

FROM : TCS

FAX NO. : 919053885006

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1

Arraignment.

TUESDAY, SEPTEMBER 1, 1998

LUNCH RECESS

UPON RESUMING:

(1:30 p.m.)

MS. FARES BANNON: The Jordon matter first, please.

THE COURT: Thank you.

MR. LAGDEN: Good afternoon, Your Worship.

THE COURT: Good afternoon, sir.

MR. LAGDEN: I appear as agent for Mr. Jordon. We're ready to proceed.

THE COURT: Thank you. Mr. Jordon, you are charged that you did on the 5th day of October 1997, at the City of Brantford, did unlawfully drive a motor vehicle on Garden Ave at Lynden Road, Brantford carelessly, contrary to Section 130 of the Highway Traffic Act of Ontario. How do you plead to this charge, sir?

MR. LAGDEN: Your Worship, before he enters a plea I wonder if I might just have a look at the information for a moment.

THE COURT: Thank you.

MR. LAGDEN: Your Worship, prior to entering a plea I would ask you to entertain a motion. I would request the court consider whether or not it has the jurisdiction to hear the charge, as I'm going to suggest that

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Submissions by Mr. Lagden.

the charge has not been laid within the rules as specified by the Provincial Offences Act. I don't think there's any argument with the fact that the defendant was originally given a Part I certificate of offence by Officer Cushman on the 5th of October. That charge was subsequently withdrawn in Provincial Offences Court on the 28th of January 1998, at which time I was present in court. And at that time the Part III information that you now have in front of you made its first appearance. Although at that time there was no personal service on it.

Section 21(2) of the Provincial Offences Act states that:

"Where a summons or offence notice has been served under Part 1 no proceedings shall be commenced under subsection 1 in respect of the same offence except with the consent of the Attorney General or his or her agent."

In this matter the permission to re-lay the charge as per the requirements of Section 21(2) of the Provincial Offences Act was granted by Chris Szoke who is the Provincial Prosecutor.

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I would respectfully suggest to this court that Mr. Szoke does not have the requisite authority to give such permission.

Provincial prosecutors obtain their legislative authority to act on behalf of the Crown from a 1973 amendment to the Crown Attorney's Act, R.S.O. 1980. Specific provisions of the Act which apply to provincial prosecutors are as follows:

Section 7(1):

"The Attorney General may by order authorize persons appointed under the Public Service Act to be provincial prosecutors."

Section 7(2):

"A provincial prosecutor may be a person who is not a member of the bar."

Section 7(3) dealing with Jurisdiction:

"A provincial prosecutor shall act anywhere in Ontario as directed by the Director of Crown Attorneys of the Ministry

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of the Attorney General."

Section 7(4) deals with the provincial
prosecutor's duties. It states that:

"A provincial prosecutor
shall conduct such
prosecutions for
provincial offences and
offences punishable on
summary conviction as
are delegated to him by
the Crown Attorney for
the county or provisional
judicial district in
which the provincial
prosecutor acts and shall
be subject to the
direction and supervision
of the Crown Attorney."

When you look at Section 11 dealing with the
Attorney General's Agent under the Crown
Attorney's Act, it says:

"Every Crown Attorney and
every provincial
prosecutor is the agent
of the Attorney General
for the purposes of the
Criminal Code of Canada."

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Submissions by Mr. Lagden.

Section 7(1) and (2) authorizes the Attorney General to appoint as provincial prosecutors persons who may or may not be members of the bar and who are appointed under the Public Services Act.

The duties of such provincial prosecutors are enumerated in Section 7(4). However, when you read this section in conjunction with Section 11 of the Act and other federal and provincial legislation, the scope of the provincial prosecutor to act for the Crown is broadened.

When we're looking at the authority to act for the Crown, and we look specifically at Provincial Offences prosecutions, Section 7(4) of the Crown Attorney's Act specifically states that a "provincial prosecutor shall conduct such prosecutions for provincial offences...as are delegated to him by the Crown Attorney...and shall be subject to the direction and supervision of the Crown Attorney."

That wording would appear to clearly authorize provincial prosecutors to act for the Crown in the prosecution of all provincial offences. However, this section may have to be read subject to the Provincial Offences Act which was passed subsequent to the Crown Attorney's Act.

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Submissions by Mr. Lagden.

In 1979, the Provincial Offences Act was passed in Ontario to establish a code of procedure for the disposition of all offences arising out of provincial legislation. The Act contains its own definition of the term "prosecutor" as follows:

Section 1(1)(h):

"'Prosecutor' means the Attorney General or, where the Attorney General does not intervene, means the person who issues a certificate or lays an information and includes counsel or agent acting on behalf of either of them."

Therefore, the power of a provincial prosecutor to conduct prosecutions for the Crown under the Provincial Offences Act, may be dependant upon the office of provincial prosecutor falling within the meaning of "prosecutor" under the Act.

A close reading of the Act reveals that a provincial prosecutor may prosecute under the Provincial Offences Act if he is acting as

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"counsel or agent" for the Attorney General. However, the Provincial Offences Act does not give us any guidance as to the meaning of "counsel or agent of the Attorney General" for the purposes of that Act.

It may be of some assistance to examine the procedure before the Provincial Offences Act came into effect. Prior to the Provincial Offences Act, the prosecution of provincial offences in Ontario was governed by the Summary Convictions Act. Section 3 of that Act incorporated by direct reference Part XXIV of the Criminal Code which sets out the procedure for summary conviction matters including a definition of "prosecutor" in Section 720 of the Code.

"'Prosecutor' means an informant of the Attorney General or their respective counsel or agents."

By virtue of Section 11 of the Crown Attorney's Act, provincial prosecutors were made "agents of the Attorney General" for the purposes of the Criminal Code including Part XXIV dealing with summary conviction procedure. So under the Summary Conviction Act, provincial prosecutors had clear legislative authority to conduct the prosecution of provincial offences as "agents

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of the Attorney General." But, the Provincial Offences Act does not specifically adopt the summary conviction provisions of the Criminal Code. Nor does the Crown Attorney's Act make the provincial prosecutor an "agent of the Attorney General" for purposes of the Provincial Offences Act.

Therefore unless Mr. Szoke, and unfortunately he's not here today, but unless Mr. Szoke can show that he specifically, by name as opposed to by virtue of his position as a Provincial Prosecutor in Brant County, has been appointed as an agent of the Attorney General, I respectfully suggest he does not have the authority to grant the requisite consent to re-lay a charge on a Part III information. I would suggest that that has to come from a Crown Attorney in this jurisdiction.

If the court agrees with this position I would request the court either consider dismissing or quashing the charge, due to the fact that it has been laid improperly and there is no jurisdiction to continue. Thank you, Your Worship.

THE COURT: Thank you, sir. Just so I have your argument straight, you are not arguing that Mr. Szoke does not have the authority to prosecute matters in this courtroom, but he has no authority to give permission to

Submissions by Mr. Paras Bannan.

reissue under Part III?

MR. LADDEN: Absolutely correct. There's no question he has the authority to prosecute, but from my understanding and reading of these various acts, I don't think he has the right to grant permission to re-lay the charge. I think that should come from the Crown Attorney himself.

THE COURT: Thank you. It probably puts you in an awkward position, ma'am, but are you prepared to respond to the motion put before the court by Mr. Ladden?

MS. PARES-BANNON: Only briefly, Your Worship. First of all it seems to me that this could have all been taken care of rather than waiting until date of trial to sort this out. This could have been taken care of, I imagine, with a phone call to Mr. Szoke. That phone call may have had the effect of determining one of two things:

One, apart from the legislation, apart from any statutory authority, there may well be, based on what I have seen, authority provided to Mr. Szoke at the time that he takes his oath with regard to being a provincial prosecutor. And that is a contractual matter. It's not a legislative matter.

The other item is it may well be that Mr. Szoke did speak to Mr. Ayre about this. And this is why I say a phone call would have

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certainly taken care of this. It may be that Mr. Szoke spoke to Mr. Ayre about this and he was acting on Mr. Ayre's authority or perhaps someone else within our office. I don't have that information. At any rate, sir, it seems to me that the legislative scheme is now determinative. One of those two possibilities, both of those two possibilities may be in fact the case. I cannot provide the court with that information. I don't know Mr. Szoke's personal circumstances as to whether he spoke to Mr. Ayre or he has authority by way of contract.

THE COURT: Is Mr. Ayre in the building today?

MS. FARES BANNON: Mr. Ayre has been in and out of the building. I don't know what his afternoon schedule is.

THE COURT: Would you like a short recess so you can at least speak to Mr. Ayre and then clearly put your position on the record?

MS. FARES BANNON: I will speak to Mr. Ayre. I don't know if I'll be in a position to enunciate the Crown's position at that time, but I will certainly speak to Mr. Ayre when he is available.

THE COURT: Thank you. On that basis I want to give the Crown an equal opportunity to argue their side of the motion. I can indicate to both parties before the court the fact that I will not render a decision on

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this matter today because I want to look into the legislation myself. But I will give you the opportunity to speak to Mr. Ayre and give you the opportunity to put your argument before the court before I make that ruling.

MS. FARES BANNON: If that's the case, Your Worship, my suggestion would be it would perhaps be more helpful to have Mr. Szoke here. He will be able to answer the questions that Your Worship and Mr. Lagden might have. I won't be able to. And I'm wondering if Your Worship has already determined that it will not be dealt with today, perhaps it would be wiser to put it to a day when we know Mr. Szoke is available.

THE COURT: Well, firstly I would like both sides of the argument before me today. And the reason that I would like that is because, as you are probably aware, I am not going to be in this jurisdiction any longer which means that I am now seized with this matter. I am going to have to come back here at some point in time and I would only like to do it on one occasion so I do not upset schedules in other jurisdictions.

MS. FARES BANNON: I'm not certain about this, Your Worship, but I'm wondering if Your Worship is seized when Your Worship has not taken a plea?

THE COURT: Well, I am seized with this part of the motion in any event.

MS. FARES BANNON: Very good. I can speak

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with Mr. Ayre, sir.

THE COURT: Thank you. On that basis, Mr. Lagden, I am going to hold the matter down to give the Crown an opportunity to at least speak to Mr. Ayre to put the Crown's position properly before the court. We will stand the matter down.

MR. LAGDEN: Maybe I could just put on the record, perhaps to my friend, I apologize doing this to you. I was not aware Mr. Szoke was not going to be here until 11:30 or 11 o'clock this morning when he told me.

MS. FARES BANNON: Oh, it's okay.

MR. LAGDEN: So I am not trying to sandbag you personally.

MS. FARES BANNON: It's okay.

THE COURT: I am prepared to stand this matter down at this time. We will deal with the other matter before the court. And we will take a short recess and possibly you can check with Mr. Ayre as to his availability to speak to you. And at this time, Mr. Lagden, are you agreeable to returning at 2:30 this afternoon?

MR. LAGDEN: No problem.

THE COURT: All right. We will stand the matter....

MR. LAGDEN: Would you have any objection to my releasing the defendant, if you are not going to be rendering a decision today regardless?

THE COURT: I can tell you I will not render

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5 a decision today, and the defendant can feel
free to be excused. You can act as his
agent. And any and all witnesses that are
before the court in the Jordan matter are
free to go and you will be resubpoenaed to
court on the basis of a ruling that I have to
make at some point in time. Thank you. All
parties may be excused if they are involved
in the Jordan matter. Thank you.
10 MS. FARES BANNON: Thank you very much.

15 REPORTER'S NOTE: AT THIS TIME ANOTHER MATTER
WAS BEING DEALT WITH. IT HAS BEEN DULY
RECORDED, BUT NOT REQUIRED TO BE TRANSCRIBED
AT THIS TIME.

20 THE COURT: Mr. Lagden, that appears to be
the last matter that we have on the list save
and except your matter. The one thing you
did not indicate in your argument, you
indicated that your client was summoned to
court on January the 27th, 1998 on a Part I
summons. And what was that offence for?

MR. LAGDEN: Careless driving.

THE COURT: It was for careless driving?

MR. LAGDEN: I can give you a copy of the
certificate if you wish.

25 THE COURT: No, no. I will take your word as
an officer of the court. I just wanted to
know....

30 MR. LAGDEN: Careless driving, same offence
date and location. And it was withdrawn. It

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Submissions by Ms. Fares Bannon.

was the 28th of January not the 27th.

THE COURT: Oh, I am sorry. The 28th.

MR. LAGDEN: In assignment court downstairs, courtroom number three.

THE COURT: All right. Thank you. I will give you half an hour.

MS. FARES BANNON: I think I should be able to speak to him in that amount of time.

THE COURT: All right. Just, you know, you can indicate to Mr. Ayre I would just like the Crown's portion of the argument before the court today, and I will make a ruling on it at some point in time. I can indicate that it is probably going to be November that I will make a ruling, late November. I have already got the schedules prepared for Guelph and Kitchener.

MS. FARES BANNON: Of course.

THE COURT: It just makes it easier. If that is agreeable with everyone?

MS. FARES BANNON: I just want to indicate to Your Worship, I may be able to put facts before you. I don't know that I'd be able to get an argument together. I can indicate to you what I can find out, but that's the best I can do.

THE COURT: Thank you. And I will make a ruling based on whatever you give me. This court will recess until 2:30 and we will deal with the issue at that time.

MR. LAGDEN: Thank you.

MS. FARES BANNON: Thank you.

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Submissions by Ms. Fares Bannon.

THE COURT: Thank you.

R E C E S S

UPON RESUMING:

(2:30 p.m.)

THE COURT: Yes, ma'am?

MS. FARES BANNON: As I suspected, Your
Worship, I can only provide you with scanty
facts. I cannot make argument on today's
date. In light of the potential seriousness
of the ruling in this matter, the Crown's
request is to have it adjourned. The fact
which I'm able to provide Your Worship is on
the 1st of September 1997 Mr. Ayre provided
Mr. Szoka with a letter, in which Mr. Szoka
was named as being an agent of Mr. Ayre's and
of the Attorney General for this specific
purpose; that is the re-laying of Part
III's.

THE COURT: On what day?

MS. FARES BANNON: September 1st, 1997.
Coincidentally Mr. Ayre has been with our
office exactly one year and that's why the
date sticks out in his mind. He informs me
that he also provided, Mr. Ayre, some time
this year 1998 with a subsequent letter
indicating the same thing. I believe Mr.
Ayre is the most conscientious person and I
believe the case is he felt that perhaps he

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should update his earlier written authority, and that's, in fact, what he did do. Mr. Szoke isn't here. I don't have either of those letters. And then Mr. Ayre was not able to provide any further information as to any contractual delegation which would have been provided to Mr. Szoke upon commencing his employment with the Ministry.

THE COURT: Is there any indication what either of those letters say?

MS. FARES BANNON: As I said, Mr. Ayre assures me that the letter from September 1st, 1997 specifically names Mr. Szoke and gives him the authority through Mr. Ayre and the Ministry of the Attorney General, and in fact, the Attorney General for this specific purpose ie: That is the laying or shall we say the ordering of laying of Part III offences. The impression I got from Mr. Ayre, and I don't want to say these were exact words and the constable was present, it seemed to me that he was envisaging this specific situation where there was a Part I. The Crown wanted a Part I pulled and a Part III laid. And he said to me that that's exactly what the letter was for. The authority directed itself specifically to that situation. And then again he said he provided Mr. Szoke with an updated letter some time in 1998.

THE COURT: So the Crown's position would be that, in fact, Mr. Szoke has the authority as

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Submissions by Ms. Fares Bannon.

delegated by the Crown Attorney to act as agent for the Attorney General under Section 21(2)? That is the pertinent section for giving the authority to the police to re-lay the information.

MS. FARES BANNON: Yes. That is, in fact, the Crown's position. However, again, I cannot speak with Mr. Szoke. He is not available. Mr. Ayre is not able to provide any further information. And it's our request on today's date, because of the potential scope of Your Worship's ruling, that we would be allowed an adjournment in order to make written submissions on this. It seems to me, sir, to be almost negligent to provide the court with such scanty information and somehow say that that's argument. That's not our argument and we would like an opportunity to make argument.

THE COURT: I will allow you an adjournment. And I will indicate to both parties before the court that I would welcome written submissions on behalf of both, and I will give both of you ample opportunity. Mr. Lagden, if you do not feel that you want to put anything further before the court other than your oral submissions that you made today, I am quite prepared to accept that.

At this time for the purposes of this ruling, I will order a transcript and that transcript will be issued not only to myself, but to

both the Crown and Defence counsel. If you want to put the matter over for a certain length of time and written submissions can be sent to me, and I will come back with a ruling based on your written submissions.

MS. FARES BANNON: Does Your Worship have a specific address? I know Mr. Szoke would probably address it to our office, but I don't know if that's going to be sufficient.

THE COURT: It should go to the Kitchener court. I am there most of the time.

MS. FARES BANNON: All right.

THE COURT: That is at 200 Frederick Street in Kitchener.

MR. LAGDEN: And the postal code?

THE COURT: I knew you were going to ask me that question.

MR. LAGDEN: I got it.

MS. FARES BANNON: Your Worship would like those submitted by what date?

THE COURT: I want to give you people reasonable time. Mr. Lagden, are you going to send in any further written submissions?

MR. LAGDEN: I can give you a copy of my, obviously I had my submissions written today. I can give you a copy of that if you wish. Basically that is going to be in the transcript that you have ordered. I don't honestly believe I have anything further to add.

THE COURT: All right.

MR. LAGDEN: Other than that, Your Worship.

I can give you a copy of my written....

THE COURT: No. I need not get that from you because I will get that in the transcript. I will give both parties an opportunity, again, on a specific date if you wish to make any further submissions outside of the written submissions. I would ask that the Crown share their written submissions with Mr. Lagden, so if he has any other oral submissions to make to the court that can be done on the same date. Now, having said that, Madam Reporter, how long will it take to obtain a transcript?

COURT REPORTER: By the end of next week I can have it to Your Worship.

THE COURT: Is that being too pushed for you?

COURT REPORTER: No.

THE COURT: All right. The reporter indicates that she can have the transcript by next week. Mr. Lagden, you can pick your copy up here.

MR. LAGDEN: I beg your pardon, Your Worship?

THE COURT: You can pick your copy of the transcript up here at the court.

MR. LAGDEN: Yes.

THE COURT: And, Madam Reporter, you could drop the copy off at the Crown's office.

COURT REPORTER: Yes. One copy for the Crown and one for Defence.

THE COURT: And if you leave mine in one of the chambers up here I will drop in one

evening and pick it up.

COURT REPORTER: Okay.

THE COURT: Based on that, how long do you require to submit written argument?

MS. FARES BANNON: One month please.

THE COURT: All right. And have written argument to me by October the 16th. I will contact both the Crown's office and Mr. Lagden, your office, after I receive the written submissions from the Crown to see whether either one of you are going to have any further oral submissions to make. And on that basis we will reschedule for November the 23rd. Is that agreeable to all parties?

MS. FARES BANNON: Yes, sir.

MR. LAGDEN: All right. Depending on the time, Your Worship. I have nine o'clock court in Hamilton, but I can make myself available here for the afternoon.

THE COURT: Is the 24th any better?

MR. LAGDEN: The same thing.

THE COURT: What about the 30th?

MR. LAGDEN: The same thing. I'm nine o'clock Hamilton all three days, but available here in the afternoon.

THE COURT: Oh, well, let us make it for 1:30.

MR. LAGDEN: One thirty. On the 23rd?

THE COURT: That is fine with me. What I will do is I will schedule myself for this court on that day. And I would ask the Crown if, it is not too much of an imposition on

Mr. Ayre, if the court can be supplied with a copy of that letter?

MS. PARES BANNON: I will make that request to Mr. Ayre, Your Worship.

THE COURT: If Mr. Ayre does not feel that it is proper, that is fine. As you indicated the ruling could have a lot of implications and I want to make sure that I cover off every aspect of it. And you will see that Mr. Lagden gets a copy of your written submissions?

MS. PARES BANNON: I have already noted that, Your Worship.

THE COURT: Thank you. On that basis this matter will be adjourned to November the 23rd at 1:30 in the afternoon for a ruling on the motion.

MR. LAGDEN: That's this court?

THE COURT: That will be this courtroom. Mr. Lagden, I know it is not normal for a Justice of the Peace to ask, but might I have one of your cards please so I can get a hold of you.

MR. LAGDEN: Certainly.

THE COURT: Thank you, sir. All right. The matter is adjourned on that basis to November the 23rd at 1:30 in the afternoon for a ruling. All parties are free to go.

MR. LAGDEN: Thank you, Your Worship.

THE COURT: Thank you. All parties may be excused. Thank you.

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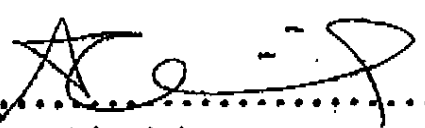
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Certification.

5 THIS IS TO CERTIFY THAT
the foregoing is a true and
accurate transcription from my
stenographic recordings made
herein, to the best of my skill
and ability.

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A.M. Chimniak

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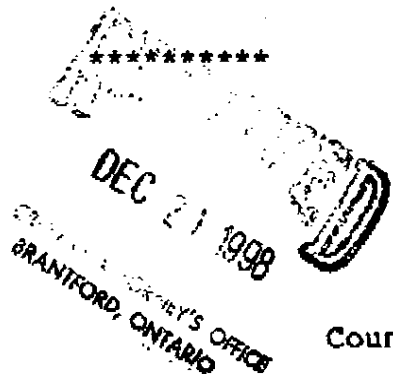
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ONTARIO COURT (PROVINCIAL DIVISION)**HER MAJESTY THE QUEEN****v.****ANDREW G. JORDON**

REASONS FOR JUDGMENT

BEFORE HIS WORSHIP JUSTICE OF THE PEACE F. SQUIRES
on November 23, 1998, at BRANTFORD, Ontario

OFFENCE: s.130 H.T.A. - Careless Driving

APPEARANCES:**G. Griffin, Esq.****I. Lagden, Esq.****Provincial Prosecutor****Counsel for the defendant**

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Monday, November 23, 1998

HIS WORSHIP: Good afternoon, gentlemen.

MR. LAGDEN: Good afternoon, Your Worship.

HIS WORSHIP: I understand that there is only one matter on the list this afternoon, that is the matter of Mr. Jordon. This matter has been put over for a decision on a motion made by Mr. Lagden. At the time that the matter was put over, the Crown's office, in order to prepare for their portion of the argument, asked for an adjournment. That portion of the argument was supplied to me in writing approximately, I better look now, approximately a month ago. I trust, Mr. Lagden, you received copies of the Crown's argument?

MR. LAGDEN: I did, Your Worship.

HIS WORSHIP: Did you have anything to say with regards to any of the Crown's argument?

MR. LAGDEN: I would just like to make a couple of very brief comments based on the information that was supplied to me by the Crown's office. The Crown's argument seems to be a three-pronged comment. The first one they say that Mr. Szoke has the contractual arrangement and, therefore, has the right to relay or give permission for relays. I would suggest to you, Your Worship, that that's the whole point of what we are doing here. There's absolutely no basis in law for that to be true, and when

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Submissions

we deal with their second point, which is specific authority, the fact, quite honestly, that Mr. Ayre has authorized Mr. Szoke in writing according to Appendix A, the letter that I received as a copy of it, the fact that that letter, in itself, exists would tend to show me that the Crown supports my position that Mr. Szoke does not have the automatic right to agree to relay -- get permission for relays of charges under section 22 (2) of the Provincial Offences Act. If they honestly believe that, that letter is redundant, and when we deal with the legislature and the case that they cite for that, Regina versus Luz, L-U-Z, I would suggest that that really is of no value to the court. That case deals with a Provincial Criminal Crown Attorney being able to delegate authority to a Federal Crown to prosecute a provincial criminal matter because there were also federal criminal matters laid at the same time out of the same set of circumstances which is absolutely nothing on point of what we are dealing with at bar here. And the third point here, legislative authority, once again, the case they supply, Regina versus Harrison, deals specifically with people acting within the scope of their authority. That is said, firstly, in the head note on page 279 and, again, three quarters of the way down the page at 285.

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Reasons for Judgment - Squires, J.P.

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And, basically, the issue at bar here is whether the Provincial Prosecutor is acting within the bounds of his authority. So, once again, I would suggest that that case isn't really relative to the issue at hand. All in all, I still don't think the Crown has shown by the submission it made to Your Worship that the Provincial Prosecutor has the right to relay -- give authorization for a relay of the charge from a Part 1 to a Part 3. Thank you, Your Worship.

HIS WORSHIP: Mr. Griffin, is there anything else that you wish to add?

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MR. GRIFFIN: In view of the fact that nobody mentioned this simple matter to me prior to coming here, no, other than simply what my friend just said, inferring that Mr. Szoke does not have automatic right, I don't think that was the argument of the Crown that Mr. Ayre had given him the authority.

HIS WORSHIP: Thank you.

R E A S O N S F O R J U D G M E N T

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SQUIRES, J.P. (Orally):

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It would appear that this matter was before the court on September the 8th, and on September the 8th, Mr. Lagden made a motion on behalf of the defendant, Mr. Jordon, as to the jurisdiction of the court to hear the charge before the court at that time, which

6.
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was a charge of driving carelessly, contrary to the Highway Traffic Act, section 130.

Mr. Lagden argues that because the original charge of careless driving was withdrawn under Part 1 of the Provincial Offences Act, the Provincial Prosecutor does not have the authority under section 21 (2) of the Provincial Offences Act as a Provincial Prosecutor is not an agent for the Attorney General.

The Crown argues that the Provincial Prosecutor is an agent for the Attorney General in accordance with section 10 of the Crown Attorney's Act with respect to the Criminal Code, and the law of agency would appear to extend that proposition such that a Provincial Prosecutor is an agent under the Provincial Offences Act.

The Crown further argues that the Provincial Prosecutor is acting within his authority based on a direction in writing to the Provincial Prosecutor giving to him the authority to relay informations pursuant to the Provincial Offences Act. The position of the Crown based on legislation and the common law interpretation of it is whomever the Attorney General (or her or his agent) appoints as an agent is an agent.

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I quite agree with that comment. I would point out, in the opinion of this court, that the Crown Attorney's Act does not supersede the Provincial Offences Act, however, it runs in conjunction and compliance with the Provincial Offences Act. Section 21 (2) of the Provincial Offences Act reads: "Where a summons or offence notice has been served under Part 1, no proceeding shall be commenced under subsection (1) in respect of the same offence except with the consent of the Attorney General or his or her agent." The question at bar is, is the Provincial Prosecutor an agent for the Attorney General for the purpose of section 21 (2) of the Provincial Offences Act? If not, does the Crown Attorney have the authority to delegate the Provincial Prosecutor as such?

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Clearly, the Provincial Prosecutor has the authority to conduct prosecutions for the Provincial Offences Act and offences punishable by summary procedure as set out in section 6 (4) of the Crown Attorney's Act. Thus the importance of section 10 of the Crown Attorney's Act which allows the Provincial Prosecutor to act as an agent for the Attorney General on summary conviction matters under the Criminal Code. I note the wording in section 10 is very specific in that it reads: "Every Crown Attorney and

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every Provincial Prosecutor is the agent of the Attorney General for the purposes of the Criminal Code." This section makes no mention of the Provincial Offences Act even though it clearly refers to a Provincial Prosecutor. It is clear by the wording of this section that the legislation authorizes the Provincial Prosecutor to act as an agent for the Attorney General for one purpose only, and that purpose is for the purpose of the Criminal Code, and, in particular, summary conviction matters. Section 6 (4) of the Crown Attorney's Act indicates a Provincial Prosecutor shall conduct prosecution for the provincial offences as are delegated to him by the Crown Attorney and shall be subject to the direction and supervision of the Crown Attorney. The key words in the opinion of this court in this section are the words "shall conduct prosecutions as are delegated to him by the Crown Attorney". This may very well include suggesting what charges may be laid prior to the Certificate of Offence being certified by the officer or prior to the swearing of an Information. This, however, is within the jurisdiction of the Crown Attorney to delegate such authority.

The question the court must ask is does the Crown Attorney have the authority to delegate or designate the Provincial

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Prosecutor as an agent for the Attorney
General?

In the opinion of this court, only the
Attorney General may make such delegation.
It is, therefore, the opinion of this court
that the Provincial Prosecutor does not have
the authority to act pursuant to section 21
(2) of the Provincial Offences Act. This
court, therefore, has no jurisdiction over
this matter, and it would appear to be a
nullity, and it shall be marked as such.
Thank you, gentlemen.

MR. LAGDEN: Thank you. For purposes of
clarification, Your Worship, when you
started your judgment, I believe you said
"September the 8th", and I think you will
find it was September the 1st.

HIS WORSHIP: If I said "September the 8th",
then the correction shall be made to that.
In fact, it was September the 1st.

MR. LAGDEN: Thank you.

HIS WORSHIP: Thank you. And the defendant
is free to go. Thank you.

MR. LAGDEN: I would ask Your Worship for a
copy of that judgment.

HIS WORSHIP: I will provide all three in
this courtroom, the court reporter, the
Crown and the defense a copy of my notes
which were changed as I was reading it in
some places. I am quite content that you
have them, and, of course, if this matter is

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going to go any further, it will, in fact,
be guided by a transcript and not my notes
that I use because I do not want a whole lot
of people seeing those. Thank you. This
court stands adjourned until three o'clock.

THIS IS TO CERTIFY THAT the foregoing is
a true and accurate transcription from my
stenographic recordings made herein, to
the best of my skill and ability.

.....*Cindy Vanexem*.....
Cindy Vanexem, C.S.R.,
Certified Court Reporter