first of these provides:

> "(3) A person who –
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> (a) aids a prisoner in escaping, attempting to escape or preparing to escape from lawful custody;
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> (b) counsels or procures a prisoner to escape from lawful custody;
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> (c) aids a prisoner who is unlawfully at large in remaining unlawfully at large;
>
> (d) counsels or procures a prisoner who is unlawfully at large to remain unlawfully at large;
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> commits an offence against this Act."

Not only is this provision, like s 104(4) which provides for an offence for facilitating an escape, complementary to s 93(1)(a), but it specifically applies a provision equivalent to s 7 only to aiding, counselling or procuring escapes from prison, thereby impliedly excluding the operation of any such provision to the other provisions of s 104.

[35] It is the combination of these factors which, in my opinion, clearly indicates a statutory intention to exclude the operation of s 7 of the *Criminal Code* to s 104. For that reason I agree with the conclusion reached by the learned District Court judge and I would dismiss this appeal.

Order

1. Grant the application for leave to appeal.
2. Dismiss the appeal.
3. The parties are invited to make submissions on costs in writing within seven days.

[36] **THOMAS JA:** I agree with the reasons for judgment of Davies JA and with the orders he proposes.

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[30] See also *Criminal Code* s 141 to s 145A.