

CITATION: *Kerry Leanne Rigby v Michael John Adamson* [2004] NTMC 082

PARTIES: KERRY LEANNE RIGBY

v

MICHAEL JOHN ADAMSON

TITLE OF COURT: Katherine Court of Summary Jurisdiction

JURISDICTION: Traffic Act

FILE NO(s): 20411148

DELIVERED ON: 29.10.04

DELIVERED AT: Katherine

HEARING DATE(s): 18.6.04, 29.7.04, 6.9.04, 23.9.04

JUDGMENT OF: D TRIGG SM

CATCHWORDS:

Traffic Act ss19(9)(b)(i), 39(1)(f)

Motor Vehicles Act s119; what may be certified.

Meaning of “gross vehicle mass”, whether “GVM” is the same.

REPRESENTATION:

Counsel:

Plaintiff: Sgt Nash

Defendant: Ms Tys

Solicitors:

Plaintiff: Katherine Police Prosecutions

Defendant: Cassandra Tys

Judgment category classification: C

Judgment ID number: [2004] NTMC 082

Number of paragraphs: 67

IN THE COURT OF SUMMARY JURISDICTION
AT KATHERINE IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20411148

[2004] NTMC 082

BETWEEN:

KERRY LEANNE RIGBY
Complainant

AND:

MICHAEL JOHN ADAMSON
Defendant

REASONS FOR DECISION

(Delivered 29 October 2004)

Mr TRIGG SM:

1. On the second day of June 2004 the complainant laid a complaint that the defendant, on 12 May 2004 at Katherine Northern Territory of Australia:

1. drove a motor vehicle, namely Grader, SV1-236, on a public street, namely Stuart Highway, while having a concentration of alcohol in your blood equal to 80 milligrams or more of alcohol per one hundred millilitres of blood, namely, 100 milligrams of alcohol:

Contrary to section 19(2) of the *Traffic Act*.

2. On the 18th day of June 2004 the defendant came before me in Katherine in answer to the afore-mentioned charge. The defendant was unrepresented. He indicated that he wished to plead guilty to the charge. Accordingly, the charge was read and the defendant entered a plea of guilty.
3. The prosecutor read out the facts which I noted to be as follows:

At about 2.30 pm on Wednesday 12 May 2004 the defendant left the King River area after consuming two light beers. The defendant was

driving a grader which was 15.1 tons and he was towing a dog trailer. The weight was 28 thousand kilograms.

The defendant was driving north on the Stuart Highway where he was pulled into a weigh bridge. An inspector at the weigh bridge noticed the smell of liquor on the defendant and called police.

Police attended and conducted a roadside breath test on the defendant which proved positive.

The defendant was arrested for the purpose of breath analysis.

A subsequent breath analysis recorded a reading of .100 per cent.

The defendant was asked why he was driving with alcohol and he said that he was driving the grader back home. He said he thought he was OK. He had a big night the night before.

The defendant had a heavy vehicle driver's licence.

4. Those facts were agreed by the defendant.
5. A record of prior matters was then put before the defendant and he admitted that he had had those appearances in court. I marked the priors ExP1. Those priors disclosed that the defendant had been dealt with by the court on two previous occasions namely:

On 5 January 1984, in Alice Springs for driving unlicensed. He was convicted and fined \$50 in default two days.

On the same date in Alice Springs court he was also dealt with for exceed .08 with a reading of .180. He was convicted and fined \$200 in default 8 days hard labour and his licence was disqualified for six months.

On 27 August 1997, in Katherine for towing an unregistered and uninsured trailer. He was convicted and fined \$500 plus \$40 Victims Assistance Levy in default 10 days as an aggregate penalty.

6. I raised with the prosecutor (Sgt Nash) and the defendant that the admitted facts were that the grader weighed 15.1 ton and the trailer 28000kg. I therefore referred both to sections 39(1)(f) and 19(9)(b)(i) of the *Traffic Act* and queried whether this meant that the defendant must be disqualified for

five years for that type of licence. I note that the admitted facts did not necessarily amount to an admission as to what the gross vehicle mass was of the two items on the day in question.

7. The defendant was not aware of this possible consequence and accordingly I allowed him to adjourn the matter to obtain legal advice. I adjourned the matter to 29 July 2004 at 10 o'clock before me for completion of the plea and for short evidence if necessary.
8. There were various problems in relation to getting the matter back on before me and at one stage it went before another magistrate when, in my view, it should not have. I managed to get the matter back before me for completion and on the 6 September 2004 Ms Tys appeared for the defendant. The defendant was not present.
9. Ms Tys still wished to adjourn the question of licence disqualification so that she could research the matter further and make submissions or perhaps call some evidence. However, I did not consider that the question of disqualification of the defendant's general licence should be further delayed and accordingly I proceeded to find the defendant guilty of charge 1 and by force of that finding of guilt I disqualified the defendant from holding or obtaining a licence or driving for a period of 12 months from the time of pronouncing my finding of guilt.
10. I then adjourned the question of disqualification of his heavy motor vehicle licence. That issue proceeded before me on 23 September 2004, when I was sitting in Darwin. Sgt Nash and Ms Tys appeared by way of video conferencing from the Katherine Courthouse. The defendant was also in attendance. Prior to the hearing Ms Tys had been good enough to fax through various documents which might be relevant to the matter.
11. Neither party sought to call any evidence, but Ms Tys did wish to rely upon two certificates which she had sent through to the court. Accordingly, a

certificate issued under s.119 of the *Motor Vehicles Act* in relation to the Grader became Exhibit D1. A further certificate, also under s.119, in relation to the Dog Trailer became Exhibit D2.

12. In Exhibit D1 Dean Buzza the Deputy Registrar of Motor Vehicles in the Northern Territory certified that the Caterpillar Road Grader registered number NT SV1236 had a “GVM: 13000 kg”.
13. Exhibit D2 was also a certificate by Mr Buzza and in that he certified that the McGrath Dog Trailer registered number NT TA4547 had:

“ATM: 25500 kg”

“TARE: 7830 kg”

14. I note that “gross vehicle mass” or “GVM” does not appear anywhere in that certificate.
15. S.19(2) of the *Traffic Act* states:

“A person shall not, on a public street or public place –

- (a) drive;
- (b) start the engine of; or
- (c) put in motion,

a motor vehicle if there is a concentration of alcohol in that persons blood equal to 80mg or more of alcohol per 100ml of blood.”

16. S.19(3) goes on to lay down the penalty provisions as follows:

“The penalty for an offence against subsection (2) is –

(b) for a second or subsequent offence - \$2,000 or imprisonment for 12 months.”

17. In addition to this penalty s.39(1) of the *Traffic Act* also deals with cancellation of licences and states as follows:

“(1) where a court finds a persons guilty of an offence against a section specified in column 1 of schedule 1, the persons licence is, by force of a finding of guilt, cancelled and the person is disqualified from holding a licence –

(a) for the first offence, for the period specified in column 3; or

(b) for the second or subsequent offence, for the period specified in column 4,

of that schedule opposite the relevant section in column 1, or such longer period as the court thinks fit, but if the finding relates to –

.....

(f) an offence against section 19(1) or (2) or 20 committed by a person referred to in section 19(9)(b)(i) or (iii), the persons licence is, by force of the finding, cancelled for such period as is prescribed in schedule 1 in relation to an offence of that kind or such longer period as the court thinks fit, and the person is by force of this section disqualified from obtaining a licence to drive a vehicle referred to in section 19(9)(b)(i) or (iii) for a period of five years.” (emphasis added)

18. As noted earlier the defendant pleaded guilty to an offence against s.19(2) of the *Traffic Act*. In addition he admitted a prior conviction for exceeding .08 with a reading of .180 per cent on 5 January 1984. Accordingly, pursuant to schedule 1 of the *Traffic Act*, when read with s.39(1)(b) of the *Traffic Act*, the defendant had to be disqualified for a minimum period of 12 months.
19. I imposed that disqualification on 6 September 2004.
20. The question which arises and which I am now asked to determine, is whether by force of the finding of guilt s.39(1)(f) of the *Traffic Act* disqualifies the defendant from obtaining a licence to drive a vehicle referred to in s.19(9)(b)(i) for a period of five years. If so, this would have effect from 6 September 2004 and could have serious impact on the defendant’s employment future.
21. S.19(9)(b)(i) of the *Traffic Act* states:

“Subject to the Regulations, subsection (8) applies to a person –

(b) who is the driver of a motor vehicle –

(i) *having a gross vehicle mass, within the meaning of the Motor Vehicles (Standards) Regulations, of more than 15t;*” (emphasis added)

22. S.19(8) of the *Traffic Act* states:

“A person to whom this subsection applies shall not, on a public street or public place –

(a) drive;

(b) start the engine of; or

(c) put in motion,

a motor vehicle if alcohol is present in that persons blood.

Penalty:

For a first offence - \$500 or imprisonment for three months.

For a second or subsequent offence - \$750 or imprisonment for six months.”

23. Clearly, Parliament has intended that any person who falls within s.19(9) of the *Traffic Act* should not have any alcohol in their system when they are driving a motor vehicle of that type.

24. Further, it is clear in my view that Parliament has also intended that any person who is the driver of a motor vehicle having a gross vehicle mass of more than 15 tons (assuming that “15t” is a reference to “tons”) who has a blood alcohol reading of .08 per cent or more then their licence to drive a vehicle of more than 15 tons is to be disqualified for five years.

25. One can clearly see the logic behind such an approach. The potential damage that a heavy vehicle could do if under the control of an intoxicated person is self evident.

26. I note the reference to “15t” but, as noted above, the various certificates are expressed in kilograms. I also note (from the Oxford English Dictionary of Current English 6th edition) that the ratio of kilograms to “ton” may not be clear cut. Accordingly, it would be advisable that s39(1)(f) of the *Traffic Act* be amended to reflect what the Legislature might consider to be an appropriate amount in kilograms.

27. The question for current purposes is:

On 12 May 2004 when the defendant was apprehended for drink driving with a reading of .100 per cent ***was he the driver of a motor vehicle having a gross vehicle mass, within the meaning of the Motor Vehicles (Standards) Regulations, of more than 15t?***

28. If the answer to this question is yes then as a matter of law s.39(1)(f) of the *Traffic Act* applies to him. If the answer is no, then it does not. For the reasons which follow, I find that the answer to this question is no, as the prosecution have failed to satisfy me that he was.

29. This issue should have been easy to resolve, but unfortunately it is not as easy as it should be.

30. A reprint of the *Motor Vehicles (Standards) Regulations* as in force at 5 October 1994 (was a compilation of *Regulation 74* of 1982 as amended by *Regulation 31* of 1988). This reprint stated in the interpretation regulation 4(1) that in these regulations, unless the contrary intention appears –

“Gross vehicle mass”, in relation to a vehicle, means the mass recorded by the registrar, whether by reference to the tickets recorded or kept by an officer having duties in connection with the registration of vehicles in a State or another Territory of the Commonwealth or otherwise, as the maximum laden mass at which the vehicle should be operated.

31. Hence, pursuant to this definition the expression “gross vehicle mass” did have a meaning ascribed to it under the *Motor Vehicles (Standards) Regulations*. Accordingly, s19(9)(b)(i) of the *Traffic Act* was capable of

being interpreted and having meaning. Further, provided that the court could have been satisfied that the “GVM” referred to in ExD1 was a reference to “the mass recorded by the registrar.....as the maximum laden mass at which the vehicle should be operated” then ExD1 may have had some evidentiary value (I will address the evidential value of ExD1 later in these reasons). Unfortunately, the matter did not end there.

32. *Regulation* number 17 of 2003 commenced on 1 May 2003 and was in force at the time of this offending. Pursuant to reg.39 of *Regulation* 17 of 2003, *Regulations* numbered 74 of 1982 and 31 of 1988 were repealed. Accordingly, the definition above referred to was repealed.
33. The interpretation paragraph in *Regulation* 17 of 2003 does not have any definition for the expression “gross vehicle mass”. I do not know why this was done. Accordingly, the expression “gross vehicle mass” now has no meaning (within the main body of the *Regulation*) ascribed to it “within the meaning of the *Motor Vehicles (Standards) Regulations*”. It therefore follows, in my view, that unless the court can find a meaning for this expression somewhere else within the *Motor Vehicles (Standards) Regulations* then s19(9)(b)(i) of the *Traffic Act* is meaningless.
34. In this regard Sgt Nash invited me to look for the meaning of this expression in legislative enactments other than the *Motor Vehicle (Standards) Regulations*. In particular he sought to rely upon a definition of that expression in s5(1) of the *Motor Vehicles Act*. I consider that this is not permissible, as s19(9)(b)(i) is quite explicit in its terms. If the expression has a meaning then it must be apparent in that *Regulation*, and if it is not, then that is, in my view, the end of the matter.
35. The expression “gross vehicle mass” does appear in *Regulation* 17 of 2003, but only in one place that I have been able to find, and that is in reg.25(1)(a). The expression “GVM” also appears throughout *Regulation* 17 of 2003. However, this expression is not defined or given any meaning in

the interpretation section. If “GVM” were intended to be an acronym of “gross vehicle mass” then it would have been easy to say that within the definition section.

36. Another expression “GCM” which is also used in *Regulation 17* of 2003 is given an interpretation and meaning. In reg.4(1) is stated:

“GCM” or “gross combination mass”, in relation to a motor vehicle means the greatest possible sum of the maximum loaded mass of the motor vehicle and any vehicle or vehicles that may be towed by it at the same time.....”

37. Hence, the term “GCM” is clearly defined as an acronym of “gross combination mass” and a meaning to the expression is then set out. In my view, the same should have occurred in relation to “gross vehicle mass”.
38. Within the transport industry it may be that “GVM” is an acknowledged term of art that is fully understood, but no evidence was called to suggest that this might be the case. In my view, whilst I could probably assume that “GVM” was a reference to “gross vehicle mass” it is not such a widely used expression that I could take judicial notice of it.
39. I note that under the definition of “gross” both in the Concise Oxford Dictionary of Current English (6th edition) and the Macquarie Dictionary (3rd edition) nowhere does the term “gross vehicle mass” appear. Other expressions such as “gross domestic product” along with its acronym “GDP” do appear. Hence these expressions are of such general usage as to be commonly understood. The same does not appear to be the case for “GVM”.
40. Even if “gross vehicle mass” did appear in a dictionary, that would be of no assistance to the prosecution, as the Legislature has decided to give that expression only the meaning that comes from the *Motor Vehicles*

(Standards) Regulations. Let us compare the repealed *Regulations* with the current *Regulation* to see if this provides some assistance.

41. The expression “gross vehicle mass” appears in the repealed *Regulation*:

- In the definition section, where it is ascribed a meaning as follows: “gross vehicle mass”, in relation to a vehicle, means the mass recorded by the Registrar, whether by reference to the particulars recorded or kept by an officer having duties in connection with the registration of vehicles in a State or in another Territory of the Commonwealth or otherwise, as the maximum laden mass at which the vehicle should be operated;

As noted earlier this has not been reproduced in the main body of *Regulation 17* of 2003, but a definition for “GVM” does appear in the dictionary in schedule 6 thereof as follows: “**GVM**, for a vehicle, means the maximum loaded mass of the vehicle:

(a) specified by the manufacturer on an identification plate on the vehicle; or

(b) if there is no specification by the manufacturer on an identification plate on the vehicle or the specification is not appropriate because the vehicle has been modified — certified by the vehicle registration authority.”

- Under the interpretation of “inspection label” in reg.4(1) where it was stated: “inspection label”, in relation to a vehicle, means a label, issued by the Registrar or an approved person, specifying the gross vehicle mass or gross combination mass of, or such other approved particulars in relation to, the vehicle and affixed, in accordance with the Registrar's or the approved person's instructions in respect of such affixation, to that vehicle.”

In the new *Regulation* “inspection label” is now defined in reg.4(1) as follows: “inspection label”, in relation to a vehicle, means a label, issued by the Registrar or an approved person,

specifying the GVM or GCM of the vehicle (or other approved particulars in relation to the vehicle) and affixed to the vehicle in the approved manner;

- In reg.6(c) which stated: “For the purposes of a prosecution for an offence against these Regulations, the particulars recorded or kept by the Registrar, whether by reference to the particulars recorded or kept by an officer having duties in connection with the registration of vehicles in a State or in another Territory of the Commonwealth or otherwise, purporting to be -
 - (a) the manufacturer's gross axle load limit of an axle group;
 - (b) the manufacturer's gross combination mass of a vehicle combination;
 - (c) the manufacturer's gross vehicle mass of a vehicle;
 - (d) the manufacturer's maximum rim load of a rim of a tyre; or
 - (e) the manufacturer's maximum tyre load of a tyre,shall, unless the contrary is proved, be deemed to be that limit, mass, or load, as the case may be.”

This has been replaced in the new *Regulation* by reg.38(1)(c), which now states: “(1) For the purposes of a prosecution for an offence against these Regulations, the particulars stated in a certificate issued by the Registrar as to –

the manufacturer's gross axle load limit of an axle group;

the GCM of a vehicle combination;

the GVM of a vehicle;

the manufacturer's maximum rim load of a rim of a tyre; or

the manufacturer's maximum tyre load of a tyre,

are taken to be that limit, mass or load, as the case may be, unless the contrary is proven.

(2) The particulars included in a certificate under subregulation (1) may be derived from the records of the Registrar or from records kept by a registrar (however described) of vehicles in a State or another Territory of the Commonwealth.

(3) No proof as to the signature of the Registrar is required in relation to a certificate under subregulation (1).”

- In reg.12(1)(b)(i) which stated: “(1) Subject to subregulation (2), the laden mass of a vehicle or vehicle combination shall not exceed the lesser of -
 - (a) the sum of the masses permitted by regulation 11 to be carried by the tyre or axle groups of the vehicle or vehicle combination;
 - (b) in the case of -
 - (i) a rigid motor vehicle - the gross vehicle mass or the manufacturer's gross vehicle mass;”

This is substantially reproduced in reg.12(1)(b) of the current *Regulations* as follows: “(1) The laden mass of a vehicle is not to exceed –

- (a) the sum of the masses permitted by Division 1 to be carried by the tyres or axles (or axle groups) of the vehicle; or
 - (b) the GVM of the vehicle, whichever is the lesser.”
- In reg.41(1)(a) where it was stated: “(1) A hauling unit shall not be used in a road train except where it has marked on it, adjacent to its compliance plate, if any, or at some other position specified by the Registrar or an approved person, the following particulars:
 - (a) the gross vehicle mass; and
 - (b) the gross combination mass, of that hauling unit.”

Which has as its comparable regulation now as reg.25(1)(a) which reads: “(1) A hauling unit used in a road train is to have displayed on it the following particulars:

- (a) the gross vehicle mass of the hauling unit;
 - (b) the gross combination mass of the hauling unit.”
- In reg.47(1) which dealt with “rear marker plates”. The current *Regulations* deal with this topic in reg.34, but the expression “gross vehicle mass” or “GVM” no longer appears.
 - In reg.49(2) which dealt with “maximum projection of mirrors” it was stated: “(2) A rear vision mirror affixed to the side of the vehicle

which has a manufacturer's gross vehicle mass of 8.5 tonnes or more may project more than 150 millimetres beyond the maximum permitted width of the vehicle provided the mirror -

- (a) does not project more than 230 millimetres beyond; and
- (b) is capable of retracting to less than 150 millimetres of, the maximum permitted width of the vehicle.”

This has not been reproduced in the current *Regulations*, but now appears in schedule 6 thereof, in rule 35 of the *Australian Vehicle Standards Rules* as follows: “(3) At least 1 rear vision mirror must be fitted to each side of:

- (a) a motor vehicle with a GVM over 3.5 tonnes; and
 - (b) a motor bike, or motor trike with 1 front wheel, built after June 1975.
- (4) A motor vehicle with a GVM not over 3.5 tonnes (except a motor vehicle mentioned in subrule (2) or (3)) must be fitted with:
- (a) at least 1 rear vision mirror on the right side of the vehicle; and
 - (b) at least 1 rear vision mirror on the left side of the vehicle or inside the vehicle.
- (5) A rear vision mirror fitted to a motor vehicle with a GVM over 3.5 tonnes must not project over 150 millimetres beyond the widest part (excluding lights, signalling devices and reflectors) of the vehicle or combination.”

- “GVM” also appears in the current reg.14(2), but there appears to be no equivalent in the repealed *Regulations*.
- “GVM” also appears in the current reg.37(c), but there appears to be no equivalent in the repealed *Regulations*.

42. This comparison between the repealed *Regulations* and the current *Regulations* satisfies me that the expression “gross vehicle mass” as used in the repealed *Regulations* is now generally (except in r.25(1)(a) which was probably an oversight) replaced by “GVM” in the current *Regulations*.

43. I therefore find that “GVM” does mean “gross vehicle mass”. However, that is not the end of the matter. It is still necessary for the court to be able to decide what “gross vehicle mass” or “GVM” means within the *Motor Vehicles (Standards) Regulations*.
44. Pursuant to reg.27(1) of *Regulation 17* of 2003 “The *Australian Vehicles Standard Rules* contained in schedule 6 are made as regulations under the Act and are a law of the Territory”.
45. The *Australian Vehicle Standards Rules* as contained in schedule 6 are, pursuant to rule 1, referred to as “the Vehicle Standards” throughout the rules. Pursuant to rule 3:
- (1) The dictionary at the end of the Vehicle Standards defines certain words and expressions, and includes signpost definitions to words and expressions defined elsewhere in the Vehicle Standards.
 - (2) The dictionary is part of the Vehicle Standards.
 - (3) The definition in the Vehicle Standards applies to each use of the word or expression in the Vehicle Standards, unless the contrary intention appears.
46. I note however that nowhere in rule 3 does it assert that the definitions in the *Rules* applies to “each word or expression in *the Motor Vehicles (Standards) Regulations*”. However, reg.4(2) of the *Motor Vehicles (Standards) Regulations* states as follows:
- “Unless the contrary intention appears, if a word or expression that is used in a regulation is defined for the purposes of the Australian Vehicle Standards Rules, the word or expression has the same meaning in the regulation as it has in the Australian Vehicle Standards Rules.”
47. In the dictionary at the back of the Rules at page 136, is stated:

“GVM, for a vehicle, means the maximum loaded mass of the vehicle:

- (a) specified by the manufacturer on an identification plate on the vehicle; or
- (b) if there is no specification by the manufacturer on an identification plate on the vehicle or the specification is not appropriate because the vehicle has been modified – certified by the vehicle registration authority.”

48. There is no definition for “gross vehicle mass” in the dictionary, and it is interesting to note that “GVM” as defined does not mean “gross vehicle mass”. The power to make regulations is granted to the administrator in s.138 of the *Motor Vehicles Act*, provided the regulations are not inconsistent with the Act.

49. Directly above the definition of “GVM” in the dictionary appears the following:

“GTM (gross trailer mass) means the mass transmitted to the ground.....”(etc)

50. If “GVM” was intended to mean “gross vehicle mass” it would have been simple to do the same as was done for “GTM”. However, for the reasons above set out I do find that “GVM” does mean and was intended by the Legislature to mean “gross vehicle mass”. The *Australian Vehicle Standards Rules* appear in schedule 6 of the *Motor Vehicles (Standards) Regulations* and therefore form a part of those *Regulations*. Whilst it has been an unnecessarily convoluted process, I find that “gross vehicle mass” therefore does have a meaning within the *Motor Vehicles (Standards) Regulations*, that being the definition that appears for “GVM” in the dictionary at the end of the *Australian Vehicle Standards Rules* which is in schedule 6 of the *Motor Vehicles (Standards) Regulations*. In accordance with reg.4(2) that meaning in the *Rules* has the same meaning in the *Regulations*. No contrary intention appears.

51. Further, in the *Motor Vehicles (Standards) Regulations* in reg.4(1) it is noted:

“these regulations” include the Australian Vehicle Standards Rules contained in schedule 6.

52. Accordingly, I find that the definitions in the *Australian Vehicle Standards Rules* are incorporated into and form part of the *Motor Vehicles (Standards) Regulations*. If this were not intended then it would simply be a matter of having a different interpretation for a word or expression in each instrument.

53. Having already found that “GVM” is a reference to “gross vehicle mass” does the definition of that term in the dictionary in schedule 6 assist in the instant case. That definition is set out in full in paragraph 47 of these reasons. The first thing to note is that a certification by the “vehicle registration authority” (which is what I appear to have in ExD1) is only relevant if:

There is no specification by the manufacturer on an identification plate on the vehicle; or

The specification is not appropriate because the vehicle has been modified.

54. ExD1 does not provide any assistance as to whether the “GVM” of “13000kg” was based upon a “specification by the manufacturer on an identification plate on the vehicle”, or what it is based on.

55. In my view, a further problem exists with ExD1. ExD1 is issued relying upon s119 of the *Motor Vehicles Act*. The relevant parts of that section for current purposes are as follows:

“All courts shall take judicial notice-

- (a) of the official signature of a person who holds or has held the office of Registrar or Deputy Registrar;

(ba) of, in relation to a vehicle of a kind to which the Road Transport Charges Laws apply, a certificate in writing under the hand of the Registrar, Deputy Registrar or an officer referred to in paragraph (b), that-

(ii) on the day specified in the certificate, the vehicle specified was registered as being of a specified configuration, or that it was in fact of a special configuration;

(c) of a certificate in writing under the hand of the Registrar, the Deputy Registrar, or an officer referred to in paragraph (b), that, on any day or during any period-

(iii) a motor vehicle was registered or licensed and the name of the person in whose name the vehicle was registered or licensed;

and such certificate shall be prima facie evidence of the matter contained in the certificate.”

56. In my view, a certificate under s119 must be limited to those matters which are permitted by that section to be certified. Any certification that goes beyond what is permitted by the section cannot be prima facie evidence of those non-permitted matters.
57. I will consider first the possibility that the certificate is relying upon s.119(ba)(ii). I do not know whether the Caterpillar Road Grader herein was a vehicle to which the “Road Transport Charges Laws” applied or not. But if they did, the certificate is limited to “the day specified in the certificate”. ExD1 does not specify a day to which the details in the certificate apply. In particular no mention of 12 May 2004 (the date of the offence) appears at all. The only date appearing on ExD1 (apart from telling me that the registration is due to expire on 30 March 2005) is the date the certificate

was purportedly signed, namely 22 September 2004. Further, “configuration” is defined in s.5(1) of the *Motor Vehicles Act*, and it is clear that this definition is not intended to include the gross vehicle mass of a particular vehicle. I find that s.119(ba)(ii) of the *Motor Vehicles Act* does not permit (or give any evidentiary value to) any certificate which purports to assert what the gross vehicle mass of a particular vehicle was on a particular date. Accordingly, ExD1 can not and does not afford evidence as to what the “gross vehicle mass” of the Grader was on 12 May 2004.

58. If, in the alternative, the certificate is issued under s119(c)(iii) then firstly the certificate must again relate to a particular day or a particular period. ExD1 does not purport to do either. Further, there is nothing within this subsection (or anywhere else in s119) that permits a certificate to state (and be prima facie evidence) that on any particular date the “gross vehicle mass” or “GVM” of a particular vehicle was a particular amount. Accordingly, the assertion in ExD1 that the “GVM” of the Grader was “13000kg” is not something that appears to be permitted to be contained in a s119 certificate, and therefore it cannot be prima facie evidence of that fact. It has no evidentiary value.
59. I find that s119 does not permit a certification as to the gross vehicle mass of any vehicle by the Registrar or Deputy Registrar. This is a matter (along with a number of other matters) that should be able to be certified. Otherwise officers of the department will be required to attend court and produce original records in a number of prosecutions.
60. But that is not the end of the matter. As noted above (in paragraph 41 of these reasons), reg.38 of the *Motor Vehicle (Standards) Regulations* also deals with the issue of a certificate, and this does expressly relate to “the GVM of a vehicle”. However, this regulation is of no assistance in the instant case as reg.38 specifically limits it’s operation “for the purposes of a

prosecution for an offence against these Regulations”. I am not dealing with an offence against those *Regulations*, but an offence against the *Traffic Act*.

61. In any event, there is nothing within ExD1 that assists (assuming that a s.119 certificate can assert this, which I find that it can't) in deciding what the “gross vehicle mass” or “GVM” of the Grader was on 12 May 2004. I do not know whether the registration for the vehicle was for 12 months or some other (and what) period. Further, it is clear that the gross vehicle mass for a vehicle can change depending upon what, if any, modifications to the vehicle are done. Accordingly, it is necessary in any prosecution of this type to be specific as to what the gross vehicle mass was on the day that the offending is said to have occurred.
62. The same problems exist in relation to ExD2. In addition in relation to ExD2 it doesn't even purport to refer to “gross vehicle mass” or “GVM” at all, and therefore could not be any evidence in this regard at all.
63. Accordingly, I find that both ExD1 and ExD2 are not prima facie evidence as to the “gross vehicle mass” or “GVM” of either the Grader or Dog Trailer on 12 May 2004. It follows that the prosecution has failed to establish that s39(1)(f) of the *Traffic Act* applies to this defendant.
64. The prosecution could have sought to prove what the gross vehicle mass of the Grader was on 12 May 2004 through other means, but did not attempt to do so. S.119 of the *Motor Vehicles Act* in it's current form is not broad enough to permit a certificate to state what the gross vehicle mass of the Grader was on 12 May 2004.
65. I have no doubt that the legislature intended that persons in the position of this defendant should be losing his heavy vehicle licence for five years as a result of his driving on 12 May 2004. However, the prosecution has failed to establish what it is required to in order to bring s.39(1)(f) of the *Traffic Act* into play. In my view, I have no choice other than to decline to rule that

by force of the finding of guilt on 6 September 2004 the defendant's heavy vehicle licence was disqualified for a period of five years.

66. I suggest that s119 of the *Motor Vehicles Act* might be reviewed to enable the Registrar or Deputy Registrar to certify all that may be necessary in relation to all possible prosecutions involving "vehicles", such that the courts can then give judicial notice to their signatures, and accept the certificates as prima facie evidence of the matters contained therein.
67. I will hear counsel on any incidental rulings or orders that may be sought.

Dated this 29th day of October 2004.

D TRIGG SM
STIPENDIARY MAGISTRATE