

** Unedited **

Indexed as:

R. v. Abonyi

Between

Marina Abonyi, appellant, and
Her Majesty The Queen, respondent

[1994] O.J. No. 2859

DRS 95-04815

**Ontario Court of Justice - Provincial Division
Toronto, Ontario
Hryn Prov. J.**

September 29, 1994.
(7 pp.)

Motor vehicles — Licensing and regulation of drivers — Licence, suspension of — Requirement of notice of suspension — Offences — Driving while disqualified or suspended.

The accused appealed conviction for driving under suspension. Some years ago, the accused had received a fine, which she paid one day late, thereby incurring interest of \$3.75. Eventually, due to her failure to pay the \$3.75, the appellant's driver's licence was suspended. There was no question that the appellant had been driving at the relevant time, and that her licence had been suspended. However, the appellant argued that she had never received notice of the suspension.

HELD: The appeal was allowed and the appellant was acquitted of the charge. The court decided the case on the issue of disclosure. It was not satisfied that the Crown had disclosed information to the accused which would have enabled her to investigate the reason she was not informed of the suspension. For example, she had not received disclosure of the Canada Post Acknowledgement of Receipt which might have helped her investigate the issue. Without such disclosure, it was impossible for the appellant to establish that it was through absence, accident, illness or other cause beyond her control that she did not know her licence had been suspended. Given the fact that the amount involved was \$3.75, and that it had been unpaid since 1989 with no government action until 1993, it would be unfair to remit the matter for a new trial.

J. Stinson, agent for the respondent.

A. Greenspoon, student at law, agent for the appellant.

¶ 1 **HRYN PROV. J.** (Orally):— The accused was convicted of driving under suspension. There is no issue that she was driving, and there has been no argument made that she was not under suspension. The only issue is whether she received notice of the suspension.

¶ 2 Section 52 states that upon registered mail being sent to the address of the person to whom the licence was issued at the latest current address on the records of the Ministry, that it is deemed to be received on the fifth day after the mailing "unless the person to whom notice is given establishes that he or she did not, acting in good faith, through absence, accident, illness or other cause beyond his or her control, receive the notice."

¶ 3 As I indicated, there is no issue she was driving; there is no issue being made now that she was under suspension.

¶ 4 I do not have exhibits one or two in front of me and that caused me some concern, but I will deal with the matter.

¶ 5 I have no hesitation, having looked at the transcript that she, the defendant, has established that she did not personally receive the notice, that she did not know that she was under suspension. So the only issue is whether she has established that she was "acting in good faith"; and that it was "through absence, accident, illness or other cause beyond her control" that she did not know this.

¶ 6 I am more than satisfied that the evidence indicates that she personally did not know she was under suspension.

¶ 7 The suspension was for an amount of three dollars and seventy-five cents, dating back years. It is not a case where a person does not pay a substantial fine that they would obviously be aware of. This is where a fine was paid but it was a day late. So for this three dollars and seventy-five cents interest, she was suspended.

¶ 8 The difficulty is for an accused to defend herself when the only information the accused may have is: I didn't get notice. I really don't know why. I don't know what happened; whether the registered mail came, where it went. So that it becomes difficult for the defendant to come to court and present that "other cause beyond his or her control".

¶ 9 If the person was absent from the country on the day of the registered notice, they would likely remember that. If there is some accident, the letter was lost, or if they were ill, they would remember that; but it is the "other cause" that creates difficulties. It is a difficult situation the defendant fines himself or herself in.

¶ 10 One of the ways of trying to correct that difficult situation for the defendant is through full and proper disclosure. I am thinking specifically of a copy of the receipt card. It is called an "AR". What does "AR" stand for?

¶ 11 MR. STINSON: Acknowledgment of receipt.

¶ 12 **THE COURT:** Acknowledgment of receipt. If that material was disclosed to the defendant, the defendant could look to see whose signature it is, could follow through to come to court to have this defence of "other cause beyond his or her control". Without that proper disclosure, it becomes very difficult for the defendant to properly defend themselves and to meet this onus, which they must on a balance of probabilities.

¶ 13 So I find that in this case that first of all she does not receive proper disclosure and now it is used against her, because now it is being said: Well, you did not give us that "other cause". Investigation may have found that other cause for her.

¶ 14 MR. STINSON: I'm just wondering - Your Honour, if I could just interrupt for just one second. I hate to do it, but, I just - am I correct, again, in that my friend that's here today was not representing the defendant on that day, am I correct?

¶ 15 MR. GREENSPOON: That's correct. Although, our firm -

¶ 16 MR. STINSON: It was in your firm?

¶ 17 MR. GREENSPOON: That's correct.

¶ 18 MR. STINSON: That's the only thing I have - we don't have the actual agent here. So, I mean, it could be that the other agent had it and just hasn't placed it in the file. Who knows? We don't know if they did get full, complete disclosure because this wasn't the agent at trial.

¶ 19 **THE COURT:** Yes. I will deal with it in any event now, and the reason I'm doing that is because this has been some years and we are talking about three dollars and seventy-five cents; we are talking about a situation where I don't even have exhibits one and two. So I will deal with the situation on the representations I have heard from counsel for the appellant.

¶ 20 There not having been the proper disclosure, as I said, she is entitled to at least a new trial. Given, as I have indicated, that the amount here was three dollars and seventy-five cents; it was interest on a fine; given that the Ministry did nothing about it from 1989 until 1993; given the appearances involved, trials, and now, retaining counsel for an appeal, it would be unfair to remit this matter for a new trial. In all the circumstances she is entitled to an acquittal, and she will be acquitted.

¶ 21 MR. STINSON: Just for clarification then, Your Honour, your decision is then that there was not - it is because of disclosure, not because of the arguments made and put forth?

¶ 22 **THE COURT:** Because of the wording in Miller, where on the balance of probabilities, the onus is on the defendant to fit within that section, but, how can the person come up with the "other cause" when they do not have full disclosure?

¶ 23 **MR. STINSON:** I just wanted to make sure that that's totally clear. That is was because of the disclosure issue that this fails.

¶ 24 **THE COURT:** The other matters, I am not deciding.

¶ 25 **MR. STINSON:** Okay.

¶ 26 **THE COURT:** It is limited to the circumstances of this case.

¶ 27 **MR. STINSON:** I just wanted to know for the purposes of case law in the future
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¶ 28 **THE COURT:** Yes.

¶ 29 **MR. STINSON:** - if this was to arise, I wanted it specifically on the note of disclosure.

¶ 30 **THE COURT:** Yes.

¶ 31 **MR. STINSON:** Thank you, Your Honour.

¶ 32 **THE COURT:** Again, your usual remedy would be for a new trial; but in the circumstances here, it is an acquittal.

¶ 33 **MR. GREENSPOON:** Thank you, Your Honour. I take it the fine will be remitted as well. It has been paid.

¶ 34 **THE COURT:** Yes.

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