



**COURT OF APPEAL**  
**TURKS AND CAICOS ISLANDS**

**AGR 1/2022**

**IN THE MATTER OF THE ATTORNEY GENERAL'S REFERENCE OF QUESTIONS  
ORDINANCE**

**AND IN THE MATTER OF THE ATTORNEY GENERAL'S REFERENCE (NO. 1 OF  
2022)**

**AND IN THE MATTER OF SECTION 25 OF THE ROAD TRAFFIC ORDINANCE  
CAUSING DEATH BY DANGEROUS DRIVING**

**BETWEEN**

**REGINA**

**APPELLANT**

**AND**

**CHRISTOPHER MOORE**

**RESPONDENT**

**BEFORE      The Hon. Mr. Justice Neville Adderley**

**President (Acting)**

**The Hon. Mr. Justice Stanley John**

**Justice of Appeal**

**The Hon. Sir Ian R. Winder**

**Justice of Appeal**



**AGR 1/2022 REGINA v. CHRISTOPHER MOORE**

**APPEARANCES:**

**Rhondalee Braithwaite-Knowles KC with Clemar Hippolyte and Tameka Grant for the Attorney General**

**Lara Maroof for the Interested Party Christopher Moore**

**Heard: 26 January 2023**

**Delivered: 3 February 2023**

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**JUDGMENT**

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**WINDER, JA**

1. This is the Court's decision with respect to questions referred to it by the Attorney General in accordance with Section 3 of the Attorney General's Reference of Questions Ordinance.

**Background**

2. The Defendant (Moore) was charged with one count of Causing Death by Dangerous Driving under section 25 of the Road Traffic Ordinance Cap 13.01. At the Plea and Directions Hearing Moore raised concerns about whether section 25 of the Road Traffic Ordinance Cap. 13.01 was in force on the date of the alleged offence as on the face of the Ordinance, it appeared that it was not. The face of the Ordinance showed the following:

## **ROAD TRAFFIC ORDINANCE**

Ordinance 16 of 1998 .. in force 15 September 1999, Part IV & s. 57 (L.N. 20/1999)  
in force 22 October 1999, Parts I–III, V–IX  
(except ss. 25–33, 42, 46–52 and 57) (L.N. 30/1999)  
in force 25 June 2000, ss 42,47-52 and 57 (L.N 30/1999)

Amended by Ordinance 3 of 2000 .. in force 25 June 2000 (L.N 11/2000)  
1 of 2003 .. in force 21 March 2003 9L.N 12/2003)  
4 of 2004 .. in force 30 January 2004  
6 of 2007 .. in force 1 June 2007 (L.N 21/2007)  
30 of 2011 .. in force 16 December 2011

(Emphasis added)

3. The unchallenged legislative history of the Road Traffic Ordinance, as recited by the Attorney-General in her Reference, is as follows:

- 3.1 Causing Death by Reckless or Dangerous Driving was a criminal offence in the Islands when section 22 of the 1998 Revised Edition of the Road Traffic Ordinance came into force. That Ordinance lists the original Ordinance as the Road Traffic Ordinance 1969 (Ordinance 8 of 1969). The section was amended by Ordinance 29 of 1990 but remained in force.
- 3.2 The offence was repeated when section 24 of the Road Traffic Ordinance 1998 (Ordinance 16 of 1998) was enacted. Ordinance 16 of 1998 repealed and replaced the earlier Ordinance (No. 8 of 1998). The offence of Causing Death by Dangerous Driving came into force on the 22<sup>nd</sup> day of October 1999 by virtue of Legal Notice 30 of 1999. Legal Notice 30 of 1999 brought Part VII (then comprising of sections 24 – 52) into force. Section 24 was the offence of Causing Death by Dangerous driving.
- 3.3 That same Legal Notice excluded sections 25 – 33, 42 and 46 - 52 from being brought into force. At this time sections 25 – 33 were described as the drunk driving offences and there was then no method of enforcing these sections as the devices required to give effect to them (such as breathalyzers etc.) were unavailable in the

Islands. But it is important to note that section 24, Causing Death by Dangerous Driving did come into force on the 22<sup>nd</sup> day of October 1999.

- 3.4 In 2000, the Road Traffic (Amendment) Ordinance - Ordinance 3 of 2000 inserted a new section 5A regarding the expiration of licenses after section 5 of the Road Traffic Ordinance.
- 3.5 In the intervening years, a number of Ordinances were made to amend the Road Traffic Ordinance (Ordinance 1 of 2003, Ordinance 4 of 2004, Ordinance 6 of 2007, and Ordinance 30 of 2011) but none of them amended, repealed or impacted section 24 Causing Death by Dangerous Driving which continued in force since its commencement on the 22<sup>nd</sup> day of October 1999.
- 3.6 In the 2009 Revised Edition of the Laws, the Law Revision Commissioner, renumbered section 5A, as section 6, and renumbered the succeeding sections. This insertion and renumbering resulted in section 24 Causing Death by Dangerous Driving being renumbered as section 25 in the 2009 Revised Edition of the Laws.
- 3.7 The 2014 and 2018 Revised Edition of the Laws reflects the changes made in the 2009 Revised Edition of the Laws. There are no provisions which impliedly or expressly repealed the law on Causing Death by Dangerous Driving and the Law Revision Commissioner did not have the authority to repeal a provision of the law that had not been repealed by an Ordinance.
- 3.8 At the same time, the Law Revision Commissioner made notations in the 2009 Revised Edition of the Road Traffic Ordinance which were retained in the 2018 Revised Edition of the Road Traffic Ordinance that sections 25 – 34 were not brought into force by Legal Notice 30 of 1999.
- 3.9 The Revised Edition sought to consolidate all of the Ordinances related to Road Traffic and cites the list of each such amending Ordinances in the first pages demonstrating the Ordinances it seeks to consolidate. None of the Ordinances listed contains a provision repealing the law on Causing Death by Dangerous Driving.
- 3.10 Legal Notice 27 of 2018 brought the drunk driving offences into force on the 1<sup>st</sup> day of May 2018 when section 26-34 commenced. This Legal Notice accorded with the numbering in the 2018 Revised Edition of the Road Traffic Ordinance. On the

same date, by virtue of Legal Notice 28 of 2018 the Road Traffic (Approved Devices) Notice was made approving the devices to be used to give effect to those drunk driving provisions.

4. At the Plea and Directions Hearing *Lobban-Jackson J.* heard arguments from the Crown and Moore but held that section 25 of the Road Traffic Ordinance Cap. 13.01, Causing Death by Dangerous Driving, is not in force and dismissed the charge against Moore and discharged him on 31 January 2022.

5. As a result of the notation of the Law Reform Commissioner and the decision of the learned judge, a question has arisen as to whether section 25, Causing Death by Dangerous Driving, is in force in the Islands and the correct interpretation of the 2018 Revised Edition of the Road Traffic Ordinance. The Attorney General has brought the following questions for determination by the Court of Appeal:

- (1) Whether a law once in force, forms part of the corpus juris and continues in force as enacted unless it is amended or repealed?
- (2) Whether a repeal may only take place impliedly or expressly by subsequent legislation?
- (3) Whether a provision in an Ordinance can only be repealed by another Ordinance or an item of delegated legislation made under an Ordinance conferring power to repeal?
- (4) Whether Legal Notice 30 of 1999 and Legal Notice 27 of 2018 are merely declaratory instruments with the power to commence the Ordinance and certain sections of the Ordinance rather than repealing sections not mentioned in those Legal Notices?
- (5) Whether Legal Notice 30 of 1999, not being an Ordinance, can impliedly repeal the law on Causing Death by Dangerous Driving?
- (6) Whether a commencement notice is a one-time operative instrument which brings a piece of legislation into force?
- (7) Whether section 10(3) and (4) of the Revised Edition of the Laws Ordinance are the only provisions to be considered in interpreting the 2018 Revised Edition of the Road Traffic Ordinance?

- (8) Whether the Court in interpreting the provisions of an Ordinance should seek to give effect to the legislative intent of Parliament and what is that parliamentary intent with respect to the 2018 Revised Edition of the Road Traffic Ordinance?
- (9) Whether the Law Revision Commissioner has power to repeal a provision that has not been repealed by an Ordinance given sections 6 and 7 of the Revised Edition of the Laws Ordinance?
- (10) Whether the offence of Causing Death by Dangerous driving is in force in the Islands?
- (11) Whether the Learned Lobban-Jackson J correctly applied the rules of statutory interpretation in ruling that section 25 of the 2018 Revised Edition of the Road Traffic Ordinance, Causing Death by Dangerous Driving, is not in force in the Islands?

#### Law, Analysis and Discussion

6. Section 3 of the Attorney General's Reference of Questions Ordinance provides that the Attorney General may, with the approval of the Governor in Cabinet, refer to the Court of Appeal for hearing and consideration, any question of law or fact concerning—

- a) the interpretation of the Constitution;
- b) the constitutionality or interpretation of any Ordinance; or
- c) any other matter that the Attorney General thinks fit, whether or not that other matter is in the opinion of the Court similar to the matters set out in paragraphs (a) and (b), is of public interest or public importance.

7. Section 6, 7 and 10 of the Revised Edition of the Laws Ordinance Chapter 1.02 provides:

6. The powers of the Law Revision Commissioner in the preparation of revised editions of the Laws as —

- (a) to omit— (i) all Ordinances or parts of Ordinances which have been expressly and specifically repealed or which have expired or have become spent or have had their effect; (ii) all repealing enactments contained in Ordinances and also all tables and lists of repealed enactments, whether contained in Schedules or otherwise; (iii) all preambles to Ordinances where such omissions can, in the opinion of the Commissioner, conveniently be made; (iv) all enactments prescribing the date when

- any Ordinance or part thereof is to come into operation, where in the opinion of the Commissioner such omission can conveniently be made; (v) all amending Ordinances, or parts thereof, where the amendments effected thereby have been embodied by the Commissioner in the Ordinance to which they relate; (vi) all enacting clauses;
- (b) to consolidate into one Ordinance any two or more Ordinances in pari materia, making the alterations thereby rendered necessary and affixing such date thereto as may seem to be most convenient;
  - (c) to alter the order of sections or other subdivisions in any Ordinance, and in all cases where it appears to the Commissioner to be necessary so to do, to renumber any sections or other subdivisions;
  - (d) to alter the form or arrangement of any section or other subdivision in any Ordinance by transferring words, by combining it in whole or in part with another section or other subdivision or by dividing it into two or more subsections or other sub-divisions;
  - (e) to transfer any enactment contained in an Ordinance from such Ordinance to any other Ordinance to which such enactment more properly belongs;
  - (f) to divide any Ordinance into parts or divisions;
  - (g) to add a long or short title to any Ordinance which may require it, or to alter the long or short title to any Ordinance;
  - (h) to supply, alter or delete marginal notes, headings or subheadings to any section or other part of any Ordinance;
  - (i) to correct grammatical, typographical, and other similar errors in any Ordinance and for the purpose to make verbal additions, omissions or alterations not affecting the meaning of such Ordinance;
  - (j) to shorten or simplify the phraseology of any Ordinance;
  - (k) to make such adaptations of or amendments in any Ordinance as may appear to be necessary or proper as a consequence of any constitutional changes in the Islands or as a consequence of changes in the constitution of Commonwealth countries or in the composition of the Commonwealth;
  - (l) to make such formal alterations to any Ordinance as are necessary or expedient for the purpose of securing uniformity of expression;
  - (m) to supply tables showing the arrangement of sections of any Ordinance;
  - (n) to supply such chronological tables of enactments as may appear to the Commissioner to be desirable;
  - (o) to arrange related laws into topics or titles, and to assign chapter numbers to individual related laws; and to do all things relating to form and method, whether or not similar to the foregoing, which appear to him to be necessary for the perfecting of the revised edition of the Laws.

7. (1) The powers conferred upon the Commissioner by section 6 shall not be taken to imply any power for him to make any alteration or amendment in the matter or substance of any Ordinance.

(2) If the Commissioner considers that it is desirable that in the preparation of revised editions of the Laws there should be amendments or additions other than those authorised under the powers conferred by section 6, he shall draft one or more Bills setting forth such proposed amendments or additions, and shall submit the same to the Attorney General with

a view to their being considered for submission to the legislature. (3) If any such Bill as is referred to in subsection (2) is enacted in sufficient time, the Commissioner shall give effect in the revised edition of the Laws to the amendments or additions so authorised.

10. (1) A revised edition of the Laws prepared pursuant to this Ordinance shall come into force as the authoritative version of the law on the date specified (“the effective date”) in an Order made by the Attorney General under subsection (3) with respect to that revised edition.

(2) When the Commissioner has prepared a revised edition, the Commissioner shall—

- (a) sign four copies of the book, booklet, collection of loose-leaf pages, CD ROM or other electronic record, or printout from the data bank; as the case may be;
- (b) deliver the signed copies to the Attorney General for the purpose of the making of an Order under subsection (3), and the Attorney General shall likewise sign the four copies and cause the copies to be submitted to the Governor;
- (c) following the making of an Order under subsection (3), deliver one of those copies to the Registrar of the Supreme Court and one to the Governor, for record keeping purposes, and shall lay the same before the House of Assembly.

(3) The Governor in Cabinet may, by Order published in the *Gazette*, declare that a revised edition specified in the Order shall come into force on such date as may be appointed by such Order:

Provided that an Order in respect of a complete revised edition shall not be made until after the passing of a resolution of the House of Assembly authorising the making of such an Order.

(4) From the date named in an Order made under subsection (3) the revised edition of the Laws shall be deemed to be, in all courts of justice and for all purposes whatsoever, without any question the sole authentic edition of the Laws of the Islands in respect of the law contained therein and in force on the relevant revision date:

Provided that nothing in this section shall affect the operation of any Ordinance or Subsidiary Legislation which, before the date appointed for the revised edition of the Laws to come into operation, may be enacted repealing, altering or amending any Ordinance or Subsidiary Legislation which has already been included in the revised edition of the Laws.

7. The basis for the decision of *Lobban Jackson J* is set out at paragraphs 12-15 of her written decision. She states:

Decision

12. Section 10(1) and (4) appears to be decisive of the matter unless the Prosecution can show definitively by reference to the law, exactly when section 25 of the [Road Traffic Ordinance] came into force. There appears to me to be a clear lacuna in the law which has yet to be addressed.

13. Upon close examination of the law both on an analysis of its current and historical state, my understanding is that section 25 of the [Road Traffic Ordinance] is yet to be brought into force.

14. The function of the Court is to interpret the law as is and not to engage in legal gymnastics to fill in the gaps where they do exist.

15. The charge is therefore dismissed as not being properly before the court and the defendant is discharged on CR29/21.

8. Moore argues that in making this determination, it was a proper approach for the Court to consider the effect of the Revised Edition of the Laws Ordinance Chapter 1.02 in determining which laws were in force and which were not. He relies on sections 10(1) and 1(4) of the Revised Edition of the Laws Ordinance. Section 1 (4) of that Ordinance states:

*“From the date named in an Order made under subsection (3), the revised edition of the Laws shall be deemed to be, in all courts of justice and for all purposes whatsoever, without any question, the sole authentic edition of the Laws of the Islands in respect of the law contained therein and in force on the relevant revision date”* (emphasis added)

Moore concludes that the clear meaning of these sections of the Revised Law Ordinance is that once the revised laws are in force, these are the definitive and only laws to be referred to. He says that the section speaks in mandatory terms and applies to ‘all courts of justice’ and when assessing which laws are in force the Court is required to consider the content of the current Revised Edition of the Laws as the authentic version of the law. The Court is not permitted to look back at prior versions of the law and assess the ‘authenticity’ of the most recent Revised Laws.

9. The Attorney General says that:

(1) From an analysis of the legislative history leading up to the 2018 Revised Edition of the Law, there is nothing to indicate that the legislature in any way (whether expressly

or impliedly) intended that the criminal offence of causing death by dangerous driving was no longer in force or was repealed.

(2) The Law Revision Commissioner did not have the authority to repeal a provision of the law that had not been repealed by an Ordinance made by the legislature.

(3) The decision of *Lobban-Jackson J* is therefore untenable.

10. We agree with the submissions of the Attorney General and respectfully, cannot support the narrow view taken by the learned judge.

11. Sections 16 and 18 of the Interpretation Ordinance provides:

Moment when Ordinance or Subsidiary Legislation comes into operation

16. Where any Ordinance, or part of an Ordinance, or any subsidiary legislation made thereunder comes into operation on a particular day, it shall be deemed to have come or shall come into operation immediately on the expiration of the day next preceding such day.

Sections to be substantive enactments

18. Every section of an Ordinance shall have effect as a substantive enactment without introductory words.

It follows therefore that Section 24 of the Road Traffic Ordinance 1998, which created the offence of Causing Death by Dangerous Driving, came into force on 30 October 1999 and has remained an offence notwithstanding the subsequent consolidation which has resulted in the renumbering of the provisions of the Road Traffic Ordinance in 2009.

12. Before us, all parties accepted that this notation by the Law Reform Commissioner, indicating that Section 25 of the Road Traffic Ordinance had not been brought into force, was inaccurate and an unfortunate error. Section 25, which had been renumbered from 24 in the consolidation exercise was in fact brought into force by Legal Notice 30 of 1999. In fact, in the 2021 Revised Edition of the Laws, the error has been corrected to properly reflect that Section 25 of the Road Traffic Ordinance has been in force since 22 October 1999, having been brought into force by Legal Notice 30/1999. Regrettably, this was not before the judge in time for her decision.

13. The case of *R (on the application of Edison First Power Ltd) v Central Valuation Officer and another* [2003] 4 All ER 209 at [116], [117] provides a useful discussion on the approach of the courts in interpretation and the importance of avoiding absurd and unintended consequences. *Lord Millet* stated at paragraph 117 of the decision as follows:

The Courts will presume that Parliament did not intend a statute to have consequences which are objectionable or undesirable; or absurd; or unworkable or impracticable; or merely inconvenient; or anomalous or illogical; or futile or pointless. But the strength of these presumptions depends on the degree to which a particular construction produces an unreasonable result. The more unreasonable a result, the less likely it is that Parliament intended it ..."

14. To accept an obvious error by the Law Revision Commissioner, without interrogation, would be to give the Law Revision Commissioner the power to alter the law and to repeal provisions in the legislation which he does not have. Notwithstanding what appears as a deeming provision, this could not have been the result intended by the legislature when section 10 of the Revised Edition of the Laws Ordinance was enacted. The learned judge was therefore required to consider the import of section 6 and 7 of the Revised Edition of the Laws Ordinance which delineated the extent of the powers of the Law Revision Commissioner in preparation of the revised edition of the laws and the limitations on his or her powers.

15. Therefore, when the Law Revision Commissioner made the erroneous notation in the Historical Notes on the cover page of the Ordinance the offence of Causing Death by Dangerous Driving had already been an offence within the Turks and Caicos Islands for 10 years. In any event, this notation in the 2009 Revised Edition of the Road Traffic Ordinance (which was repeated in the 2014 and 2018 Revised Edition) did not form part of the substantive legislation and could not be deemed to impact the coming into force of the offence of causing death by dangerous driving.

16. In all the circumstances therefore, we answer the questions posed by the Attorney General in her Reference, as follows:

- (1) A law once in force, forms part of the corpus juris and continues in force as enacted unless it is amended or repealed.
- (2) A repeal may take place impliedly or expressly by subsequent legislation.
- (3) The Law Revision Commissioner has no power to repeal a provision that has not been repealed by subsequent legislation, given sections 6 and 7 of the Revised Edition of the Laws Ordinance.
- (4) The learned judge applied too narrow and rigid a construction to Section 10 of the Revised Edition of the Laws Ordinance in her determination that section 25 of the 2018 Revised Edition of the Road Traffic Ordinance, which contained the offence of Causing Death by Dangerous Driving, is not in force in the Turks and Caicos Islands
- (5) The offence of Causing Death by Dangerous driving remains in force in the Turks and Caicos Islands.

3 February 2023

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Sir Ian Winder, JA



I agree

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Adderley JA, President (Ag)

I also agree

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John, JA

**AGR 1/2022 REGINA v. CHRISTOPHER MOORE**