SUPREME COURT OF QUEENSLAND

CITATION:	*R v Tabe* [2003] QCA 356
PARTIES:	**R** **v** **TABE, Graham Victor** (appellant)
FILE NO/S:	CA No 132 of 2003 SC No 35 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	22 August 2003
DELIVERED AT:	Brisbane
HEARING DATE:	18 July 2003
JUDGES:	de Jersey CJ, Davies JA and Mackenzie J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal dismissed**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – MISCARRIAGE OF JUSTICE – MISDIRECTION OR NON-DIRECTION – where appellant allegedly procured another person to take possession of methylamphetamine – where learned trial Judge directed that conviction of appellant of possession of methylamphetamine required merely knowledge that parcel contained something, regardless of nature of thing – whether Crown required to prove a more extensive mental element in case of accessory, rather than principal offender – whether learned trial Judge's direction appropriate *Criminal Code* 1899 (Qld), s 2, s 7(1)(b), s 7(1)(c), s 7(1)(d), s 7(4), s 8, s 9, s 10A, s 22, s 23, s 24, ch 5 *Drugs Misuse Act* 1986 (Qld), s 9, s 117(1), s 129(1)(c), s 129(1)(d), pt 2 *R v B and P* [1999] 1 Qd R 296, CA Nos 345 and 346 of 1997, 20 March 1998, applied *R v Barlow* (1997) 188 CLR 1, distinguished *R v Beck* [1990] 1 Qd R 30, applied *R v Bellino* [2003] QCA 110; CA No 391 of 2002, 14 March

2003, distinguished
R v Clare [1994] 2 Qd R 619, considered
R v Jervis [1993] 1 Qd R 643, considered
R v Myles [1997] 1 Qd R 199, considered

COUNSEL: G M McGuire for the appellant
M J Copley for the respondent

SOLICITORS: Ryan and Bosscher for the appellant
Director of Public Prosecutions (Queensland) for the respondent

[1] **de JERSEY CJ**: The appellant was convicted by a jury of possession on 19 November 2001 of a dangerous drug with a circumstance of aggravation (a quantity more than the prescribed amount).

[2] The charge involved what was really a notional possession, in that the appellant aided, counselled or procured one Ms Briggs to collect a parcel containing methylamphetamine from a mail exchange, the parcel having previously been intercepted by the police and the drugs withdrawn. Accordingly, by the time of the intended collection of the parcel on 19 November, the date of the alleged offence, the drugs were not present within it. Section 117(1) of the *Drugs Misuse Act* does however deem someone attempting to commit a crime of this nature guilty of commission of the crime – hence the alleged liability of the appellant as accessory to the principal offence.

[3] The factual situation advanced by the Crown was that Ms Briggs attempted to gain possession of a parcel containing the drugs, and that to aid her to that end on 19 November, the appellant drove her to the mail exchange. In the early afternoon of the preceding Friday, 16 November, the appellant had attended at the Gold Coast Mail Centre at Bundall. He then said he wanted to locate an express post item which had gone missing and which he believed was at the centre. He referred to a parcel addressed to a "Mr Tabler" (a name resembling his own) of "1 Makeri Street" (a false address). The postal officer told him the item was between a delivery centre and the mail centre, and that he should come back later on.

[4] The parcel was in fact at the centre. It contained a glass jar which in turn contained a powdery substance in a plastic bag. Having been alerted, the police collected the material and the powder was found to contain methylamphetamine.

[5] Early on the following Monday morning, 19 November, the postal supervisor of the mail centre received a telephone call from a man who said he had called in on the Friday to collect a parcel. The caller explained he had not returned for it that afternoon as he had gone on to a hotel and drunk too much. He said he was intending to travel to Brisbane, and that a female friend would come to collect the parcel.

[6] The police were contacted and a new express post parcel prepared in substitution for the one actually delivered to the centre for collection. A woman arrived and the postal supervisor gave her the parcel. She left the mail centre and entered, through the passenger side, a vehicle being driven by the appellant. Upon being detained by the police, the appellant gave, as his address, an address other than 1 Makeri Street.

[7] The learned Judge directed the jury essentially on the basis that it was sufficient, to warrant conviction of the appellant of possession of the amphetamines, that his state of knowledge equated to that in fact provable against Ms Briggs, which was that the parcel to be collected contained something, whatever its nature (the Crown being unable to establish awareness of the nature of that 'something'). On that basis, Her Honour had earlier refused to accede to a no case submission made by the Defence at the conclusion of the Crown case.

[8] In the case of a person charged in such a case with possession as principal offender, here Ms Briggs, it would certainly be enough for the Crown to stop short at proving, directly or by inference, knowledge in that person that the parcel to be collected contained something: as put by Fitzgerald P in *Clare* [1994] 2 Qd R 619, 639, "a thing or substance", or per Davies JA (p 645) an "object". It would not have been necessary for the Crown to establish that she knew the nature of that object, thing or substance. See also *Myles* [1997] 1 Qd R 199, 210 per Pincus JA: "the knowledge which is relevant for the purpose of s 57(c) [now s 129(1)(d)] is knowledge of the presence of a substance which is in fact a drug, not knowledge of the nature of the substance." What His Honour there said should not in my view be read as entailing a need to establish knowledge of the presence of a substance as such: what needs to be established is conscious possession of something, whatever its constitution or identity. *Clare* has been consistently reaffirmed and applied: see, for example, *R v Nguyen and Truong* [1995] 2 Qd R 285, 288; *Crosthwaite v Loader* (1995) 77 A Crim R 348, 356; *Jenvey v Cook* (1997) 94 A Crim R 392, 395. I refer briefly to the reasoning in *Clare* in para 15 below.

[9] Insofar as *Bellino* [2003] QCA 110 might be thought to run to the contrary, it is important to note that appeal was conducted on the basis of an assumption that it was necessary to establish in the appellant "knowledge that the package contained a dangerous drug," that being, as put in the Court of Appeal, "the sole issue at trial." The reasons for judgment in *Bellino* contain no reference to *Clare*. Nor is it apparent why s 129(1)(c) of the *Drugs Misuse Act* did not apply. In short the result in *Bellino* should, in my respectful view, be seen specifically in light of the way the case was presented and argued at trial and on appeal.

[10] In this case, it would, as Her Honour indicated, have been necessary only for the Crown to prove Ms Briggs was to collect a parcel, one presumably not empty of any contents.

[11] The present case did not concern a charge brought against the appellant as principal offender. The charge was brought against him pursuant to s 7 of the Code, as aider, counsellor or procurer. It is sufficient to focus on the allegation of aiding.

[12] To establish aiding, it was necessary for the Crown to establish that the appellant aided Ms Briggs in her attempt to obtain possession of dangerous drugs, being amphetamines. Proof of aiding involves proof of acts or omissions intentionally directed towards the commission of the principal offence, and that the accused was aware of (at least) the essential matters constituting the crime in contemplation: see *R v Beck* [1990] 1 Qd R 30, 37-8 and *R v B and P* [1999] 1 Qd R 296, 297, 309. 311.

[13] If the guilt of the principal offender may in a case of possession of dangerous drugs be established simply upon proof of knowledge that – in a case like this – something

was to be collected (which in fact was or contained dangerous drugs), then, in a coordinate sense, the liability of the accessory would, one would expect, be sufficiently established upon proof of assistance directed towards obtaining that thing, albeit there be no proof that the aider – as with the principal offender – knew that it was or contained drugs.

[14] In those circumstances the accessory, as in the case of the principal offender, could then have recourse to s 129(1)(d) of the *Drugs Misuse Act* and seek to prove an honest and reasonable belief the parcel did not contain (or would not have contained) dangerous drugs. Presumably the legislature would have considered that sufficient to protect a person who, innocently, agreed to drive another person to collect a parcel, where that other person knew it contained contraband.

[15] In *Clare*, supra, the Court considered whether a general law mental element should be imported into the offence of possession of a dangerous drug under the *Drugs Misuse Act*, in the context of High Court authority including *He Kaw Teh* (1985) 157 CLR 523. The Court took the view that the mental element was much more limited than would ordinarily apply under the general law, and was apparently influenced to that position both by the content of the concept of possession as ordinarily understood, and by the reversal of onus provision, now s 129, casting on to an accused the need to establish an honest and reasonable belief that the relevant material did not constitute dangerous drugs. Hence the need for the Crown to establish only conscious possession of something which is in fact dangerous drugs – in the case of a parcel, necessarily encompassing a belief that it is not empty but contains something. But when a person is charged as an accessory, the question may be asked whether the Crown has to prove a more extensive mental element.

[16] In the case of aiding to gain possession of dangerous drugs, for example, does the Crown have to establish that the purpose of the accessory was to assist the principal offender to gain possession of dangerous drugs as such, involving a belief in the accessory that dangerous drugs were the target – here, that the parcel to be collected would (but for the police interception) have contained them? Does that heightened obligation flow, in the case of an accessory, from the Crown's obligation to establish that the alleged accessory was aware of the essential matters constituting the contemplated principal offence? In my view that question should be answered "no".

[17] If guilt of the principal offence may be established by proof of conscious possession of (only) something, being something which is in fact dangerous drugs, then the accessory will, in my view, likewise be guilty of possession if it is established that the accessory aided the principal offender to secure possession of that something, albeit the Crown cannot establish that the accessory believed it constituted dangerous drugs. By establishing matters to that point against the accessory, the Crown would in my view establish awareness of the essential matters constituting the contemplated crime, leaving the accessory in the position, if he or she should choose, as in the case of the principal offender, of seeking to prove the honest and reasonable belief referred to in s 129.

[18] Hence my view that the mental state to be established against the accessory, as to the nature of the thing to be secured, need not be more extensive than that which, as a minimum position, need be established by the Crown against the principal offender in those circumstances.

[19] It would, as a matter of first impression, be odd if, in a case like this, proof of relevant elements of the offence to be established by the Crown differed as between principal offender and accessory. I am not persuaded this accessory's detachment from the alleged principal offence increased the Crown's burden, such as to require the Crown to establish a degree of awareness in the accessory not necessary in the case of the principal.

[20] It does therefore appear to me that the learned Judge appropriately directed the jury on the mental element to be established by the Crown in respect of the accessory liability of the appellant.

[21] The only other ground of appeal specifically pursued was that the learned Judge erred in not acceding to a submission made at the conclusion of the Crown case that there was no case to answer. Her Honour having approached the matter of proof of the requisite mental element on the above basis, the no case submission clearly had no prospect of success. It was a strong Crown case, on one view reinforced by implausible defence evidence.

[22] I would order that the appeal be dismissed.

[23] **DAVIES JA:** I agree with the reasons of the Chief Justice and with the order he proposes.

[24] **MACKENZIE J:** The appellant was convicted after trial of an offence under s 9 of the *Drugs Misuse Act* 1986 (Qld) of unlawfully having possession of the dangerous drug methylamphetamine with a circumstance of aggravation. The offence is a crime which is defined in Part 2 of the Act with the following relevant consequences:

(a) A person attempting to commit the crime is deemed to be guilty of the crime itself (s 117(1)) and;

(b) In respect of a charge against a person of having committed an offence against Part 2 the operation of s 24 of the *Criminal Code* 1899 (Qld) is excluded unless the person shows an honest and reasonable belief in the existence of any state of things material to the charge.

[25] The appeal raises a fundamental issue concerning what must be proved before a person can be convicted where the prosecution alleges he is a party, not because he has done the act constituting the offence himself but has done one or more of the acts referred to in s 7(1)(b),(c) and (d) of the Code. The issues are whether the prosecution must prove only that the person aided, counselled or procured someone else to collect a parcel which proves to have drugs in it or whether it is necessary to prove that the aider, counsellor or procurer had knowledge that the offence of possession of a dangerous drug would or might be committed in consequence of the aiding, counselling or procuring. Does the reversal of onus of proof on the defence of mistake imply that the secondary party is liable merely because he aids, counsels or procures the other person to obtain possession of the item, unless the secondary party can prove an honest and reasonable belief that the contents of the parcel to be collected did not contain a dangerous drug?

[26] On Friday 16th November 2001 an express post article addressed to someone called "Tabler" at 1 Markeri Street, Mermaid Beach arrived at the Gold Coast Mail Centre at Bundall. It was undeliverable because there was no such address and had no return address on it. When it was opened in accordance with authorised procedures a jar containing white power which proved to be methylamphetamine was found in it.

[27] Not long afterwards another employee reported an inquiry about the article by a person who had come into the mail exchange. That person was asked to write the name and address on the parcel and he wrote "Mr Tabler, 1 Makeri Street." The number 28 was also written on the piece of paper.

[28] There was an arrangement in place that suspicious articles were to be reported to the police. The employee who had discovered the drugs had not, by the time of the inquiry at the counter, reported the matter to the police and told his colleague to tell the man to come back later that afternoon, or (perhaps) that the item might be at Robina. The police were contacted and a police officer collected the parcel.

[29] The following Monday morning, the Australia Post employee who had located the parcel received a phone call from someone who said he had come in on Friday to pick up his parcel but had not come back because he had gone to a hotel and had too many drinks. He said he was on his way to Brisbane but a friend would come and collect the parcel. He was told that the person coming to do so would need identification. The Australia Post employee immediately contacted the police officer who had attended the mail centre the previous Friday. He was asked to prepare another envelope in a form resembling the original that had been taken by the police.

[30] At about the time when the police officer arrived at the mail exchange following that phone call a young woman came to the inquiry point. She was told it would take a few minutes to locate the item. She produced a card of the kind left in letter boxes if an item is to be held at a post office for collection. She was given the dummy parcel. The woman who collected the parcel was Nicole Janette Briggs who pleaded guilty in the absence of the jury panel to the charge of possession of methylamphetamine, with which the appellant was jointly charged, and possession of cannabis (with which the appellant was not charged.)

[31] It was submitted that there was no case to answer on the evidence recounted to this point, which was how the evidence stood at the end of the prosecution case. In my view, even if the prosecution had to prove that the appellant believed that he was aiding, counselling or procuring the other person to have possession of dangerous drugs there was a circumstantial case sufficient to be left to the jury. The parcel did in fact contain drugs. Someone of the general description of the appellant inquired in person about the parcel's whereabouts on the Friday afternoon. The parcel was addressed to a name different from but not unlike his at a non-existent address with which he had no apparent connection; he resided in a street the name of which did not resemble the street to which the parcel was addressed and in a different suburb. The jury may well have thought that he was asserting that the parcel was for him. The following Monday there was a telephone conversation in which a male person identified himself as the person who had rung on Friday informing the Australia Post officer that he was going to Brisbane but a female would collect the parcel for him. She collected the parcel using identification bearing the name resembling but

not identical to the appellants. The appellant was in the vehicle with her after she collected the parcel. In my view, that evidence was sufficient to support a prima facie case.

[32] The learned trial Judge ruled that there was a case to answer in reliance on the proposition that once the appellant had aided, counselled or procured the woman to get possession of the parcel the onus shifted to him to establish the defence of mistake as to the nature of its contents. The appellant then elected to call evidence without giving evidence himself. With respect to the events of Friday, the evidence was that a witness Gavin McGuane knew Tabler. When Mr McGuane was drinking with the appellant, Tabler who was not known to the appellant came in in need of transport to Bundall to collect a parcel. Because McGaune was sight impaired and the appellant had been drinking, it was agreed that Tabler drive the appellant's vehicle to Bundall. Because of parking difficulties the appellant was persuaded to go in to inquire about the parcel. He was told it was not there but may be at Robina. They went to Robina where, for the same reason, the appellant went in and was given a card to facilitate collection of the parcel when it was located.

[33] With regard to subsequent events a witness Eyers said that on Saturday Tabler won a meat tray raffle he was running. Some time later when Eyers and the appellant were having a drink together Tabler said he had to go to Sydney and donated the meat tray to be re-raffled. In gratitude Eyers bought Tabler a beer. While the three men were drinking together he heard Tabler ask the appellant to pick up a parcel for him and saw Tabler hand the appellant a ticket like one used to claim something from the post office. The name Gavin was also mentioned. The following Tuesday the appellant told him he was in trouble with the police.

[34] There was also evidence, principally from McGuane, that attempts to find Tabler had been unsuccessful. As the evidence stood at the end of the trial, subject to the issue of correctness of the directions given, there was a sufficient basis for the jury to convict. It may be observed that if it was necessary for the appellant to positively prove an honest and reasonable belief that the parcel did not contain dangerous drugs the evidence called by the defence did not address that issue in a way that was likely to convince the jury of that fact.

[35] The learned trial Judge directed the jury that once the prosecution had proved that the woman had got possession of the parcel that contained drugs and s 7(1)(b),(c) and (d) had been relied on as the basis of the appellant's liability, the onus shifted to the appellant to prove that he had an honest and reasonable belief that it did not contain a dangerous drug. This brings into focus possible tension between the principle stated in several cases of which *R v Beck* [1990] 1 Qd R 30, *R v Jervis* [1993] 1 Qd R 643, *R v Ancuta* [1991] 2 Qd R 413 and *R v B and P* [1999] 1 Qd R 296 are examples and implications from the reasoning of the majority judgment (Brennan CJ, Dawson and Toohey JJ) in *R v Barlow* (1997) 188 CLR 1. *Barlow* was concerned with s 8, not s 7, but observations were made touching on the interpretation of s 7 in connection with the meaning of "offence", and the uniformity of meaning of that word in the sections relating to parties and chapter 5.

[36] *Beck* is authority for the proposition that in s 7(1)(b) and (c) there is necessarily an intent to aid implied in the words "act for the purpose of" in the former and, notwithstanding the absence of those words in the latter, from the necessity of awareness of the offence which is or might be committed if one can be said to aid

its commission. The word "aids" in s 7(1)(c) means "knowingly aids" (Macrossan CJ with whom McPherson SPJ agreed).

[37] In *Jervis*, McPherson ACJ at 647 repeated that for criminal responsibility to attach under s 7(1)(c) the aider must know what offence is being committed or at least what offence might be committed by a person he is aiding. In the case of s 7(1)(b) the same is implicit in the requirement that the act must be done "for the purpose of enabling or aiding another person to commit the offence". The word "aid" itself carries the connotation of a conscious helping to commit the offence. At 648 he ventured the opinion that counselling and procuring must also have an element of knowledge.

[38] Fundamental to this conclusion was the following statement of principle (648):

> "In this branch of the law, what is generally required is knowledge of the act to be done, which, taken sometimes with other circumstances that are also known, amounts in law to an offence. …From this it follows that, at least in some contexts, the word "offence" is to be understood as a compound conception connoting an act or an omission together with such other circumstances as may be required to render it an offence under law. This impression of the meaning of "offence" in s. 7 is imparted not only by the language of s. 7(a) itself ("act or omission which constitutes the offence"), but also by the provision in s. 2 that what is called in the Code an "offence" is "an act or omission which renders a person liable to punishment.
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> Section 7 thus imposes a form of criminal responsibility that is measured by the extent of knowledge or foresight of the actions intended to be carried out. Its application depends for the most part on the subjective state of mind of the person concerned. In contrast to s. 7, it is generally acknowledged that s. 8 prescribes a criterion of criminal responsibility that is for the most part objective."

[39] *R v B and P* contains similar statements although through the prism of the facts in that case Pincus JA and Muir J made observations that suggest perhaps a narrower test. However that may be, a degree of knowledge of what the principal offender intended to do was necessary. It may also be noted that s 9 may extend liability in the case of persons who counsel and s 10A, persons generally. Section 7(4) is also relevant in the case of procurers. It has traditionally been viewed as concerned with the situation where for whatever reason the person procured is not criminally responsible.

[40] The majority judgment in *Barlow* establishes or necessarily implies that:

(a) The definition of "offence" in s 2 of the Code applies to chapter 5 of the Code;

(b) "Offence" denotes the element of conduct (the relevant act) which if accompanied by prescribed circumstances, or if causing a prescribed result or if engaged in with a prescribed state of mind, renders a person engaging in the conduct liable to punishment;

(c) That interpretation applies to all paragraphs of s 7;

(d) That interpretation deems a person falling within any of those provisions to have done the act which the principal offender has done;

(e) Under that interpretation the conduct of the principal offender is the relevant focus.

[41] If *R v Barlow* is to be interpreted as requiring only that the acts of the secondary party were of the kinds referred to in s7(1)(b),(c) or (d) without reference to knowledge on his part that the principal offender intended to commit an offence or do something that was an offence, reconciliation with the earlier authorities will need to be attempted. It may be accepted that if the secondary party does acts of the kinds referred to in s 7(1)(b),(c) and (d) knowing what the principal offender intended to achieve by doing them but not realising that it was an offence, it would be a consequence of s 22 of the Code that he would be liable. But if he aided, counselled or procured the commission of an act believing that what the principal offender intended to achieve was not unlawful and which would in fact have been lawful if done as he believed, presumably his criminal responsibility would be determined according to s 24 rather than as a case where he did not have a necessary intention to promote the achievement of something unlawful.

[42] Ordinarily, the Crown would have the persuasive onus of proving beyond reasonable doubt that such belief did not exist. The present case is complicated by reason of the fact that s 129(d) of the *Drugs Misuse Act* reverses the onus in respect of s 24.

[43] In *R v Clare* [1994] 2 Qd R 619 at 637-638 Fitzgerald P explained the operation of what were then s 57(c) and (d) of the *Drugs Misuse Act* but are now s 129(c) and (d) in the following way:

> "…I am satisfied that, in particular, s 57(c) and (d) of the *Drugs Misuse Act* do not require a conclusion that knowledge is not an essential element of possession within the meaning of s 9. subs57(c) merely operates in specified circumstances to create a presumption of possession, including knowledge, which is rebuttable by an accused by proof that he "neither knew nor had reason to suspect" the presence of a dangerous drug in or on the place where it was found. Subs 57(d) of the *Drugs Misuse Act* (and s24 of the *Criminal Code*) are consistent with a concept of possession which includes knowledge as an element. Each has scope for operation after possession, including knowledge, is proved by the prosecutor… In any event, s57(d) is a general evidentiary provision, and a conclusion that it would have no relevant area of operation in relation to s9 of the *Drugs Misuse Act* if "possession" includes knowledge would be insufficient to displace that ordinary meaning of "possession" for the purpose of s9. Further, common sense supports the need for proof of at least some awareness; for example, a person should not be guilty of unlawful possession by reference to his or her "possession" of a thing or substance of which he or she is unaware: e.g. some thing or substance surreptitiously placed in a pocket in clothing or contained in an apparently empty receptacle. While the appellant's argument

accepted that knowledge of the existence or the thing or substance is necessary, it was contended that knowledge of its nature or quality is not required."

[44] At 638-639 he said:

> "The principal practical difference between the wide and narrow views lies in the effect which the respective views have upon the onus of proof, particularly having regard to the evidentiary provisions in s57 of the *Drugs Misuse Act*. In these circumstances, it might be legitimate to interpret the Act, which is a penal statute, in the manner which is most favourable to an accused person; that is to say, to determine that possession requires proof of knowledge not only of the existence of the thing or substance but of its nature and even its quality. On the other hand, the clear tenor of the evidentiary provisions in s57 of the Act is to reverse the onus to oblige an accused person who is proved to knowingly have the custody or control of a thing or substance which is a dangerous drug to prove that his or her "possession" is innocent. The narrow view therefore gives better effect to the legislative intent.
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> Not without some hesitation, I have concluded that this is the correct approach and that, subject to s23 of the Code, all that the prosecution needs to show to establish possession is that an accused person has and knows that he or she has a thing or substance which is in fact a dangerous drug."

[45] The focus in the last passage is on proof of knowledge but prima facie once physical possession of the drug is established a presumption of knowledge will in practice lead to the conclusion that the possession is unlawful unless there is something in the evidence raising some category of excuse. If the excuse raised is not affected by a statutory reversal of onus, the onus will remain on the prosecution to exclude it. If the interpretation of s 7 implicit in *Barlow* is applied, unlawfulness of possession on the part of the secondary party will depend on whether, having aided, counselled or procured the principal offender to have possession of the package that in fact contained a dangerous drug, some recognised form of excuse is raised on the evidence. Section 23 has no application because the appellant knew that a parcel was to be obtained from the mail exchange by the principal offender. If the only form of excuse relied on was honest and reasonable belief that the parcel did not contain a dangerous drug, he was subject to an onus to prove that belief positively because of s 129(d) of the *Drugs Misuse Act.*

[46] The direction of the learned trial Judge was therefore correct. The only additional observation I wish to make is that I agree with the Chief Justice's analysis of *R v Bellino* [2003] QCA 110.

[47] The appeal should therefore be dismissed.