

ONTARIO COURT OF JUSTICE
(TORONTO REGION)

BETWEEN:

HER MAJESTY THE QUEEN

Ex Rel. City of Toronto

Appellant

-and -

BARTOSZ DOROZ

Respondent

Reasons for Judgment

Heard: 27 April 2011; Judgment: 30 May 2011

(47 paras.)

On appeal from the Sentence imposed by Justice of the Peace S. Anstey of the Ontario Court of Justice, dated 22 July 2010, at Old City Hall, Toronto, Ontario.

Emma Luca, for the appellant

Vartan Manoukian, as *amicus curiae*

Libman J.: -

Introduction

[1] In *York (Regional Municipality) v. Winlow*, 2009 ONCA 643 the Ontario Court of Appeal unanimously held that the *Highway Traffic Act* offence of speeding¹ establishes a statutory penalty scheme that requires courts to impose the fines set out in the legislation, and that there is no discretion to reduce such fines. In this case, however, the trial justice of the peace imposed a suspended sentence following

the defendant's guilty plea to speeding, rather than the set fine. On appeal, the City of Toronto argues that it was not open to Her Worship to do so; in response, *amicus* submits that this is a proper disposition, although not for the reasons expressed by the trial justice. It is with this thorny issue that this provincial offences appeal case is concerned.

Guilty Plea Proceedings

[2] The defendant appeared in person, on his scheduled trial date, on a charge of speeding 57 kilometres per hour in a 40 kilometres per hour zone. With the consent of the prosecutor, he was permitted to plead guilty to the lesser speed of 50 kilometres per hour. After the presiding justice of the peace conducted a plea inquiry to make sure that the defendant understood he was giving up his right to a trial by pleading guilty, the clerk of the court read out the reduced charge and the defendant pleaded guilty.

[3] Justice of the Peace Anstey proceeded directly to sentencing, and provided these reasons for not imposing any monetary penalty:

The Court: Okay, there will be a finding of guilty now, sir. Your fine is \$42.50 – actually \$47 I think, if I could read it, and the Court is quite aware of case law of [Winlow], who says there is no jurisdiction to reduce the fine below the set which, in this case, would be \$25 for you. However, this Court feels that in taking guilty pleas it's only fair and just that people have a reasonable amount of reduction. We often see fines in speeding reduced by anywhere, hundred, hundred and twenty-five dollars, seventy-five dollars, so it is the practice of this Court in keeping with justice and fairness in the courts, to reduce anything in speeding under 50 to nothing. So, you will not pay anything. I am going to suspend your sentence.

[4] After explaining to Mr. Doroz that he did not have to pay a fine in light of his guilty plea, the Court invited the prosecutor, Ms. Woodford, to make any comments. The following exchange occurred:

The Court: And Madam Prosecutor, I don't know if you want to add anything to the record.

Ms. Woodford: Your Worship, just that it is the position of the Prosecution that the sentencing provisions in s.128(14), and supported in the *Winlow* case law, are such that there is not room for the ...

The Court: No jurisdiction for the Court to reduce it beyond the ...

Ms. Woodford: Exactly, no jurisdiction.

The Court: Yes.

Ms. Woodford: Other than in exceptional circumstances.

The Court: You like Mr. Winlow, I say I trump him.

Ms. Woodford: Of course, Your Worship.

The Court: Okay.

Ms. Woodford: Thank you for the opportunity to put that on the record.

The Court: Okay. Thank you, Madam Prosecutor.

[5] In accordance with the ruling of the trial justice, the clerk recorded on the back of the Certificate of Offence that the defendant pled guilty to a substituted offence, noted as 50/40, and that the finding of the Court was a suspended sentence.

Position of the Appellant Prosecutor

[6] The City of Toronto states that there are three issues that arise from the learned trial justice's disposition of a suspended sentence in these proceedings. These are: (1) whether or not the suspension of a sentence on a speeding offence amounts to a reduction of a fine, as precluded by the Ontario Court of Appeal decision in *Winlow*; (2) whether the justice of the peace could have arrived at the conclusion of suspending the passing of sentence by treating the defendant's fine for speeding as a minimum fine, in accordance with the relief from minimum penalty provision under s.59 of the *Provincial Offences Act*²; and (3) assuming it was open to the trial justice to impose a suspended sentence for speeding in law, whether this was an appropriate case to do so.

[7] In support of its position, the appellant essentially puts forth these arguments. With respect to the first issue, she states that a justice of the peace cannot impose a sentence that is not contemplated by the relevant legislation, given that the authority of such judicial officers is limited by statute; moreover, imposing a fine other than what is prescribed under s.128(14) of the *Highway Traffic Act* for the offence of speeding is in direct opposition to the Ontario Court of Appeal's decision in *Winlow*. As for whether it is open to a court to impose a suspended sentence for speeding, it is submitted that s.59(2) of the *Provincial Offences Act* can only apply when a minimum fine is prescribed, and that the language of s.128(14) cannot be interpreted as a minimum penalty, which thus bars the application of s.59. Finally, it is contended that the trial justice failed to elicit any basis for imposing a suspended sentence, and indeed, did not permit the parties to make submissions prior to imposing her sentence. In the result, there is nothing in the facts of this specific case warranting this exceptional disposition.

Position of Amicus

[8] As the defendant did not appear in response to the prosecutor's appeal in this case, Ms. Luca, acting with her office's customary fairness, agreed to notify the Paralegal's Association of these appeal proceedings, and to ask that a representative be nominated as *amicus*. Accordingly, Mr. Manoukian, a paralegal practitioner, agreed to act as *amicus*, and submitted written materials in response to the arguments put forth by the City of Toronto.

[9] In his factum, *amicus* contends that the *Winlow* decision did not deal with the issue of the "suspension" of a speeding fine, and that it therefore left open the possibility of such a disposition,

given that it was concerned instead with the strict adherence to a fine derived under s.128(14) of the *Highway Traffic Act*. Neither, it is submitted, does *Winlow* address the issue as to whether speeding fines can be considered as minimum fines for the purposes of s.59 of the *Provincial Offences Act*, and that, properly interpreted, “fixed speeding fines” can only be construed as a declaration of a minimum penalty, such that s.59(2) applies in the circumstances of this case. Finally, *amicus* agrees with the appellant that the trial justice erred in law by failing to permit the parties to make submissions on sentencing prior to imposing a suspended sentence. However, he argues that the end result was correct despite the process by which it was derived.

Analysis

[10] The issue at heart of the controversy in this appeal is whether the imposition of a suspended sentence for the *Highway Traffic Act* offence of speeding constitutes a sentencing disposition that is legally available, given the Court of Appeal’s decision in *Winlow*. Put another way, while *Winlow* holds that the set fines for speeding cannot be reduced, does it follow that the sentencing court is precluded from imposing a suspended sentence for speeding, in circumstances where it is appropriate to do so?

[11] Let me first briefly deal with the ancillary issues that arise in this case, and have been addressed by the parties. A justice of the peace or judge conducting a proceeding under Part I of the *Provincial Offences Act* clearly has jurisdiction to impose a penalty that constitutes a suspended sentence. Indeed, the sentencing options, which are stated on the back of the Certificate of Offence, expressly refer to a suspended sentence as an available disposition. There is no requirement that probation must accompany a suspended sentence: see *R. v. Coon Bros. Sand & Gravel (1988) Ltd.*, [2004] O.J. No. 194 at para. 12 (QL) (C.J.). Accordingly, while the trial justice of the peace does not possess inherent powers to impose a sentence that is not authorized by statute, there is no basis for holding that she was legally barred from doing so on account of the proceeding being for a Part I offence, as opposed to one under Part III, where the probation provisions of the *Provincial Offences Act* expressly apply.

[12] That said, I agree with both the appellant and *amicus* that the learned justice of the peace erred in imposing a suspended sentence by proceeding directly to sentencing, without first calling on the prosecutor and defendant to make sentencing submissions. This right of addressing the court on sentencing is set out in s.57(1) of the *Provincial Offences Act*. While the omission to comply with this provision does not affect the validity of the proceeding (s.57(2)), it gives rise to the type of problems illustrated by this case: the justice appears to have arrived at a choice of sentence without giving the parties an opportunity to advance their respective positions beforehand, and it is not clear on what factual basis the sentencing outcome selected was imposed. Stated shortly, on the record before her, it was not open to the trial justice to impose a suspended sentence. In particular, it was not appropriate to do so as a means of circumventing or “trumping” the *Winlow* decision, simply because the set fine for speeding could not be reduced.

[13] The question remains, however, whether it was open to the justice of the peace to impose a suspended sentence as a means of providing relief against a minimum penalty. It is to this issue that I now turn.

[14] Prior to *Winlow*, a number of courts considered whether the set fine for speeding qualified as a minimum penalty, and thereby triggered the application of s.59(2) of the *Provincial Offences Act* as a means of relief. The preponderance of cases held that s.59 was not available in such circumstances, as the set fine did not constitute a minimum penalty. Examples of this line of authority include *R. v. Bartolo*, [2004] O.J. No. 4237 (QL) (C.J.); *R. v. Kuntz*, 2004 ONCJ 269; *R. v. Chu*, [2005] O.J. No. 2261 (QL) (C.J.); *R. v. Pezzuti*, 2005 ONCJ 140; *R. v. Carter*, 2005 ONCJ 654.

[15] In the *Carter* decision, Justice Minard provided these reasons for holding that relief under s.59 of the *Provincial Offences Act* was not available in respect of speeding fines:

In my view the interpretation of section 128(14) where it refers to “is liable to” and then provides for the mathematical calculation is not ambiguous if one applies the test to be used with respect to the interpretation of statutes as provided by the Supreme Court of Canada in the *Bell Express Vu* decision, [2002] 2 S.C.R. 559, found at Tab 16 of the materials before me. It brooks in my view of no ambiguity. It provides for a clear fine based on a mathematical formula.

The argument of the respondent that it in effect provides for a statutory maximum fine is with all due respect nonsensical. It would have been very easy for the legislature, as it often does, in citing either a range of fines or specifically providing for a maximum fine, to simply use that language and of course that is not the language that has been used here. So if Parliament had intended it to be a maximum, it would have been very simple and easy for the provincial legislature to have done so when it has not. (paras. 11-12)

[16] I take the references in *Carter* to maximum fines to mean minimum fines for the purposes of s.59.

[17] The Court of Appeal in *Winlow* did not address the s.59 minimum penalty issue, as the legal matter that the appeal turned on was whether or not courts had a discretion to *reduce* the fines specified in s.128(14) of the *Highway Traffic Act*. Accordingly, it was not necessary to address the applicability of the *Provincial Offences Act* relief from minimum fine provision.

[18] Thus Justin Laskin, on behalf of the Court, engaged in an exercise of statutory interpretation with respect to the words “is liable .. to” in s.128(14), concluding that they admitted of only one meaning, namely, establishing a statutory penalty regime that obliges courts to impose fines specified in the section.

[19] He stated at para. 54 as follows:

For all these reasons, in my view, the fines for speeding in s.128(14) of the HTA are fixed and are derived simply by multiplying the number of kilometres per hour over the speed limit by the appropriate dollar figure. The courts have no discretion to reduce these fines.

[20] This holding in *Winlow* makes it clear that courts cannot impose fines lower than those mandated under the *Highway Traffic Act* for the offence of speeding. It thus precludes the justice from imposing a fine “that is less than the minimum”, to use the language of s.59(2) of the *Provincial Offences Act*.

[21] However, s. 59(2) provides as an alternative means of relief the ability of courts “to suspend the sentence.” This is distinct from reducing a fine amount as the concluding words in s.59(2) make clear: “.. the court may impose a fine that is less than the minimum *or* suspend the sentence.” [emphasis added]

[22] This use of the disjunctive in modes of relief from minimum penalties also appears in the French version of s.59(2): “... le tribunal peut imposer une amende inférieure au minimum *ou* surseoir au prononcé de la sentence...” [emphasis added]

[23] The relief against minimum penalty provision was contained in s.60 of the original *Provincial Offences Act* legislation, which was proclaimed in force in March, 1980.³ Commenting on the purpose of this unique section, W. Douglas Drinkwalter and Douglas J. Ewart, *Ontario Provincial Offences Procedure* (Toronto: The Carswell Company Limited, 1980) at 220 observe:

Subsections (1) and (2) represent an attempt to balance a recognition of legislative supremacy with the need for individualized sentencing. Minimum sentences represent a clear expression of legislative intention, yet can work an injustice in certain rare and exceptional cases. Accordingly, while the courts are given the power to relieve against minimum penalties, this power is limited by extremely tight controls.

[24] These provisions appear in essentially the same terms as s.59(1) and (2) of the current legislation:

59. (1) Provision for minimum penalty – No penalty prescribed for an offence is a minimum penalty unless it is specifically declared to be a minimum.

(2) Relief against minimum fine – Although the provision that creates the penalty for an offence prescribes a minimum fine, where in the opinion of the court exceptional circumstances exist so that to impose the minimum fine would be unduly oppressive or otherwise not in the interests of justice, the court may impose a fine that is less than the minimum or suspend the sentence.

[25] I note that the Ontario Law Commission’s recent report on modernizing the *Provincial Offences Act* contains no recommendation that s.59 respecting relief from minimum penalties be reformed or modified, as opposed to the other sweeping changes it proposes, such as introducing a regime of administrative monetary penalties in lieu of prosecutions for parking infractions under Part II of the Act, and enacting for the first time a statement of sentencing purposes and principles: see Law Commission of Ontario, *Modernizing the Provincial Offences Act: A New Framework and Other Reforms* (Interim Report, March 2011) (Toronto: Law Commission of Ontario, 2011). Neither did the more than 60 amendments made to the *Provincial Offences Act* by the *Good Government Act, 2009*,⁴ impact s.59.

[26] In arguing that the set fine for speeding, which is a function of a mathematical calculation, does not constitute a minimum fine, Ms. Luca points to a number of examples in the *Highway Traffic Act* where

she states it is clear that the legislature has created a minimum penalty as contemplated by s.59, as opposed to the speeding offence in s.128(14):

130. Careless driving ... and on conviction *is liable to a fine of not less than \$400* and not more than \$2,000 or to imprisonment for a term of not more than six months, or to both, and in addition his or her licence or permit may be suspended for a period of not more than two years. [emphasis added]

144(31.2.1) Penalty for disobeying red light – Every person who contravenes subsection (18) is guilty of an offence and on conviction *is liable to a fine of not less than \$200* and not more than \$1,000. [emphasis added]

[27] It is true that the set fine for speeding is not cast in language similar to the offences above, which set out *both* a minimum and maximum quantum of fine. But does it necessarily follow that s.128(14) of the *Highway Traffic Act* cannot be construed as providing for a minimum penalty within the meaning of s.59 of the *Provincial Offences Act*? Every person who is found guilty of the same offence as Mr. Doroz (speeding 10 kilometres over the legal limit), is subject to the identical monetary penalty of \$25. It cannot be any lesser amount; neither can it exceed this figure. The legislative intention therefore appears clear: the fine to be imposed for speeding in these circumstances is \$25, no more, no less.

[28] I believe, with deference to those who have held otherwise, that this particular type of monetary fine can only realistically be viewed as a minimum penalty. While there are not, expressly stated, respective minimum and maximum fine amounts as in the case of careless driving and disobeying a red light, it constitutes, in effect, a declaration of a minimum penalty where the minimum and maximum penalty happen to coincide. Indeed, there is precedent in the *Highway Traffic Act* for such an interpretation.

[29] In *R. v. Dilorenzo* (1984), 45 O.R. (2d) 385 (C.A.), the Court was concerned with the *Highway Traffic Act* “police chase” provision under then s.189a(3), which carried with it a penalty that included a driver’s licence suspension for a period of three years. It was argued that since the penalty prescribed by s.189a(3) was not “specifically declared to be a minimum” in the words of s.60 [now s.59] of the *Provincial Offences Act*, the section could not be treated as having prescribed a minimum penalty.

[30] Robins J.A., speaking for Justices Martin and Goodman, rejected this argument. He stated at paras. 26-27:

The issue is admittedly one of statutory construction: if s.189a(3) in fact prescribes a minimum penalty then no discretion exists. The words “the court shall make an order suspending the driver’s licence ... for a period of three years” are clear and incapable of misunderstanding. Given their ordinary meaning, the legislative intention is beyond peradventure – the licence is to be suspended for three years, no more, no less. *A fixed penalty has been created in which the minimum and maximum coincide.* For the purposes of s.60(1), the words used in creating that penalty, in my opinion, can only be construed as constituting a declaration of the minimum

penalty which the court is required to impose in the circumstances of s.189a(3), and as satisfying the intent underlying s.60(1).

In providing for this penalty the Legislature has employed language free of the ambiguity associated with the word “liable” in expressions such as “shall be liable” or “shall be liable to ... years imprisonment.” As the cases involving statutes containing those and like words illustrate, there have been differences of judicial opinion as to whether such words can be construed as providing for a minimum penalty: see, for example, *R. v. Bell* (1924), 42 C.C.C. 253, [1924] 3 D.L.R. 307, [1924] 2 W.W.R. 616 (Alta. S.C.A.D.); *R. v. Duchesne* (1961), 131 C.C.C. 311 (Que. Ct. Sess.); *R. v. Smith* (1923), 38 C.C.C. 327, [1923] 1 D.L.R. 820, 56 N.S.R. 72 (N.S.S.C.); *R. v. Thompson Manufacturing Co. Ltd.* (1920), 47 O.L.R. 103 (H.C.J.); and *R. v. Harrison*; *R. v. O’Kelly* (1924), 42 C.C.C. 259, [1924] 3 D.L.R. 312, [1924] 2 W.W.R. 563 (Man.C.A.). Here, no similar problem of construction appears. *The Legislature, if not in so many words, has specifically declared the minimum penalty and no basis exists upon which to vary or modify its manifest intention.* [emphasis added]

[31] In my respectful opinion, these comments are apt in relation to the fixed penalty scheme that is set out for speeding fines. While the words “is liable” are used in s.128(14), the clear intent of the Legislature is to create a minimum penalty. In this case, like the mandatory license suspension period of three years in issue in *Dilorenzo*, the minimum and maximum monetary penalty are the same. That is, no greater or lesser fine than \$25 is to be imposed for exceeding the speed limit by 10 kilometres per hour; it may neither be increased nor decreased.

[32] The *Dilorenzo* decision is not referred to in any of the authorities relied on by the appellant in support of its position. It is acknowledged by Ms. Luca, but she attempts to limit its application by arguing that it did not apply to fines but a licence suspension, and that, in any event, it is inconsistent with *Winlow*. However, the Court of Appeal in *Winlow* expressly referred to *Dilorenzo* with respect to the issue of statutory interpretation of the words “is liable ... to” (see para. 34), without further comment. If the Court considered the holding in *Dilorenzo* to be inconsistent with its decision in *Winlow*, as the prosecutor suggests, it did not say so. There is no reason, therefore, to consider that *Dilorenzo* does not continue to represent binding authority, post-*Winlow*. Accordingly, I do not think the prosecutor’s position on appeal distinguishing the application of the *Dilorenzo* decision is tenable in these circumstances.

[33] Apart from the issue of statutory interpretation, there are also policy considerations that favour the interpretation of the speeding fixed set fine as constituting a minimum penalty for the purposes of s.59 of the *Provincial Offences Act*. Let me illustrate a number of them.

[34] In their commentary on the relief from minimum penalty provision in *Ontario Provincial Offences Procedure* at 220, Drinkwater and Ewart provide the example of an impecunious pensioner convicted of careless driving who, as a result of his motor vehicle being destroyed in an accident, decides to stop driving and cancel his driver’s licence. It is suggested, in these circumstances, that the imposition of the minimum fine could amount to undue oppression, such that relief from the minimum fine would be

warranted. However, if this person was also charged with speeding and a conviction registered for this offence as well, no lesser fine could be imposed on account of *Winlow*, and thus relief in the form of a suspended sentence would be the only remedy available to such a defendant.

[35] Another example arises where a person is charged with speeding, but due to his/her modest circumstances, eg., a student who drives the family car, or a single parent driving a car paid for by an estranged spouse, the party is unable to pay any fine. In such circumstances, the operation of a suspended sentence pursuant to s.59(2) would constitute the only relief available from the fixed speeding fine.

[36] The case law makes it clear that a very high standard is to be met for the granting of relief under s.59. In the words of subsection (2), “exceptional circumstances” must exist such that imposing the minimum fine “would be unduly oppressive or otherwise not in the interests of justice”. This test is an onerous one: see, for example, *R. v. Fagbemi* (2000), 4 M.V.R. (4th) 221 (Ont.C.J.); *R. v. Fong*, 2004 ONCJ 222; *R. v. Nerian*, 2010 ONCJ 46. A reduction in the minimum penalty should therefore not be “lightly imposed”: *R. v. Ade-Ajayi*, 2011 ONCA 192 at para. 13.

[37] Indeed, the prosecutor before the trial justice in this case acknowledged that relief might be granted to defendants charged with speeding, at least where exceptional circumstances are present. I appreciate that this is hardly determinative of the issue, and it is argued on appeal that this concession was, in fact, erroneous. The fact remains, though, that fines for speeding, especially those that approach the stunt driving/racing level of 50 kilometres per hour over the posted limit, or occur in community safety or construction zones and thus are doubled, may well be in the range of hundreds of dollars, and thus comprise substantial monetary penalties.

[38] Moreover, if courts were not permitted to impose suspended sentences under s.59 in those cases where the exacting standard in the legislation was met, the anomalous result would be that where a party convicted of the speeding offence is found to be deserving of such relief, and it was in fact granted for other offences, such as the careless driving example provided by Drinkwalter and Ewart above, the operation of s.59(2) would be statute-barred by virtue of the interpretation of s.128(14) of the *Highway Traffic Act* put forward by the appellant, for this one category of offences only.

[39] A second policy consideration that favours the limited applicability of s.59 in the case of speeding is that there is no mechanism currently in place in the Province of Ontario that allows impecunious offenders to perform work credits as a means of payment of fines. The fine option program that was established in this jurisdiction is no longer available.⁵ As a result, Ontario is one of the few provinces where offenders, who are unable to pay fines, do not have the ability to satisfy them through the alternative means of work for fine credits, as noted in *R. v. Wu*, 2003 SCC 73. But for the relief mechanism provided by s.59(2), provincial offences courts would be required to impose monetary penalties in cases of obvious financial hardship for offenders convicted of speeding.

[40] Finally, to permit recourse to the limited availability of suspended sentences in deserving cases under s.59 of the *Provincial Offences Act* is consistent with underlying *Charter of Rights*⁶ values. Although this is not a case, like *R. v. Raham*, 2010 ONCA 206, where the presumption of constitutionality

is in issue, given the disposition of the trial justice following the defendant's guilty plea, the interpretation put forward by the appellant would inevitably give rise to challenges for *Charter* relief due to the unavailability of s.59. See, by way of example, *R. v. 1260448 Ontario Inc. (c.o.b. William Cameron Trucking)* (2003), 68 O.R. (3d) 51 at para. 23 (C.A.), leave to appeal dismissed, [2004] S.C.C.A. No. 8 (QL), where in rejecting a *Charter* s.7 challenge to the absolute liability flying truck wheels offence under the *Highway Traffic Act*, which is punishable by the highest minimum fine under the Act,⁷ the Court noted the application of s.59(2) as providing a means of relief to defendants charged with such offences.

[41] The offence of speeding is likewise absolute liability in nature; its constitutional validity has been upheld in the face of a s.7 *Charter of Rights* challenge (see *R. v. Polewsky* (2005), 202 C.C.C. (3d) 257 (Ont.C.A.), leave to appeal refused, [2006] S.C.C.A. No. 37 (QL)). Consequently, it seems a proportionate measure to provide a limited mechanism of relief for those who commit such provincial offences without any fault requirement on their part, and who are able to establish before the courts that their particular circumstances meet the very high threshold set out under s.59(2). This produces, in turn, sentencing dispositions that are rendered on a principled basis.

[42] Accordingly, I conclude that the fixed set fines for the *Highway Traffic Act* offence of speeding offence constitute a declaration of a minimum penalty, and thereby trigger the operation of s.59 of the *Provincial Offences Act*. In the result, while the Court of Appeal's decision in *Winlow* holds that such fines cannot be reduced, a suspended sentence may be imposed under s.59(2) in exceptional circumstances. For the reasons I have endeavoured to explain, this result flows from a purposeful interpretation of the legislative provisions in question, as well as policy considerations.

Concluding Comments

[43] The trial justice in this case sought to impose a suspended sentence in lieu of a fine reduction in order to circumvent the *Winlow* judgment. I wish to emphasize that this is not a proper basis to make recourse to s.59 of the *Provincial Offences Act*. As the case-law makes clear, s.59(2) relief is triggered only in the most limited of circumstances. Hence, in the case of speeding offences, the imposition of a suspended sentence will be the exception, and not the norm.

[44] In a post-*Winlow* decision, *R. v. Powell*, 2010 ONCJ 302 at para. 9, Justice Douglas, in the course of reversing on appeal the trial justice's reduction of a fine for speeding following the defendant's guilty plea, put the matter succinctly: "There are times when we have a great deal of discretion; this time was not one of them."

Disposition

[45] The appellant has had mixed success on this appeal. It has failed to persuade me that it was not open to the trial justice, in law, to impose a suspended sentence as a penalty for the *Highway Traffic Act* offence of speeding; however, I agree that it was not an appropriate disposition in the circumstances of this case.

[46] In accordance with the powers of this court pursuant to s.138(1) of the *Provincial Offences Act*, I do not think it is in the interests of justice to require this defendant, who has taken no part in these proceedings since his guilty plea in July, 2010, to re-attend before the trial justice, almost a year later, in order to have a fine of \$25 re-instated, or to order on appeal, without his knowledge, that this penalty amount must now be remitted .

[47] The appeal is therefore dismissed.

¹ R.S.O. 1990, c.H.8, s.128(14).

² R.S.O. 1990, c.P.33.

³ S.O. 1979, c.4.

⁴ S.O. 2009, c.33.

⁵ R.R.O. 1990, Reg. 948.

⁶ *Canadian Charter of Rights and Freedoms*, Schedule B, The Constitution Act, 1982.

⁷ Above, note 1, s.84.1.