

CITATION: R. v. Capobianco, 2010 ONCA 589
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COURT OF APPEAL FOR ONTARIO

MacPherson, Rouleau and Karakatsanis JJ.A.

BETWEEN

Her Majesty The Queen Ex Rel.
Regional Municipality of York

Appellant

and

Franco Capobianco

Respondent

Hans J. Saamen, for the appellant

Jordan Glick, as *amicus curiae*

Heard and released orally: September 8, 2010

On appeal from the decision of the summary conviction appeal court dated January 15, 2009, by Justice Peter Tetley of the Ontario Court of Justice, with reasons reported at 2009 ONCJ 744, allowing the appeal from the conviction entered on March 11, 2008 by Justice of the Peace Karen Walker of the Ontario Court of Justice.

By the Court:

[1] The respondent was tried and convicted of the driving offence “failing to drive in a marked lane” contrary to s. 154(1)(a) of the *Highway Traffic Act*, R.S.O. 1990, c. H.8 (HTA), for driving through an area of highway colloquially known as a “bull-nose”. A bull-nose is a term used by the Ministry of Transportation that refers to two solid white lines that start at a point and travel back towards the on-ramp of a highway. In the present case, the on-ramp led from the west-bound Rutherford Road onto the north-bound Highway 400. The bull-nose is, in effect, the meeting of the right-hand shoulder of the highway and the left-hand shoulder of the on-ramp onto that highway.

[2] Section 154(1)(a) of the HTA reads as follows:

Where a highway has been divided into clearly marked lanes for traffic,

(a) a vehicle shall be driven as nearly as may be practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained the movement can be made with safety;

[3] The French text of s. 154(1)(a) of the HTA reads as follows:

Si une voie publique est divisée en plusieurs voies nettement indiquées :

a) un véhicule doit circuler autant que possible entièrement à l'intérieur d'une seule voie sans la quitter tant que le conducteur ne s'est pas d'abord assuré qu'une telle manœuvre peut s'exécuter en toute sécurité;

[4] On appeal, the summary conviction appeal judge allowed the appeal and entered an acquittal on the basis that there was no evidence that the respondent's manoeuvre was not made in safety.

[5] The appellant was granted leave to appeal from this decision on two questions of law:

- 1) Does s. 154(1)(a) of the HTA contain one or two separate offences?
- 2) If the section creates two offences, is failing to drive in a marked lane by driving in or through a “bull-nose” an offence under s. 154(1)(a)?

[6] On June 21, 2010, O’Connor A.C.J.O. appointed Jordan Glick of the Law Office Henein & Associates as *amicus curiae*.

[7] The appellant concedes that there was no evidence that the respondent’s manoeuvre was not made in safety but submits that the summary conviction appeal judge erred in interpreting the word “and” as requiring that the Crown prove both that the respondent left the lane and that the manoeuvre was not made in safety.

[8] In the appellant’s submission, s. 154(1)(a) creates two separate offences: first, an offence for not driving as nearly as may be practicable entirely within a single lane and; second, an offence where the driver moves from the lane without first having ascertained that the movement can be made with safety.

[9] The appellant acknowledges that “and” usually implies a conjunction; that one must do both what precedes and what follows the word “and”. However, in the appellant’s submission, the use of the word “and” in s. 154(1)(a) is intended to create separate obligations upon a driver. The driver must both drive within a marked lane and, when he or she decides to move from the single marked lane, ascertain that it can be done

safely. This interpretation, in the appellant's view, flows from a reading of the HTA as a whole, from the context in which the word "and" appears in the section and from a review of other provisions of the HTA that use the word "and".

[10] We disagree. Although the use of the word "and" in the English version of the section might be seen as ambiguous because, in some circumstances, it can connect two separate obligations, the French version of the section does not allow for such an interpretation. The French version clearly provides for only one offence. It does not use the equivalent of the word "and". Roughly translated, the French version provides that the vehicle must travel as much as possible entirely inside a single lane without leaving it until the driver has assured himself that such a manoeuvre can be executed safely.

[11] The French version, therefore, does not allow for the conjunctive/disjunctive debate suggested by the appellant. It clearly provides for only one obligation and one offence. Assuming, therefore, that the use of "and" in the English version creates an ambiguity that does not exist in the French version, the meaning in the unambiguous French version is the one shared by both versions and is to be preferred. This interpretation is reasonable and, being the interpretation that is in common with both versions, is taken to reflect the actual intention of Parliament: see *R. v. Daoust*, [2004] 1 S.C.R. 217 at para. 28.

[12] Having concluded that s. 154(1)(a) of the HTA contains only one offence, we need not answer the second question of law on which leave was granted.

[13] The appeal is dismissed.

“J.C. MacPherson J.A.”

“Paul Rouleau J.A.”

“Karakatsanis J.A.”