

ONTARIO COURT OF JUSTICE
IN THE MATTER OF THE PROVINCIAL OFFENCES ACT R.S.O.1990

HER MAJESTY THE QUEEN

Vs.

GHEBRELUL GEBRESELLASSI

* * * * *

P R O C E E D I N G S A T M O T I O N

BEFORE HIS WORSHIP JUSTICE OF THE PEACE K. MADIGAN
On May 24, 2002 at
Old City Hall, Toronto, Ontario

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CHARGE: s. 106 (3), H.T.A. - Fail To Wear Complete
Seatbelt Assembly

* * * * *

Appearances:

A. Smith

Municipal Prosecutor

R. Steinmiller

For the defendant

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20	Transcript Ordered:		May 24, 2002
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THE COURT: Mr. Steinmiller has arrived, the time now is nine sixteen a.m. ,I say that, Mr. Steinmiller, because I will be timing you.

MR STEINMILLER: The clock will be running.

THE COURT: All right.

MR. STEINMILLER: I assure you Your Worship, I shall be brief.

THE COURT: Okay. If you got any case law that you will be citing please just - can you certainly get the correct spellings to the clerk and the reporter because...

MR. STEINMILLER: I will certainly do that. Would you like me to do that now Your Worship?

THE COURT: Certainly, yes, that's fine.

MR. STEINMILLER: Actually I can hand a package to the reporter. I believe Mr. Smith already has the package, and of course I will be passing one forward to Your Worship to follow along as we proceed.

MR. SMITH: We're doing the case law thing now. Is there a matter - is there a case in there, Your Worship, *R. vs. Glen Johnstone* - Johnstone?

MR. STEINMILLER: I can, I can advise my friend that is not there, Your Worship. It is referred to, but it is not actually included.

MR. SMITH: There you go.

THE COURT: Now what I have done is I instructed the reporter to order a transcript. I am not sure whether, depending upon the nature and extent and complexity of the arguments made and the submissions given I will, I may very well rule on this right away or I may very well take my time.

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MR. STEINMILLER: Certainly.

THE COURT: I am anticipating that I will not rule on it right away, okay, if it is a novel argument but, so okay. Your 20 minutes starts now at 9:17.

MR. STEINMILLER: All right I believe we need an arraignment first though, Your Worship.

CLERK OF THE COURT: Ghebrelul Gebresellassi is charged on or about the 18th day of May, 2001, at 7:50 a.m. at southbound Bathurst Street, south of Queen Street West, at the City of Toronto, did commit the offence of driver fail to wear complete seatbelt assembly, contrary to the *Highway Traffic Act* s.106(3).

How do you plead on behalf of the defendant: guilty or not guilty?

MR. STEINMILLER: Not guilty, Your Worship.

MR. SMITH: Thank you. Your Worship, I think we may be able to save a little time here, exchange a few brief words with my friend here. I think he is prepared to concede to the facts to the matter and move straight to the argument.

THE COURT: Okay, are you conceding the allegations in the ticket?

MR. STEINMILLER: I am, Your Worship.

THE COURT: Okay so, you are conceding to all the details: date, time, location, and are you conceding also that the driver failed to wear complete seatbelt assembly?

MR. STEINMILLER: I am conceding that, Your Worship. The only thing I would ask that be added to that, and I believe my friend is prepared to consent to that as the officer would in fact

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testify to it, is that the motor vehicle that was being operated on that particular day was a taxi cab and it was for hire. The driver was a taxi...

THE COURT: Is that conceded by the prosecution?

MR. SMITH: I will stipulate to that, Your Worship. From my standpoint I am just asking if my friend would stipulate that at the time the defendant was alone in the motor vehicle.

MR. STEINMILLER: Oh yes, yes he did not have a fare.

THE COURT: But it was available for hire?

MR. STEINMILLER: It was.

THE COURT: All right, okay.

MR. SMITH: And one last thing. Is my friend conceding that the seatbelt in the car was actually one-piece assembly fully functional?

MR. STEINMILLER: I am conceding that as well, Your Worship. As I say the facts are not an issue; it's only a question of whether or not he was obliged to wear it.

THE COURT: Okay.

MR. SMITH: Thank you, Mr. Steinmiller.

MR. STEINMILLER: Well, I believe normally since I don't call a defence the prosecution will go first, but I think it might be better if I do, Your Worship.

THE COURT: That is fine. No, I mean I think it is appropriate given that it is your motion.

MR. SMITH: Yes, I think so too.

MR. STEINMILLER: Again, Your Worship, the facts are such that the motor vehicle that was being operated was a taxicab. It is my respectful

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submission that a taxicab driver is exempt from wearing his seatbelt, whether or not he has a passenger, and I would be relying on *Ontario Regulation 613*.

5 **THE COURT:** I do not have my *Highway Traffic Act*. Could I borrow a copy from someone just so I can follow along?

MR. STEINMILLER: I see an extra one there. Oh that's the *Provincial Offences Act*, my apologies.

10 **MR. JOHNSTON:** You can certainly borrow mine.

THE COURT: Okay so... just a minute here now. What section is it?

MR. STEINMILLER: *Ontario Regulation 613*, Your Worship, it deals with seatbelt assembly.

15 **THE COURT:** Okay, just a minute here. I am not just sure where it is found in here. Well let us put it this way: I am having trouble finding it in here, but why don't you go ahead and read it, and then what will happen in the worst case scenario I can look at your copy if necessary.

20 **MR. STEINMILLER:** Certainly Your Worship. Under *Ontario Regulation 613*, which deals with seatbelt assemblies, taxicabs are specifically mentioned under s. 7(2) as well as (3). I am going to go in the reverse order.

25 **THE COURT:** Okay

MR. STEINMILLER: The reason being is (3) says:

30 "The driver of a taxicab while transporting for hire a passenger is exempt from 106(3) of the act".

So there is clearly, if there is a passenger in the taxi, the cab driver does not have to wear a

seatbelt.

THE COURT: Sorry to interrupt, but what is the reason for that, is that for security purposes?

MR. STEINMILLER: Basically a safety reason, so that the seatbelt cannot be wrapped around his neck and be strangled...

THE COURT: I see.

MR. STEINMILLER: ...by someone in the backseat

THE COURT: Okay.

MR. STEINMILLER: ...because as Your Worship, is well aware in Ontario we don't have the screens in taxi cabs such as they do in New York City and places like that, that separate the driver from the passenger. So when there is a passenger in the cab, the cab driver is exempt from wearing his seatbelt and that is covered under (3). Subsection (2) however reads as follows:

" Taxicabs are exempt from the requirement that: (a) upper torso restraints where driver seating positions and seatbelt assemblies in the front centre seat seating positions not be removed, rendered partly or wholly inoperative, or modified so as to reduce their effectiveness."

So, although we have a double negative here basically what it says is that the taxicab driver can remove the upper portion of his seatbelt, he doesn't even have to have it. They're exempt from the requirement that the upper torso restraint not be removed, or rendered partly or wholly inoperative or modified. So the problem arises Your Worship is, if he is allowed to take the top part off. And this regulation goes far back to when

5 there used to be two - part seatbelt assemblies:
where you could wear the top part or you can wear
the bottom part individually, and the top part
clipped into the bottom. So back then you could
wear the bottom part without wearing the top.

THE COURT: I see.

10 **MR. STEINMILLER:** But now of coarse we have a
situation where all seatbelts are one piece. So the
issue then becomes, does the cab driver have to
wear both parts of it or is he exempt from wearing
either part? My argument is that he is exempt from
wearing either part because the wording reads:
"Fail to wear complete seatbelt assembly", but he
15 is not required to have a complete seat belt
assembly. He is only required to have the bottom
part, he is not required to have the top because he
is allowed to modify it, and in relying on that
position...

20 **THE COURT:** Now just so that I know, in this
taxicab, is it all one piece?

MR. STEINMILLER: Yes.

25 **THE COURT:** So if he were to exercise from your
point of view his discretion whether or not to wear
the top part he could not do that, because he would
then not be in compliance by failing to wear the
bottom part.

MR. STEINMILLER: Precisely, because the top and
the bottom are all one buckle and the mechanism
fits in so that you cannot...

30 **THE COURT:** Okay, so let me just make sure that I
understand this. You are saying because it is all
one piece in this particular case...

MR. STEINMILLER: Yes.

5 THE COURT: ...and because he is frustrated in his discretion too not where the top piece that he formally had, he is effectively given an exemption from wearing the whole thing because it is all one thing.

MR. STEINMILLER: I am saying that, but I am going to point out to Your Worship, that numerous other people have said it as well...

10 THE COURT: Okay.

MR. STEINMILLER: ...including three Ontario Court of Appeal judges and this is where I would refer to the first case if I may?

THE COURT: Yes.

15 MR. STEINMILLER: Did Your Worship get a package?

THE COURT: Yes, and I thank you for it.

MR. STEINMILLER: The first one is Mr.

20 *Szepiecewicz, John Szepiecewicz*, and I believe Madam Clerk has the spelling, and noteworthy Your Worship, this goes back to 1984 in front of Judge Climans in this building. Now just for the record on these pages, these pages are not numbered. But on the second page of writing, if we look at line 27, Mr. Manraj, who is the prosecutor for the City reads into the record the exemption:

25
30 "Taxi cabs are exempt from the requirement that upper torso restraints for driver's seating position and seat belt assemblies in the centre front seating position not be removed, rendered partly or wholly inoperable or modified so as to reduce their effectiveness."

That wording, Your Worship, is precisely the wording that is in the 2001 *Highway Traffic Act* that I just read to you.

THE COURT: The wording is very awkward.

MR. STEINMILLER: That's the point.

THE COURT: Really annoying.

MR. STEINMILLER: If we go further, and again I have no reason to read the entire case, if we go the final page of writing at the top of the page, and again this is Mr. Manraj speaking, who is the prosecutor, he refers to it in saying "Your Honour, that is"... this is on the final page Your Worship.

THE COURT: Okay, yes.

MR. STEINMILLER: Mr Manrag says "Your Honour, that is double-dutch". He is referring to the wording.

THE COURT: Yes.

MR. STEINMILLER: And his Honour says:

"It sure is. In any event the charge is on a taxi driver. In any event, failing to wear a complete seatbelt assembly doesn't apply. I'm going to allow the appeal. It seems rather to be convoluted. I'm going to allow the appeal and dismiss the charge."

So this goes back to 1984, some 18 years ago, and the wording is exactly the same today as it was back then, so there is one judge who said exactly what I'm trying to present to Your Worship this morning.

Now the next case that we have, and again now there is no reason for me to read the entire case because

I have seen them so many times I know the pertinent parts.

THE COURT: Okay, I do have a copy of the Regulation here and I will say that (2) when I see it as it is properly laid out it is not as confusing as it might first appear. It is clear that taxicabs are exempt from the requirement that a and b not be removed. In other words they can be removed.

MR. STEINMILLER: They can remove the top part, no question.

MR. SMITH: I'm sorry, if I can present Your Worship, actually Mr. Steinmiller provided me in the package with a copy of the Regulation, does Your Worship have it?

THE COURT: I do not know if I have copy of the regulation in the package.

MR. SMITH: I have a copy in the Annotated HTA, so I'll pass that up for Your Worship to refer to.

THE COURT: Okay thank you.

MR. STEINMILLER: Again, Your Worship, that was 1984 and that was Judge Climans who made that ruling. Again in 1994 the next case I would like to refer to is a matter of *Her Magesty The Queen Against Hardeep Hundal*. It should be in order.

THE COURT: Okay, yes.

MR. STEINMILLER: Now that was in front of the recently retired Justice of The Peace Kant.

THE COURT: Yes.

MR. STEINMILLER: And although I certainly understand Your Worship is not bound by a ruling from a fellow Justice of the Peace, I think his

decision bears looking at for two reasons: number one for what he said and number 2 that the next case...

THE COURT: It may very well be persuasive by logic and reasoning.

MR. STEINMILLER: Not only that, Your Worship, but the next case we are about to look at is an appeal of Mr. Kant's decision.

THE COURT: Okay.

MR. STEINMILLER: So if we look at Mr. Kant's decision and fortunately this one is actually numbered, on page 4...

THE COURT: Yes.

MR. STEINMILLER: ...Mr. Kant reads the exemption starting on line seven "taxicabs are exempt from" etcetera, etcetera. So ten years later the exemption has not yet changed.

THE COURT: Right.

MR. STEINMILLER: But if we go to the next page, which is page five, reasons for judgement.

THE COURT: Yes.

MR. STEINMILLER: Starting at the top.

THE COURT: Yes.

MR. STEINMILLER: Justice of the Peace Kant says: Looking at the Judgement of Judge Climans, he says the same thing. He said that:

"If you tell the driver, who does not have a hire in the car, that he does not have to wear the upper seatbelt assembly and you have a car which have both the upper torso and the lap together, how does he follow the law? What directions are there for him? And then he said that:

"If the law charges a man with not

5 wearing the complete seatbelt assembly, complete seatbelt assembly is the torso and the lap position, if he is not allowed to wear the top one and he is supposed to wear the lower one, but he can't change the seatbelt assembly, how in heavens name can you charge him with not wearing the complete seatbelt assembly".

And Justice of the Peace Kant went on to dismiss the charge. That was subsequently appealed..

10 **THE COURT:** Yes.

MR. STEINMILLER: ... by the crown.

THE COURT: Yes.

MR. STEINMILLER: And that appeal was heard, the next case I'm referring Your Worship to, in 1995 in front of Judge Graham.

15 **THE COURT:** Yes.

MR. STEINMILLER: Judge Graham considered the issue and again the exemptions are read in. I think the most telling statement made by Judge Graham comes on the page 7.

20 **THE COURT:** Yes.

MR. STEINMILLER: Line 21, I believe.

THE COURT: Yes.

25 **MR. STEINMILLER:** "The Court: If the driver of a taxicab while driving for hire, and the other thing is that section 613.7(2) has a complete exemption"... The section you are looking at... "So I don't know - I think there's confusion here. I think the Justice of the Peace was right. They can amend the Act. I'm allowing the appeal".

30 In actual fact because it was a Crown appeal he dismissed it.

THE COURT: Yes.

MR. STEINMILLER: The bottom line is he agreed with Mr. Kant.

THE COURT: Okay.

MR. STEINMILLER: Again the issue surfaces in 1998, once more in Appeal Court. Once again the prosecution appealed. This was a matter of Mr. McIntyre. Two prosecutors this time against Mr. McIntyre himself who was unrepresented, and again Your Worship can tell by the amount at least by the length of the transcript that there is fairly lengthy argument about the issue and it comes down to page 12 of his decision.

THE COURT: Yes.

MR. STEINMILLER: Judge Salem says:

"I follow your logic..." referring to the submissions made by the prosecutor, "... but it just doesn't make sense to me. It seems to me that what we're up against is that the cabbie that walks to his vehicle and cuts the shoulder strap is fine. The person that doesn't cut the shoulder strap, for whatever reasons, whether he's going to use that cab for personal reasons, or whether it isn't even his cab, is the one that is going to be convicted under the section. That just doesn't ring true to me. This is an appeal. I am going to allow the appeal. I am not going to grant a new trial; I am going to enter an acquittal".

So there is three well respected judges who have all said the same thing.

THE COURT: Okay, now can I just clarify.

MR. STEINMILLER: Yes.

THE COURT: In this particular case, your defendant's case...

MR. STEINMILLER: Yes.

THE COURT: ...he did not cut the strap, correct?

MR. STEINMILLER: No he just did not wear the seatbelt.

THE COURT: Was it his vehicle or was he just renting the vehicle?

MR. STEINMILLER: That part Your Worship I cannot tell you, most of these cabs are leased by the driver. But I cannot in all fairness say whether it was his vehicle or not.

THE COURT: Okay all right.

MR. STEINMILLER: The next one I would like to refer Your Worship to is one that was argued by myself in front of your brother, Justice of the Peace Andrew Clark, and now that's the matter of Redwan Mohammed. That was in this court in August of the year 2000, and Justice of the Peace Clark, he took I guess several weeks to come to his conclusion we gave him all the cases and he put it over for decision and one of the cases that was given to him is the case I believe my friend is going to be referring to and that's the matter of Johnstone.

THE COURT: Johnstone, yes.

MR. STEINMILLER: Johnstone.

THE COURT: Glen Johnstone.

MR. STEINMILLER: And that to my knowledge is the only descending decision that is in existence in terms of whether or not cab drivers are exempt, but I would refer you if I may to the, page 5 of Justice of the Peace Mr. Clark's decision. He considers Szepiecewicz, Hundal and McIntyre.

Specifically I would like to...

THE COURT: Sorry, what page is this?

MR. STEINMILLER: This is on page five Your
Worship, my apologies.

THE COURT: Yes.

MR. STEINMILLER: In specific in referring to the
McIntyre decision on line 22, Justice of the Peace
Clark says:

"Justice Salem describes Highway Traffic Act
offences as quasi-criminal, and as such holds
that they demand some consistency, something
he found lacking in the prosecution's logic.
i.e. if it's there, you have to use it, if
you don't have a passenger or risk being
charged with an offence, but if it's removed,
you are free to drive without it at all
times. Seatbelt offences are regulatory in
nature. They are offences if successfully
prosecuted lead to demerit points and
financial penalties. The current scheme,
being two demerit points and a set fine of
ninety dollars".

He continues on page six: "These are not
insignificant penalties for those who earn their
livelihood in driving a taxi". I believe, Your
Worship, that this is a very well worded conclusion
that he comes to.

"There is a time-honoured rule of statutory
interpretation which demands that taxing or
penal statutes be given the strictest of
interpretations, so that a citizen is not
taxed or penalized unless his activity falls
foursquare within the ambit of the Statute".

THE COURT: That is exactly what was going through
my mind as you were leading up to this, but go

ahead.

MR. STEINMILLER: He then refers to the Johnstone case and says; and I am sure Mr. Smith will point out the Johnstone case to you when he gets his fifteen minutes.

"Since there were no reasons given in the Johnstone case I find myself bound by the cases cited by Mr. Steinmiller. But further, I do concur with the reasons given by the provincial offences *Appeal Court in R. vs Szepiecewicz* and particular in *R. vs McIntyre*. While I appreciate the logic of the prosecution's position, I find that logic strained and a bit artificial. There are no answers to certain basis questions such as with today's combined assemblies would disabling the torso portion also necessarily disabling the torso portion also necessarily disable the lap portion. If that is the case, then this is something the regulation condones.

I find that the regulation in section 7(2) and (3) creates confusion. Consequently, I find the charge of failing to wear a complete seatbelt assembly in context with this case is improper. The charge is dismissed."

I will only refer to the one other case that I have, and that is in front of your Justice of the Peace brother Mr. Kielty.

THE COURT: Yes.

MR. STEINMILLER: Again he took all the cases that I presented to you, took them with him, came back for his decision and without going through the entire decision...

MR. SMITH: Sorry Mr. Steinmiller, I don't have that one.

MR. STEINMILLER: The one for Zaidi...

THE COURT: This is Zaidi and it was before Justice of the Peace Kielty on March 20, 2001.

MR. STEINMILLER: I believe Mr. Brain has a copy of it. Perhaps we can impose on him to- yes, as Your Worship indicated again March, 2001. It's an ongoing issue. I argue this all of once a month in court. I think page fifteen is where Justice of the Peace Kielty begins to come to the conclusion that he did:

"Five, six years ago, it was His Honour Judge Graham, who considered an appeal of Justice of the Peace, Kant, suggested what Mr. Steinmiller has pointed this out to the court. They can amend or the legislature has the right in my opinion, to appeal, in particular the problem section which appears to be that taxicabs are exempt of requirement of the upper torso restraints for drivers seating positions not be removed or rendered partly or wholly inoperative or modified so as to reduce their effectiveness. If this section was removed, it would have clarity of the law that if there's a passenger involved, the driver does not have to wear his belt because the person may use the belt to strangle the driver".

Further the section when he talks about other exceptions, which deal with if you're under 40 kilometres per hour but on the final page, which is sixteen.

THE COURT: Yes.

MR. STEINMILLER: He comes to the conclusion on line fifteen: "I will conclude by again referring to the statement by His Worship Clark, who ruled against the crown in these matters. There's a time-honoured rule on page 6 of his judgement". And

again he reads the time honoured rule that the Statute must be given the strictest of interpretation so that the citizen is not taxed or penalized unless his activity falls four square within the ambit of the Statute. And he then proceeded to dismiss the charge.

Now there have been other ones, Your Worship, I don't have copies, I ordered them. I won't even begin to refer to them, however, I think the evidence that I presented this morning is rather overwhelming. There is a problem with this charge. Taxicab drivers are...

THE COURT: Well technically you have not given me any evidence, but you have given me certainly evidence of the number of cases that support your position in law.

MR. STEINMILLER: Correct, I can't give evidence, but I would ask Your Worship...

THE COURT: Can I just interrupt you? I want to just make sure, just a couple of the passages to which you have referred to allude to the fact of either cutting the seatbelt, or, and there is another. The most recent one that you cited, Mr. Kielty indicates whether there is a passenger in the car. Do you care to address either of those issues?

MR. STEINMILLER: Well, we know if there is a passenger in the car that (3)...

THE COURT: Because your position is that it doesn't matter whether there is a passenger in the car or not.

MR. STEINMILLER: Well if there is a passenger (3)

clearly exempts the driver, because it says when transporting for hire a passenger is exempt from 106(3)...

5 **THE COURT:** All right, okay, but in the case where there is no passenger your taking the position which is your case, this particular case, that even when there is no passenger then it is in (2) that comes into effectively give an exemption.

10 **MR. STEINMILLER:** Exactly Your Worship, because (2) allows them to not wear the top part. But again it's a very simple question; if you don't have to wear the top part but the top and bottom are all one then it boils down to do you have to wear both or are you exempt from wearing either? And the six
15 decisions I've referred Your Worship to this morning all take the position that you are exempt from wearing either one. There seems to be a censuses that the legislation as it sits is "double dutch". It creates confusion, and it should be
20 changed, but here we are eighteen years after the first case was argued in appeal court, or the first one I'm aware of, it still reads exactly the same way.

25 **THE COURT:** And you have also brought to my attention the traditional rule of statutory construction which requires that any penal legislation be read narrowly and strictly, so as to clearly indicate two persons who may fall within that law what is required or prohibited, as the
30 case may be.

MR. STEINMILLER: I couldn't agree more and the key phrase of course Your Worship is, clearly this is

not clear.

THE COURT: Are all of the cases which you cited, were they all decided under the (2) of the relevant regulation?

MR. STEINMILLER: Yes.

THE COURT: They were not under (3)?

MR. STEINMILLER: No, none of these people or none of these situations involved a fare in the cab.

THE COURT: Okay.

MR. STEINMILLER: It's quite clear, if there is a fare in the cab he doesn't have to wear it at all.

THE COURT: Alright.

MR. STEINMILLER: The issue is if there is no fare does he or does he not have to wear it.

THE COURT: Right, okay.

MR. STEINMILLER: Unless Your Worship has any further questions for me that would be...

THE COURT: Well no, what I am going to do, I think I understand quite clearly your argument and I think it is an excellent one and I think it is well made for what it's worth. But have a seat, I want to hear what Mr. Smith has to say, and especially with reference to the Johnstone case, and then of course I may very well have some further questions for you.

MR. STEINMILLER: Certainly Your Worship.

THE COURT: I will certainly give you a chance to reply even if I don't have any particular questions.

MR. STEINMILLER: Thank you.

MR. SMITH: Good morning Your Worship.

THE COURT: Mr. Smith, in some of the cases that

5 Mr. Steinmiller cited there was reference to
judicial officers saying to prosecutors who are
appearing before them, I understand your logic but
I don't understand the logic. What is the crown
position on this? How can this - give me a
justification or the logic or the reasoning that
has been used in these cases. They were not, I was
not referred to passages which explain that logic
or reasoning and I would appreciate it if you would
10 do so.

MR. SMITH: Certainly, as Your Worship has before
you the case of *Redwan Mohammed*, decided by his
Worship Clark...

THE COURT: Yes, yes.

15 **MR. SMITH:** You will see on the front page there
the parties who argued that case were Mr.
Steinmiller and myself.

THE COURT: All right, I see.

MR. SMITH: Now in that case I took...

20 **THE COURT:** You got your name in print, Mr. Smith.

MR. SMITH: I did yes. It keeps coming back in
print, thanks to Mr. Steinmiller. But I took a
position in that particular case, and my position
on that issue has not changed from that day, and I
25 will explain my logic and my position on that now.
I again start off as Mr. Steinmiller did referring
to regulation 613.7(2) and (3). Subsection (2)
states:

30 "Taxicabs are exempt from the requirement
that upper torso restraint for driver seat
positions and (b) seatbelt assemblies in the
front seat seating positions not be removed,

rendered partly or wholly inoperative or so to reduce their effectiveness."

5 Than it also states (3): "The driver of a taxicab while transporting for hire a passenger is exempt from 106 (3) of the Act", that being the *Highway Traffic Act*, and I will read now 106(3) which states:

10 "Subject to (5) every person who drives on a highway a motor vehicle in which a seatbelt assembly is provided for the driver shall wear the complete seatbelt assembly in a properly adjusted and securely fastened manner".

15 Your Worship, my position is there is no ambiguity here. The subsections of section 7 in Regulation 613 deal with different situations. Subsection (2) allows an exemption from the requirement that you and I must follow the rule in regards to seatbelts. We cannot in our personal vehicles render them
20 partially or wholly inoperative, modify them such as we often referred to here this morning, cutting the seatbelt. We are not allowed to do that in our personal vehicles, however this regulation allows an exemption from that rule. However, it does not
25 impose a requirement that a modification or rendering partially or wholly inoperative take place. It allows for an exemption, and my position back in the year 2000 remains the same today. If a taxicab driver has done that fine, but if they
30 have not, and in this case they have not, because as Mr. Steinmiller conceded the motor vehicle the defendant was operating that day had a fully intact

and functional seatbelt system, then I believe we are required to move on to (3). As 106 restates, where provided someone must wear the seatbelt.

5 **THE COURT:** But this is why, just so you can understand, why I asked the previous question to Mr. Steinmiller. I asked him whether the driver whom he represents in this case actually owned the cab and the reasoning is, just following your logic, and Mr. Steinmiller did not know that
10 particular information. But the reason I ask that was if he owned his own cab he might very well have; he does have the discretion to do that according to you.

15 **MR. SMITH:** Discretion is the operative word, yes.

THE COURT: But if he does not own that cab he does not have sufficient property interest in it to dismantle or detach or cut the belt, or render it inoperative, the strap across the chest.

20 **MR. SMITH:** I would submit, Your Worship, that ownership is not an issue here. As I quoted in 106 (3) it does not refer to the owner of the vehicle it refers to the driver. Ownership I would respectfully submit is not an issue in this matter. We are dealing with the driver of the vehicle.
25 Ownership is not an issue.

30 **THE COURT:** No, but I understand that. But what I am trying to say is according to your logic, each person that drives that vehicle has the discretion to render that strap inoperable, and I am saying from a practical view point, and even from a legal view point, that is not true. Because, if he were to cut the strap he could be charged with mischief

to private property. Now, that might be unlikely, but the point is it is not his vehicle, it is not his property to decide whether to do that or not in many many circumstances.

5 **THE COURT:** I agree. One cannot be changing modifying or altering someone else's property.

THE COURT: Exactly, that is all I am saying.

10 **MR. SMITH:** Yes, but I would submit that's not an issue here. This is why there are two separate subs I submit looking at it from an interpretation standpoint, this is why there is two separate subsections here. There are many instances in the *Highway Traffic Act*, I'll give Your Worship an example. Section 7 of the *Highway Traffic Act* deals with permits and it has numerous subsections to it. There is a subsection dealing with an instance where there is no permit for the motor vehicle, there is a subsection dealing with where there is a permit but you have simply forgotten it at home; 15 you failed to surrender it to the officer. There is a subsection dealing with where you surrender it to the officer but the officer looks on the back and sees the sticker isn't there making it currently valid, thus drive motor vehicle no currently validated permit. It's the same sort of situation here Your Worship, there are various subsections to deal with various instances.

20 It is possible, yes, that the owner of the taxicab, be it the driver who owns it himself or he leases it from the owner, may in fact render it partially or wholly inoperative, may modify it in any way. 25 However, and if that is the case fine they can't be 30

charged, but where that has not happened the government has taken that into account and moves on to (3) where a complete seatbelt assembly is provided.

5 **THE COURT:** Okay but aren't you treating -
effectively aren't you asking me to treat people differently, the drivers of taxicabs differently on the basis, on some very precarious basis that in one case someone has disabled the seatbelt assembly or not? That does not seem right to me.

10 **MR. SMITH:** I believe, to a certain extent I agree with what Your Worship just said, however...

THE COURT: Why is that a proper basis upon which to treat people differently?

15 **MR. SMITH:** Basically, Your Worship, we treat people differently because, as Your Worship has pointed out, this is a discretionary situation, one has the discretion. One is not required if they have a taxicab to remove the belt; one however can if they wish. Now we treat people differently Your Worship because some people decide to remove or partially or wholly render inoperative the
20 seatbelt, and some people decide not to. It takes into account different situations. Where one has the power to make a choice one can go one way or can go the other. This section of the regulation takes those two things into account. It takes into
25 account there is personal choice, and where there is personal choice, some people make a choice one way, some people make a choice the other. This takes that into account, Your Worship. As you have
30 indicated, it is discretionary and that's my

interpretation of it in sub.(7) sub.(2) as well.

THE COURT: Doesn't the interpretation of the law, the interpretation and application of the law for which you are arguing, doesn't that ultimately bring the law into disrepute?

MR. SMITH: No, I don't think so Your Worship.

THE COURT: What I mean by that is, you are making it unnecessarily complicated. Look, either a taxi driver is exempt or he's not, let's keep things clear. That is why when the criminal law was developing over the centuries the courts continually said to the prosecution, to the Attorney General; you know, you have to make the law clear. Number one, the person reading the law or the person on the street who's presumed to know the law has to know what is required or alternatively what is prohibited. It should be clear so that the person can understand the law and obey it. But this seems to violate that rule.

MR. SMITH: Well actually I am just coming to that Your Worship.

THE COURT: Okay I am not making a ruling I am just trying to...

THE COURT: ...flesh out the issues.

MR. SMITH: ...flesh out the issue.

MR. SMITH: I completely understand, that's what arguments are for, and the one case that I will be referring to is the Johnstone case. I will submit there is no exemption for the taxicab driver. If you read that decision Your Worship. I believe you will find that my former colleague Mr. Powell...

THE COURT: Yes.

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MR. SMITH: ...pointed out that the exemption under 7 (2) of Regulation 613 is for the vehicle not the driver. Now, taking that into account His Honour Judge Reinhardt heard that and agreed with it.

THE COURT: Okay, now where is that, what page are you referring to?

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MR. SMITH: Oh, certainly. Turning to page 12 near the end at approximately line 14. Mr Powell states and I quote:

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"Your Honour, I think Mr. Zlois is confusing the matter. Section 7, sub.(2) speaks of taxicabs, not of taxi drivers. This whole Regulation where it begins at seat belt assemblies, is speaking about seat belt assemblies itself, not about the drivers of taxicabs. Seven sub.(2) says very specifically, taxicabs are exempted from the requirement. So it is speaking about the Regulation, the spirit of it, is about the equipment in the cab and not about the driver"...

20
THE COURT: But what, okay.

MR SMITH: Uh, I am almost, there is a little more;

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"Any exemption I would agree with Your Honour is in section 3; the driver of a taxicab, while transporting for hire a passenger, is exempted from subsection 106(3) of the Act. That's the only exemption that I see, and the only evidence we have in the transcript, is that the officer observes the taxicab coming down the road, and he stops the vehicle because he observes the upper torso is not in operation, and with Mr. Zlois trying to suggest that the officer was flagging a cab I think is ludicrous, and I would suggest there is no merit in this, Your Honour. The section 7(2) clearly speaks of taxicabs, and I understand Judge Graham has made a decision,

but with respect I would indicate that is not binding on Your Honour this morning. The law itself is clear and I would suggest to Your Honour, that there is no merit at this time with respect to this appeal.

The Court: I think I agree. So on the appeal, the appeal is dismissed. Because in my view, the plain wording of subsection (7) sub. (3) is that the exemption is while the driver of the taxicab is transporting for hire a passenger. That's an exemption to 106, sub. (3) for the driver. So the appeal is dismissed".

THE COURT: Okay, now you have really confused the issue. What would that mean if Mr. Powell were correct, that the exemption applied to the vehicle not to the driver, what would that mean? The vehicle is not going to be charged with an offence. It would only be a live human being that would be charged with an offence, and if he couldn't say well the vehicle is exempted what would be the point of saying it? Mr. Smith...

MR. SMITH: Basically, if I may continue Your Worship, my position is as His Honour agreed with Mr. Powell in the case of Johnstone. We're dealing with two separate situations here; one dealing with the equipment in the cab and the other with the rules upon the driver. Your quite right Your Worship, it's only a human being that's going to be charged, and according to Judge Reinhardt the human being is suppose to follow the rules under 7 sub(3), of Regulation 613. When not transporting for hire they are, excuse me, they are exempted while transporting for hire a passenger. They are exempted from 106(3).

5 As we have indicated in this case and as my friend
has conceded, in the beginning, there was a
complete and functional seatbelt assembly in this
cab. They are not required to modify it. However,
if it is still functional, still equipped, still
fully in tact, then I submit that 7 sub.(3), comes
into play, and I would submit Your Worship, that
this is entirely consistent with the policy I
believe that we have. We have seatbelt laws for a
10 reason, we know they save lives. And cabs, just
like any other person's vehicle or commercial motor
vehicle, the driver still runs the risk of being
harmd or even killed in a car accident, and we
know that seatbelts reduce the instances of both of
15 those things.

THE COURT: You do not have to convince me as to
the effectiveness of the seatbelt legislation or
the public policy underlying it. I accept that, and
quite frankly I am not called upon to delve into
20 that, but understanding the public policy may very
well help you interpret the legislation...

MR. SMITH: Yes.

THE COURT: ...but here is what I am trying to say. I
think the simplest thing, if I were writing the law
myself, I would of thought that the simplest thing
to say would be if you are driving a passenger you
are exempt from all seatbelt requirements, and that
is what it says in (3). But, in (2) it is very
25 poorly worded in that it does not clearly indicate
the goal at which it's aiming, that is (2). Your're
saying that if the person renders the seatbelt
inoperative then they are not required to wear the
30

complete seatbelt assembly, but they would be required to wear the belt portion, is that what your're saying?

5 **MR. SMITH:** Yes. It only allows for the upper torso restraining the driver's position to be rendered impartially or wholly inoperative removed or otherwise.

THE COURT: But your're saying that someone who has chosen not to render it partially...

10 **MR. SMITH:** Or wholly inoperative or remove part of it.

THE COURT: ...or wholly inoperative.

15 **MR. SMITH:** Comes under 7(3). It takes into account the different situations. It allows a personal choice as to, on the owner, whether or not they choose in a taxicab to render it partially or wholly inoperative or remove part of it, and if they have, that's their choice. Obviously, that's their choice. It says right there exempt from the requirement, but it is a choice Your Worship. It is not a requirement on a taxicab owner to remove or partially, wholly, render inoperative the seatbelt...

20 **THE COURT:** So...

25 **MR. SMITH:** ...it takes into account the different situations just like the section I dealt with, I spoke of regarding permits. It takes into account different situations dealing with the same issue. Taxicabs and seatbelts, as Mr. Steinmiller I believe is quite accurately pointed out, I believe that's in place for the same reasons Mr.

30 Steinmiller pointed out. It deals with cabdrivers being robbed, it deals with cab, seatbelt and the

cab being used to restrain the driver during a robbery or even worse trying to strangle the driver.

THE COURT: But...

MR. SMITH: But it deals, in both cases it takes that into account. One allows them to render it partially or wholly inoperative or remove the upper torso belt, that's one way to deal with that problem, and if they haven't, if the seatbelt is still fully intact, fully function on the cab, then 7(3) comes into play. They do not have to wear it at all while transporting a passenger for hire this...

THE COURT: But your position is that they have to wear whatever, that they have to wear at least a lap belt even under (2) of the regulation.

MR. SMITH: Yes.

THE COURT: They could render the upper torso portion of it they could disable that but not the...

MR. SMITH: The lap portion.

THE COURT: Now how do you deal with the fact that in, I mean it is 2002. I dare say I am going to take judicial notice of the fact that most cars come with one seatbelt assembly, and is it proper? I do not see how you can propose an interpretation or application of the law, that would place an obligation on a defendant to physically dismantle part of his car so as to benefit from a piece of legislation, that seems rather odd.

MR. SMITH: We're not dealing with the general public Your Worship, were dealing specifically with taxicabs, and Mr. Steinmiller is quite correct.

5 Cab drivers get robbed, cab driving is not without its risks. I recognize that, I made no issue of that and there's no reason to, 'cause we all know from experience and history that yes cab drivers do get robbed, cab drivers do get harmed, cab driver's do get killed, and this takes that into account. However, that must be balanced, Your Worship, I believe with society's interest in minimizing the harm and the damage that comes during car
10 accidents. A taxicab getting hit by another car is just as much of a risk to the driver as that taxicab driver driving his personal vehicle down the street and getting hit. We are still dealing with a motor vehicle, a car. I believe the
15 legislation is clear. I believe the legislation takes things into account and does a balancing act. It balances the need to take into account the security needs of a cab driver while he's doing his job or her job. On the same hand, on the other hand it balances society's interest in minimizing the damage and harm that comes about during car
20 accidents. A cab getting hit by a truck where the driver is not wearing a seatbelt is going to suffer just as much harm as if that same cab driver was driving his personal vehicle and got hit by the same truck.

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30 **THE COURT:** Mr. Smith, every day that you stand in court as a prosecutor you personally, and in your position benefit from the presumption of law in the mind of the ordinary citizen. On any day of the week in which you're appearing in court you can properly direct the court's attention to the fact

that under our legal system every defendant is presumed to know the law, even if they do not in fact know it.

MR. SMITH: Yes, that's actually enshrined in section 81 of the *Provincial Offences Act* as well.

THE COURT: The purpose of that presumption is to encourage people to discover the law, to understand it and to obey it. In my opinion, the interpretation and application of the law for which you've argued today, would ultimately and even in this case would bring the administration of Justice into disrepute. I say that very deliberately for several reasons. Number one, the law is confusing, and the law, there is no need for the law to be confusing. It is never really justifiable for the law to be confusing. A person should be able to look at the law and say that's what's required, that's what's prohibited, and I adjust my behaviour accordingly. Without the benefit of your submissions and Mr. Steinmiller's submissions, if I were looking at that law for the first time myself I would not be quite certain what was required, and I might very well think that it is all right because there is an exemption here. It is not as clearly worded as one would desire, and it seems somewhat arbitrary to say to the persons who would be covered by that particular law; well it all depends on whether you cut the seatbelt, I mean that does not make sense. It is not consistent, it is confusing, it is discriminatory, it is inconsistent and it undermines the clarity of the law at which the, or let me rephrase that, it

undermines the clarity at which the law should aim. It should be crystal clear when someone consults the law, what is required, what is prohibited. That regulation violates that cardinal rule. I cannot uphold that,. I mean, for a number, of reasons: number one I have given you my reason on the interpretation. There is that canon of statutory interpretation, which requires a court to narrowly and strictly interpret any penal legislation, and to give the benefit of any doubt of interpretation to the defendant. The State has all the resources at its disposal in making the law, to make it clear. The State has a whole department of lawyers at the Ministry of the Attorney General and indeed in other Ministry's, who are available to the government to consult for the purpose of making the law clear, and there is no excuse for it not being clear. No excuse what so ever, especially when you are going to impact people's livelihood. In this particular case we are dealing with a taxi driver who makes his livelihood from driving.

MR. SMITH: I agree, Your Worship. However, there is this factor; driving is not a right, it's a privilege. It is a regulated activity, and one must follow the rules. I would submit I Your Worship has heard my position on this. I don't believe there is any ambiguity here. One deals with the cab and if they can, if they choose, modify it. If they haven't, it says 7(3) says they cannot wear it while they are carrying a passenger for hire their exempt from 106(3), 106(3) quick reference to that

says where a complete seatbelt assembly is provided it must be worn. I don't think...

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THE COURT: I want to make one thing clear. I would have much greater sympathy for your position if you were saying to me if you got a passenger you don't have to wear it, otherwise you have to wear it. If you were saying that, I can completely understand that reasoning, that logic, and the public policy upon which the law would be based in that case. But when you say, well this exemption in (2) of section 7 of this regulation permits someone to modify their vehicle to gain benefit of the law, that seems rather strange. If you are giving an exemption give an exemption if your not don't, you cannot make your exemption dependent upon the action of the citizen. You have either got to give an exemption or not.

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MR. SMITH: Your're giving an exemption in relation to a particular class of vehicles those used as taxicabs Your Honour, Your Worship. That is the exemption. We're dealing specifically with taxicab's here. These rules are specifically related to taxicabs, and my position is (2) allows for a choice. If one has exercised that choice so be it, if they have not then 7(3) comes into play and they do not have to wear it while carrying a passenger for hire. Where a complete seatbelt assembly exists in the car and it's fully functional, it must be worn at all times other then when they are transporting a passenger for hire. This is a regulation not open to the general public it's specifically limited to taxicabs. I submit

there is no ambiguity here. There is an allowance. If one chooses to exercise it they can, if they choose not to another section comes into play. Section 7 of Regulation 613 covers different instances. Where one thing is allowed fine, if you don't do that another comes into play. There's many instances in law where that happens.

THE COURT: But Mr. Smith, this even goes beyond the rule of statutory interpretation to which I have referred and to which Mr. Steinmiller referred. Section 7 of the Charter deals with principals of fundamental justice, and it seems this kind of law seems inconsistent with the section 7 requirements of the Charter. Section 7 of the Charter would require at the very least that you make clear to the person what is required, what is prohibited, and what is exempted, and that is not clear. I would have trouble reading this myself, and I cannot fail to take that personal observation into consideration. This is not, your position is not readily evident from looking at the relevant subsection of this seatbelt regulation. Mr. Steinmiller, anything you wish to say? I think effectively, I have made my ruling.

MR. STEINMILLER: Your Worship, if I may I would just like to point out one thing that I think is rather telling on the entire situation, and it's very brief. Judge Reinhardt talked about the vehicle itself versus the driver of the vehicle, that you're allowed to remove it from the vehicle but the driver still has to wear it. If we look under Regulation 613 once more...

THE COURT: Yes.

MR. STEINMILLER: ...Section 1 says:

"Police department vehicles are exempt from the requirement that upper torso restraints, seatbelt assemblies in the centre front seating position, and seatbelt assemblies in the rear seating positions not be removed, rendered partly or wholly inoperative or modified so as to reduce their effectiveness".

Also same wording, so does that mean if a police officer is driving around, if he has an upper torso portion there, even though he's exempt from having it and he can remove it, if it's there, can he be charged for not wearing a complete seatbelt assembly?

THE COURT: That is an excellent question.

MR. STEINMILLER: Same wording.

THE COURT: And further you see, although neither of you have raised this on Charter principles, I can see section 7 principles of fundamental Justice being implicated and triggered by this issue. Secondly, I can also see section 15 of the Charter. This law is discriminatory just by virtue of what Mr. Steinmiller said, and it's also discriminatory in that its application would be depended upon whether a person cut his seatbelt. I mean that seems ridiculous. A law has to be consistent, it has to be readily understandable and non-conditional. It has to be clear, and this law does not satisfy any of those requirements. But in addition it is discriminatory, because right based upon what you said there it would discriminate

between police vehicles and taxicabs, which are given the same exemption. But, when was the last time you were ever in court, Mr Steinmiller, when an officer was charged with failing to wear a seatbelt?

MR. STEINMILLER: I've never seen it.

THE COURT: I've never seen it.

MR. STEINMILLER: And yet the wording is almost identical. As far as cutting the seatbelt Your Worship, the problem then becomes if it's his own vehicle he can cut it and not wear it while he's driving as a taxicab. But then, when he is not on duty as a cab driver he's using it to take his family to church. He's not on duty, it's not a taxi cab, now he's required to wear the complete seatbelt assembly again. But if he cut the top part off he can't, because you can't put it back on again, if you cut it it's gone.

THE COURT: Mr. Smith any final, in fairness to you Mr. Smith, I think I already made my decision. It's so obvious to me that this law does not satisfy the requirements that should be satisfied by any legitimate law. There may even be a problem with void for vagueness. It is such a confusing law that one could argue that it is vague, because it is very difficult to understand.

MR. SMITH: Well as I've expressed, Your Worship, from my position it's not. But responding to Mr. Steinmiller's assertion regarding police vehicles, if we move on to section 2 it states:

"A police officer, peace officer who is in

the lawful performance of his or her duty is transporting a person in his or her custody is exempt from subsections 106(3), (4) and (6) of the Act."

5 It is the same situations with the cabdrivers. They're exempt while their doing something if the seatbelt is there, because 106(3) makes reference to a complete seatbelt assembly being available. As for Your Worship's submissions as to sections 7 and 10 15 I, with greatest respect disagree with the Court on that position. We are dealing with taxicabs here, as Mr. Steinmiller...

THE COURT: I am sorry, what did you disagree with, what was...

15 **MR. SMITH:** Your interpretation regards to section 7 and 15 of the Charter. As Mr. Steinmiller eluded to and as I have agreed, we are dealing with taxicabs here. And there are security and safety issues with regards to crime, and if that is the case this legislation in my respectful submission strikes a balance between the security and safety of the driver from crime versus the safety of the driver while they are on the road. 20

THE COURT: Let me clarify my position.

25 **MR. SMITH:** Certainly.

The COURT: When I refer to the Charter I am well aware that neither you nor Mr. Steinmiller specifically cited Charter provisions in making your arguments, and my ruling will not be made on the basis of my interpretation of those substantive requirements of the Charter. However, what I am 30 trying to point out is that when I look at the

5 Charter, that as the Supreme Law of the land helps me in making a judgment as to what is the most appropriate interpretation and application of a law, the interpretation of which is in dispute, okay? So I almost used the Charter not as a main argument, but as an ancillary or auxiliary by which to decide the issue upon which you raised to decide the issue upon which you've made your arguments, okay? I'm not I'm not...

10 **MR. SMITH:** Certainly, I just wanted to put on the record that Your Worship made reference to it, and I just wanted to put on the record, with the greatest respect I disagree with Your Worship's position on that. That's all.

15 **THE COURT:** Okay, in other words what I am saying is that the Charter is the supreme law of the land. It must always, if there is any conflict between the Charter and any other law, the lesser law must give way to the greater which is the Charter, the
20 Constitutional law. However, even when Constitutional arguments have not been explicitly raised, the Court can still look to the Charter as a means of guiding its interpretation and
25 application of any law that is in dispute. That is all I am saying, and the Charter provisions which I cited would lead me to believe that Mr. Steinmiller is correct. That this law is not clear, it is
30 somewhat discriminatory and the interpretation would, if we followed that principle which you have submitted, it could only create greater confusion in the law, not greater clarity, you know. The law maker has an obligation to state the law, and to

5 state it clearly, and when you've stated it in such a way that people are scratching their heads, well, does that mean that I have to do this or, you've failed the test right there. You almost have failed the test the moment that someone brings it to the attention of the court that this is unclear.

10 I do not mean that facetiously, but what I am trying to say is that when someone makes a serious motion as Mr. Steinmiller has done, that should give a prosecutor pause right there. Mr.

15 Steinmiller I know has been around. He is an experienced paralegal, he has been in these courts for many many years. This is not a frivolous argument, it is well thought out. He has case law, ample case law to support his position and it seems to me that there is confusion in this law, and I cannot uphold that. I cannot permit an interpretation or application of any law that would be unclear, inconsistent, discriminatory, or unfair in any way. I would interpret that law in a way that would give the benefit of the doubt to any person who is presumably covered by that law.

20 Does that answer your question Mr. Steinmiller? You've stated the facts and the only question was the interpretation of the law, so even if you admitted this I would say that in this particular case on the basis of the law itself I would have to dismiss this case.

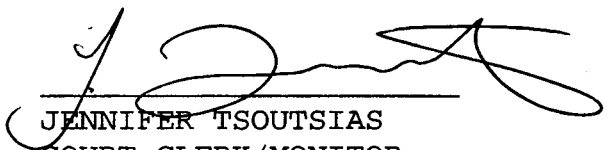
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30 **MR. STEINMILLER:** It certainly answers my question Your Worship. Thank you.

THE COURT: Okay, because we have the factual matters clarified, but the only thing that was in

dispute was the interpretation and application of the law, I now resolved that in favour of the Defendant. The matter is dismissed.

MR. STEINMILLER: Thank you, Your Worship.

This is to certify that the foregoing is a true and accurate transcript of my recordings, to the best of my ability and skill.


JENNIFER TSOUTSIAS
COURT CLERK/MONITOR