

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

BLYTHE HIGGINSON

TRANSCRIPT OF PROCEEDINGS

HEARD BEFORE THE HONOURABLE JUSTICE F. CAMPLING

At Ontario Court of Justice, Hamilton, Ontario

On Tuesday, May 12, 2015

APPEARANCES

S. Stanley

Municipal Prosecutor

I. Fournier

Paralegal on behalf of Blythe Higginson

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

BLYTHE HIGGINSON

TRANSCRIPT OF PROCEEDINGS

HEARD BEFORE THE HONOURABLE JUSTICE F. CAMPLING
At Ontario Court of Justice, Hamilton, Ontario
On Tuesday, May 12, 2015

APPEARANCES

S. Stanley

Municipal Prosecutor

I. Fournier

Paralegal on behalf of Blythe Higginson

1.
R vs. Blythe Higginson

TUESDAY, MAY 12, 2015

MS. STANLEY: We can then deal with the matter
for Blythe Higginson, please?

THE COURT: Yes.

MR. FOURNIER: Morning, Your Honour.

THE COURT: Good morning, Mr. Higginson [sic].

MR. FOURNIER: For the record, surname is Four-
nier. F, as in Frank, O-U-R-N-I-E-R, first ini-
tial....

THE COURT: Oh, I thought you were Mr. Higginson.

MR. FOURNIER: Nope.

THE COURT: You're Mr. Foreman?

MR. FOURNIER: Fournier.

THE COURT: Sorry, Fourme?

MR. FOURNIER: Fournier.

THE COURT: Fournier? As if the, F-O-U-R-N-I-E-
R?

MR. FOURNIER: Yes, first initial I.

THE COURT: Thank you, sorry.

MR. FOURNIER: No problem.

THE COURT: Yep, got it, Mr. Fournier.

MR. FOURNIER: Licensed paralegal, representing
Ms. Blythe Higginson.

THE COURT: Okay.

MR. FOURNIER: By appeal.

THE COURT: Okay, and where is your client?

MR. FOURNIER: Not here today. She lives in....

THE COURT: Sorry?

MR. FOURNIER: Not here today.

THE COURT: Okay.

MR. FOURNIER: She lives in Pickering and said

she just couldn't make it.

THE COURT: Okay, and is the appeal going ahead today?

MR. FOURNIER: Yes.

MS. STANLEY: It is, the prosecution is opposed to the appeal.

THE COURT: Okay, go ahead, Mr. Fournier.

MR. FOURNIER: Court's indulgence just for one second?

THE COURT: Yes.

MR. FOURNIER: I'm not sure, first of all, Your Honour, did you receive the transcripts last week and the case law?

THE COURT: Yeah, I have the transcript of the trial, I have some case file. I'll tell you what I have, I have a case, that I think Ms. that Stanley provided by email called *Djurovic*, D-J-U-R-O-V-I-C. And I have a transcript of a case that you appeared on Mr. Fournier, or at least somebody named Fournier appeared on, called *Rapo-so*.

MR. FOURNIER: That was me.

THE COURT: Pardon me?

MR. FOURNIER: That was me.

THE COURT: Okay, and I have a case called *McKay*, an Ontario Court of Justice, Justice David Harris at Cayuga.

MR. FOURNIER: Do you have *R vs. Fox* also or *Mechocco* (ph)? *Mechacco* (ph)?

MS. STANLEY: There are two other ones.

THE COURT: Yeah, I think I do, I've got, yeah, I have *Mechocco* (ph) and *Fox* also, yes, I do.

MS. STANLEY: Yes, they were cases that I had filed originally.

THE COURT: Yes.

MR. FOURNIER: But I just wanted to make sure where we were...

THE COURT: Okay.

MR. FOURNIER: ...relatively on the same page.

THE COURT: Okay, good.

MR. FOURNIER: Your Honour, this is an appeal simply based on the grounds for the appeal is the school bus not properly being identified as stated in *R vs. Raposo* and *R vs. McKay*.

THE COURT: Okay.

MR. FOURNIER: I believe both of those decisions land solidly on all four, and are on par with this appeal. *R vs. Raposo*...

THE COURT: Just hang on a moment, Mr. Fournier, while I get those two out. *Raposo* and *McKay* you're relying on? Okay, got them, yes.

MR. FOURNIER: *R vs. Raposo*, April the 5th, 2005, before the Honourable Justice D. Cooper here in Hamilton. I'm just going to take it to a couple of sections, so obviously you have it, but if you go to page six, line four...

THE COURT: Yes.

MR. FOURNIER: ...His Honour, referring to the justice of the peace, and she took the position that if it looks like a duck and quacks like a duck, it must be a duck. And then I continue by say-

ing, 'Yes, but I understand because I, like I said, even I called it a school bus.' But, then you go to page seven, which is the judgement, and Justice Cooper starts off with, "Well, I'm not normally an overly technical person, I think it's pretty obvious that this was a school bus, and as Mr. Fournier freely admits; he referred to one. But the definition of 'school bus' is conjunctive, it is subsection (a) painted chrome yellow, and subsection (b) displays on the front and rear are 'school bus' and on the rear are the words 'Do not pass when signals flashing.'" He continues that, "Provincial statutes, in my view, are usually extremely technical where the defendants are concerned," and doesn't see why it shouldn't cut both ways. "The officer freely admits the answer to Mr. Fournier's questions is the flashing lights were there, the wig-wag arm out the side was there, cars were stopped; but he has not defined it as required. This is a rather unusual case, I do not think it is highly likely to re-occur again, even in the realm of Provincial offences. I think I will give the defence the benefit of the doubt. Defendants, as I say, who are charged under extremely scrupulous Provincial statutes, are probably far more exact than the criminal law in many ways, are put to sever onuses. And as I say, I do not see any good reason why this should not go the other way. It was an obvious oversight, but it is a very clear defini-

tion which has not been met. So the appeal will be allowed and conviction quashed."

Very straight forward, right on point.

The second case that I draw your attention to is *R vs. McKay* before the Honourable Justice D. Harris. And, what's interesting here is counsel, or Haldimand County, basically does most of the work for me 'cause I'm appealing another similar circumstance having to do with what is a school bus. I take you to page one, line 16. Ms. Premie (ph), who is counsel for Haldimand County, says, "Your Honour, I reviewed the transcript, I recognize and acknowledge that there were some errors made in the trial. The most specific one is that the elements of proving a 'school bus' under the *Highway Traffic Act* were not proven. There was case law presented to the Justice of the Peace, case law which I am familiar with, that speaks to the elements that have to be proven and they are specifically that the vehicle was chrome yellow, and that there were markings on the front and the back of the bus and a submission was made by the defence to that effect," and the justice of the peace did not - didn't agree. It continues on page two, obviously, and then if you go down to lines 29, where it says "Also, the - my - my friend is - I would agree with her." So this is me speaking, obviously I'm having a bit of an issue that morning. "It is a serious offence - and it wasn't my friend who ran the trial - but more

5
10
15
20
25
30

care, because of the seriousness of the offence, ought to have been, on behalf of the prosecution on the date of trial, to make sure that the date of trial, the dots - the Is were dotted and the Ts were crossed and it was gravely mistaken." It was missed. So then, this - this one's a little bit interesting though, Your Honour, because Justice Harris admits, 'I didn't read this transcript.' He acknowledges that. But it continues on on page five, line four and it's the court talking, "I noticed that when your - when I was reading the transcript this week, Your Honour," my apologies, this is Ms. Premie (ph) talking, sorry. "I noticed that when I was reading the transcript this week, Your Honour, the bigger issues that I had not established that I had was the establishment of a school bus. That was a," then the court says, "Okay". Ms. Premie (ph), "The bigger issue that bring my," the court, "We'll get to that then. You're saying that the case law makes it clear that there wouldn't have been - clear that there would've been an obligation on the prosecution to identify the vehicle with more detail than that was provided here?" Ms. Premie (ph), "Yes." The court, "That the evidence that was led in trial failed to properly identify this vehicle as being a school bus within the meaning of that section?" Ms., Premie (ph), "Yes."

So, when I continue on with that, His Honour, at the bottom of page six, it's the last line plus

5 the word "I." "I'm accepting the submissions
that are provided to me by representatives for
both the appellant and the respondent that there
was a failure to properly identify the vehicle
as a school and that on the strength of that, I
should be striking, allowing the appeal, over-
turning the conviction, and I am doing so." Re-
spectfully speaking, Your Honour, no honourable
10 justice is a rubber stamp. If His Honour didn't
believe that properly identifying a vehicle in
this context was required, I'm confident both of
us - and I say 'us' as myself and Ms. Premie
(ph) - would have been set straight by His Hon-
our. We would have been pointed in the right
15 direction.

I take you to the definition of what makes a
school bus, and it's under the *Highway Traffic*
20 *Act*, s175(1).

THE COURT: I have it here, I've read it.

MR. FOURNIER: Perfect. At the end of day it's -
there's two points; one, you need the colour, and
then - which is chrome yellow - and then there's
got to be some sort of markings on it. Those
25 markings are the words 'school bus' on the front
and back and on the rear of the bus 'do not pass
when signals flashing.'

I've had an opportunity to review my friend's
case law. What's interesting is all of them in-
30 dicate chrome yellow, or yellow, or chromium yel-
low, or something to that effect. So they hit

one of the two. But you require both. In *R vs. Raposo*, no marking were indicated at all. In *R vs McKay*, no markings were indicated on the vehicle. What distinguishes *R vs. Fox* - and I take you to the oral portion of it by Her Honour Justice Baldwin, if you go to the last page, paragraph four, second line about halfway says, "The only word missing was chrome. She said yellow, the officer said yellow, almost every of her assessment said school bus. Also, what was written on the back, although the officer didn't give an identical wording to what is in the regulation, she gave a wording absolutely consistent." So, *R vs. Fox* actually helps me 'cause you're saying the officer in - I know that this case, the actually original trial, the officer says, 'It says school bus on the front and on the back.' Where the officer messed up is she misquotes the line saying, 'Do not pass when signals flashing.' She gives a different version of it. So what? But she does say, 'It says school bus on the front,' and she does say, 'It says school bus on the back.' And, frankly, I not really concerned whether it says do not pass when signals flashing simply because the party coming towards the school bus from the opposite direction doesn't have those words but are held to the same standard as the party coming from behind. So I'm not saying you need to take those words off. I'm saying at the end of the day the definition's

quite clear; it needs to say school bus some where on it. Sorry. I'm going to continue on.

I also like when my friend supplied me R vs Mechovkov (ph) - I'm going to pronounce it wrong - a decision by the Honourable J. Lampkin. If I take you to page seven, paragraph six, it's part of the factual background, it says, "At the time he observed a school bus identified as such by it's colour of chromium yellow and the words 'school bus' displayed on the vehicle." So, in this case, the officer says it says 'school bus' on it and gives the colour again, quite frankly, as a requirement.

And in the same case, I take you to page 10, paragraph three. And when one reviews the regulations relating to school buses, one sees how tightly school buses are regulated. Some of the main features are that they must be painted chrome yellow, which immediately distinguishes them from all other buses on the highway; they must have the words 'school bus,' and 'do not pass when signals flashing' clearly marked in black letters of a certain size and prominent places on the bus. Then it says no other bus is allowed to have those markings. I don't have the regulation with me right here, but there is a regulation regarding school buses that you're allowed to charter them. They don't black out the words 'school bus;' they're just not a school bus at that time. But I can hire Laidlaw - and it

5 looks like a school bus - to take me and my family to the Casino for the night and take us home so we all get home safely. But it's still - it looks the same, but under charter, it no longer is a school bus.

Now, as I say, it's interesting that the case law that my friend provided, they all say it said 'school bus' on it.

10 I look at the last case that my friend provided, and it - *Juravic*, first of all, it's from a justice of the peace and with all due respect to a justice of the peace, it's not binding. And, quite frankly, I think it's not persuasive. If you actually read his take on *R vs. Raposo*, he actually either misread it or didn't read it, quite frankly. But what distinguishes this case away from this matter, if you go to page eight, the defendant hangs himself quite clearly.

15 20 Line 25. He said in his own words that he noticed a yellow car, which is a school bus, approaching. He says that. So even if the officer fails to say it said 'school bus' on the front and back, the state of mind of the defendant says 'You thought it was a school bus, you're aware that it was a school bus, you gave testimony that it was a school bus that you were approaching,' so - I think he - I think he just acknowledge it upon approach though, again it distinguishes it.

25 30 Look at the definition that you have before you, of what a school bus is, I can't imagine it with-

5 out the words displayed on the front and the rear are the words 'school bus.' I don't know how you have a chrome yellow large vehicle going down a road and you don't put those words on the front and back. They're significant, it's not minute, it's important. It's important for the officer to say that it is.

10 And there was some argument in submissions, which isn't in the transcript for this matter, of *Blythe Higginson*. The submissions, and I apologize, weren't brought to point. But when you look at *Blythe Higginson's* matter, when you go page three, line four, sorry - yep, page three, line 4. "To follow a school bus, a chrome yellow school bus number 451," gives the colour. Then there's no other descriptors other than lights, flashing lights - like, the other things, but they're not requirements. Stop arm, flashing over head lights, they're not requirements as in - per the definition.

20 And then, you go to page four, line 23, it even goes so far to say, "At the rear on the school bus at the top are two flashing lights," sorry, "two lights that flash, one side left, one side right, flash back and forth." They're completely visible. On the left side, or the driver's side, there is a stop sign, octagonal stop sign, with the flashing lights on it as well. And that was out fully visible so the drivers can see it. At the end of the day, all that's neat - and I say

25

30

that not disrespectfully - but it's not a requirement. Not as per the definition.

5 The one thing I did like - sorry, and I am going to ask you to flip back one last time to the Lampkin - His Honour Lampkin's decision - is on page 11, paragraph 34, when it goes to an inference. And we can take inferences that this is a, you know, the officer calls it a school bus, everyone calls it a school bus; it's an inference. And on page 11 he quotes Justice Warner, "An inference can reasonably be applied where matters may not be easily proved, and the surrounding circumstances add an element of probability that the fact is true." There's your inference. This is easy to prove; all the officer had to say is, 'The word school bus is on the front and the back of the bus, I saw it.' That's all he had to say. You don't require - we don't need to stretch this anything. It's a slight - it's an obvious oversight, it was an oops, if anything. They just didn't say it; the prosecutor didn't pull it from the officer, the officer didn't give it evidence. So when I read Justice Lampkin about an inference, like Justice Cooper said, a duck is a duck, looks like a duck, quacks like a duck, it must be a duck. But at the end of the day, we're asking that an inference be put in place that we all know what it was. But that easily could have been corrected, very easily, we don't need inferences to help us here. If the officer just said,

10
15
20
25
30

'It said school bus on the front, said school bus on the back,' we're dead in the water.

And, the last part - and my apologies, I just don't want to misspeak here - is the very last page, which is page 12 of the Lampkin decision, on *R vs. Mechocco* (ph), paragraph 41. "Mr. Andrews submits further that there is no evidence that the bus had the words, 'do not pass when signals flashing,' as is required by the regulation. That does not cause a defect in description. The officer had no doubt that it was a school bus because it was identified to him as such by its colour being chromium yellow and the school bus was displayed on the vehicle." The only thing I think, that is missing here is the words 'school bus' was displayed, but I take it it means the same to me. The definition hasn't been met. Subject to any questions that you may have.

THE COURT: Thank you. Before I hear from you Ms. Stanley, do we have a date for your matter?

WHEREUPON ANOTHER MATTER IS BRIEFLY SPOKEN TO...

WHEREUPON MATTER RESUMES...

THE COURT: Yes, thanks.

MS. STANLEY: Thank you, Your Honour. Now in response to Mr. Fournier's submissions with regard to the *Higginson* appeal, I'm going to refer the Court back to two cases that I submitted, *Machec-*

co (ph) by Justice Lampkin, on page 11. Mr. Fournier had taken you to paragraph 34 and I'm going to take you - I think he stopped just shy of the point I wanted to make, about halfway through that paragraph, when quoting Justice Warner, the Court indicates, "It is therefore permissible for a court to infer if the evidence contains enough facts to support an inference that the school bus was a school bus, as defined in the *Motor Vehicle Act*, and complies with the standards and specifications of the school bus, including the specifications for exhibiting the flashing red lights." And further in paragraph 41 of page 11, as Mr. Fournier has already read into the record, that paragraph, "The court had indicated that the words, 'do not pass when signals flashing,' as required by the regulation, that was not given in evidence, that does not cause a defect in the description." And the court decided, in reviewing the transcript from those proceedings, that the officer had no doubt that it was a school bus because it was identified to him by its colour and the 'school bus' was displayed on the vehicle. And I'm just skipping a sentence, "He therefore described the main features that identify the bus as a school bus and the inference is irresistible that he was describing a school bus as defined in the *Highway Traffic Act*."

Regina vs. Fox, which is the 2014 decision by Justice Baldwin, at page three, paragraph four,

the third line, the court indicates that almost every line of her testimony is school bus, school bus, school bus. And the court had accepted the evidence of the officer in that case.

If I can refer, Your Honour, to the transcripts for the case against Blythe Higginson, during these trial proceedings there was only a prosecution case - or prosecution witness before the Court, Officer Larkin, there was no defence evidence or no defence witnesses called. I can refer you to page three. This is Officer Larkin, this is a Hamilton Police Service officer, and in his evidence in-chief...

THE COURT: I don't think you really need to. I've read the transcript, I know that Officer Larkin said that it was a school bus, it was chrome yellow, it was bus number 451, operated by Attridge School Buses, had a stop sign out, its lights flashing, the above red lights were flashing on the school bus. And at page four, at the rear of the school at the top, there were two lights that flash, one side left, one side right, they flashed back and forth and they were operating perfectly with no dirt. There is a stop sign, an octagonal stop sign, with flashing lights attached to that as well, and that was out to full visible - so form, full visible form, so drivers can see it. The officer testified that there were young school children with lunch boxes and so on. So there's certainly lots of evidence that it's a school bus, as just about everyone

understands it. I think the issue is more whether or not it's fatal that the officer didn't testify to all of the prerequisites contained in the definition of school bus, in the statute.

5 MS. STANLEY: Yes, thank you. And what I was going to draw your attention to on page three is the fact that the officer has identified that not only is it a chrome yellow school bus, but he identifies it as a Attridge school bus, bus number 10 451. And I think that's important that he's identified that marking as a school bus. He doesn't indicate where that marking is located, but he indicates in his evidence that it's an Attridge school bus, bus number 451. And I think 15 the Court can take notice that this evidence was given as a result of observations made by Officer Larkin of the markings that he observed on the school bus. He indicates that he stopped behind the school bus facing westbound and he said there was one other vehicle facing eastbound that had 20 also stopped for the school bus based on his observations, that the defendant passes the police officer, who's stopped, travelling westbound, so comes up from the rear of the police vehicle, 25 which is a stealth vehicle, so unmarked, and passes both the police officer and the school bus on the left. And we learned through the trial that there was a statement given by the driver, Ms. Higson [sic], and that statement was admitted 30 into the trial and that is at page nine, line 31. That starts that the officer indicates, "I told

the lady I made a traffic stop for he failing to stop for a stopped school bus, and her reply was, 'I thought the left lane did not have to stop.'"

And then, through cross-examination on page 11, lines nine through 15, he was cross-examined with regards to the students on the school bus and the officer replies, "I'm not sure if they're students, but they're people on a school bus, a chrome yellow school bus, departing it. I would - safe to say, given the inference that they had school bag and lunches, that, yeah, they are students."

The decision of Her Worship Casey in this regard, she accepted the evidence of Officer Larkin.

There was no evidence to the contrary; Officer Larkin was not cross-examined with regard to the definition or any wording or lack of wording.

Her Worship Casey was satisfied of the description of the school bus and that the elements of the offence had been proven.

Your Honour, if I refer you to section 175(12), it indicates what the elements of the offence are; that every driver or street car operator on a highway, when approaching from the rear, a stopped school bus that has its overhead red signal lights flashing shall stop at least twenty meters before reaching the bus and shall not proceed until the bus moves or the overhead red signal lights have stopped flashing. Those are the necessary elements of the offence. And Her Wor-

5
10
15
ship Casey accepted the officer's evidence that it was a school bus and all of the elements that were set out in subsection (12) that those had been satisfied. The officer continually described a school bus through his evidence. He talks about, "I followed a school bus," that is how he started in-chief. It's chrome yellow, the name of the bus company, Attridge School Bus, bus number 451 was identified, the stop sign was engaged, the red lights flashing, children departing from the school bus, and then he refers to them as students. It was a reasonable conclusion by Her Worship Casey that there was sufficient details provided to satisfy the elements of the offence and to convince her that a school bus violation had occurred.

20
25
I would ask the court to accept the officers evidence, as Her Worship Casey did, and the driver's statement, and the fact that the driver, Ms. Higson [sic], acknowledged to the police officer she didn't realize it was a violation to pass on the left. Accept the logical reasoning of Justice Latman [sic], in his decision that the main features of the school bus was described by Officer Larkin in the *Higginson* trial. And in Justice Lampkin's words, "The inference is irresistible."

30
Now yesterday afternoon I did email through an additional case, *Regina vs. Djuovic*, D-J-U-R-O-V-I-C, which is a justice of the peace decision by His Worship Bonas. Just in reviewing some case

5 law with regard to school bus violations, I realize this just being a trial level decision, and of course any of these decisions are not binding on this court, but I did find it interesting that this point was raised during this trial that His Worship Bonas was present to hear. And the issue was raised whether the bus was sufficiently identified in the court's view.

10 And if I can refer you to page 12, paragraph 36, His Worship responds to that point that was raised by the defence, that the bus was not sufficiently identified. And what His Worship Bonus points out is that it's a violation in the rule of *Brown vs. Dunn*, the principle that outlines that the questions - and I'm reading at the top of page 14 here - the questions as to whether there were any markings on the bus should be put to the witness in cross-examination, rather than relying upon an equivocal answer which might benefit the defendant. At the bottom of page 14, the last paragraph, as I indicated before, "There is a body of evidence from which the court can draw upon to satisfy the issue of the proper definition of what a school bus is and that evidence which the court can purposely rely upon."

25 The cases that were provided to you by my friend, being *Regina vs. McKay* and *Regina vs. Raposo*, they do favour his argument today. And unfortunately we don't have the transcripts to know exactly what the evidence was that was given in ei-

30

5
10
15
20
25
ther of those cases. *Regina vs. McKay*, Ms. Premie (ph), who's counsel for Haldimand County, concedes that there was some errors made in the trial. But we don't know what those errors were, we don't know what the evidence was that was actually given by the officer in the *McKay* decision by the justice of the peace. She concedes that the elements of the offence were not proven. She also goes on to concede that there's an issue with jurisdiction. And in the *Raposo* case, on page one, around line 14, Mr. Keith, who is the Provincial Prosecutor, indicates that the word 'school bus' is never given in evidence in the *Raposo* trial. So, I think those are distinguishable from the *Blythe* decision, because in the *Blythe* decision, the officer continually refers to this vehicle as a school bus and he gives - he gives a lot of detail pertaining to the school bus and how it was identified to him as such. And that it should have been identified to Ms. Higginson as such. And might very well may have been because when indicated the reason for the traffic stop, she doesn't deny the fact that she doesn't see a school bus, but simply indicates that she didn't realize that it was a violation to pass the school bus.

30
So in my submissions, subject to any questions that Your Honour might have, I believe that there was sufficient evidence before the trier of fact, that she had the ability to accept the evidence that she did have, without any evidence to the

contrary, excepted Officer Larkin's evidence in totality, that it was in fact a school bus in question that day. Those would be my submissions.

THE COURT: Thank you.

MR. FOURNIER: Just one last point, if I may?

THE COURT: No, you don't need to.

MR. FOURNIER: Okay.

R U L I N G

CAMPLING, J. (Orally)

This is an appeal by Blythe Higginson from her conviction on January 12th, 2015 by Her Worship Justice the Peace Casey on a charge under section 175(12) of the *Highway Traffic Act*. That reads, "Every driver or street car operator on a highway when approaching from the rear a stopped school bus that has overhead red signal lights flashing shall stop at least 20 metres before reaching the bus and shall not proceed until the bus moves or the overhead red signal lights have stopped flashing."

The Crown witness at trial was Stan Larkin, a Hamilton Police Service Officer. On reading his evidence, which made the justice of the peace very understandably accepted, there being no defence evidence and no evidence to the contrary, it is abundantly clear to me that Ms. Higginson contravened section 175(12), but that is not enough for it to be abundantly clear to me. The

5
real issue is whether the charge was properly proven. And in that brings into play the definition of school bus in section 175(1) of *The Highway Traffic Act*, namely 'school bus' means a bus is (a) painted chrome yellow; and (b) displays on the front and rear thereof the words 'school bus,' and on the rear thereof the words, 'do not pass when signal's flashing.'

10
Officer Larkin then testified that the bus was a chrome yellow school bus, he testified to several other attributes of the bus that would convince just about any one that it was a school bus, as ordinarily understood. Including the fact that
15
children got out of it. And on the evidence there's a clear inference that they were school children because of what they were carrying. What Officer Larkin did not say, and was not asked about, was that the words 'school bus' were
20
displayed on both the front and rear of the bus, as well as on the rear of it the words 'Do not pass when signals flashing'. The issue then is, can conviction stand when a Crown has proven that the bus was a school bus within the ordinary
25
meaning of school bus, or does the Crown have to prove that the bus was a school bus as defined in s.175 of *The Highway Traffic Act*?

30
There is no question in my mind that when a statute defines a term, in order to prove a charge, the words of which include that term, the Crown must prove that the definition is sat-

5
10
15
isfied. And here the Crown did not do that. The reasons of Justice of the Peace Casey do not refer to the definition of 'school bus' in the statute. I do not have the submissions of either side, because they are not ordinarily included in the transcript, so I do not know whether the London justice of the peace was referred to the definition. All I know is that the Crown did not prove the bus to be a school bus within the meaning of the definition in the statute. Although clearly, to me, it was a school bus in the ordinary meaning and therefore, in my view, the Crown did not prove every element of the charge.

20
Accordingly the appeal is allowed, the conviction is set aside, and an acquittal is entered. MR. FOURNIER: Thank you, that completes my matters this morning. Permission to be excused?

THE COURT: Thank you.

25
30
WHEREUPON MATTER CONCLUDES...

24.
Certification

Form 2
Certificate of Transcript
Evidence Act, Subsection 5(2)

5 I, C.A. Higson, certify that this document is a
true and accurate transcript of the Recording of
.. *Rvs Blythe Higginson* .. in the Ontario
Court of Justice, held at 45 Main Street East,
taken from Recording No.4711-308-20150512-095055-6-
CAMPLIF.dcr which has been certified in **Form 1**.

10 .. *June 10/15* .. *Cara Higson* ..
(Date) (Signature of Authorized Party)

15

20

25

30