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ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

-against-

KRISKA HOLDINGS LTD.

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R E A S O N S F O R J U D G M E N T

DELIVERED ORALLY BY THE HONOURABLE MR. JUSTICE L. CHESTER  
on Wednesday August 25, 1999, at OSHAWA, Ontario.

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CHARGES: S. 116(1)(a) H.T.A. - Overweight Dual Axle

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APPEARANCES:

|              |                                            |
|--------------|--------------------------------------------|
| S. McNamee   | Counsel for the Ministry of Transportation |
| G. McDougall | Agent for the Kriska Holdings Ltd.         |

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Wednesday August 25, 1999

R E A S O N S F O R J U D G M E N T

CHESTER, J. (Orally)

5 This is an appeal from a decision of Justice of  
the Peace B. Brown that was rendered on March the  
29th, 1999. I have been assisted by a  
representative of Kriska Holdings Ltd. and counsel  
for the Crown with respect to a great deal of  
10 information, a factum and case law that have  
helped me in reviewing this matter. I understand  
the issues on this appeal, and I'll summarize the  
three issues. (i) Did the Justice of the Peace  
err in allowing the evidence of the officer  
because the officer did not have reasonable and  
15 probable grounds to have the truck weighed?

(ii) Secondly, I think the second issue is whether  
or not there is a conflict, a specific conflict,  
between s. 124 of the Highway Traffic Act and s.  
22 of the Truck Transportation Act? In other  
20 words is there an overlap and if there is an  
overlap does one outweigh the other? The  
appellant is arguing that yes, there is. If there  
is an overlap then you have to take s. 124 of the  
Highway Traffic Act.

25 (iii) The third issue I would summarize as the  
meaning of the word "examine." I don't think this  
is a major point of the appellant but does  
"examine" include "weigh"? So for example, he has  
acknowledged that the officer is permitted to  
examine but that does not necessarily include  
30 weigh. If the officer wants it weighed, he has to

have the reasonable and probable grounds. Thus getting back to whether or not the word "examine" includes the weighing of the vehicle.

I think it is useful just to do a quick review of the sections that we're dealing with. S. 124(3) of the Highway Traffic Act reads, "Where a police officer or officer appointed for carrying out the provisions of this Act has reasonable and probable grounds to question the validity of any documents produced in accordance with ss. 2, or to believe the axle unit weight or axle group weight of a vehicle or combination of vehicles is in excess of the limits permitted under this Act or the regulations or a permit issued for the vehicle or combination of vehicles, he or she may..."(and I put emphasis on the word "may",) "...weigh the same by means of either portable or stationary scales, and..." (and I emphasize the word "and" and I emphasize the word "may") "...may require that the vehicle or combination of vehicles be driven to the nearest weigh scales."

So the officer has to have reasonable and probable grounds under those circumstances and may weigh and may require the vehicle to be weighed at the nearest weigh scale. Now both cases use the word "may" and certainly the word "shall" is not in either case. So it is a combination. The officer does not have to weigh but as long as the officer has reasonable and probable grounds then certain things can happen.

5 And then we have s. 22 of the Truck Transportation Act, ss. 22(1). "Any officer may at any time..." (and I emphasize the words "at any time",) "...examine..." (and again that's an issue,) "...any commercial vehicle, its contents and equipment for the purpose of ascertaining whether this Act, the Highway Traffic Act, and the regulations under either Act are being complied with. And the person in control of the vehicle shall assist in the examination of it, its contents and equipment." Again it uses at the latter part of that subsection the word "shall" and the word "assist". So that is a pretty powerful section in terms of being intrusive, not only being able to stop a commercial vehicle at any time, but also to not only stop it, but have the person in control of that vehicle assist in the examination of it. He just can't stand by. He has got to assist. And the examination includes the vehicle, its contents and equipment. So that is a review of the two sections that are the subject matter of this appeal.

25 It is my opinion, after reviewing all of the cases and the submissions made by the parties here today, that s. 124 applies to a different set of circumstances. I find, that even if it applies, I see nothing in s. 124 that overrides s. 22 of the Truck Transportation Act. I see no overlapping, as suggested that there is. But even if there is overlapping and again assisted by the rules of construction, I am old enough to have met the late

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Mr. Driedger, who is the leading expert on the rules of construction of statutes, and there is a presumption in law that even if there is overlapping, each section that overlaps operates fully according to its own terms. I find that there is no evidence that one of the provisions, such as s. 124 in this case, was meant to provide an exhaustive declaration of the applicable law. This is quoted in Mr. Driedger's work at page 177, where he states, "Where two provisions are applicable without conflict to the same facts, it is presumed that each is meant to operate fully according to its terms. So long as overlapping provisions can apply, it is presumed that that both are meant to apply. The only issue for the court is whether the presumption is rebutted by evidence that one of the provisions was meant to provide an exhaustive declaration of the applicable law."

I find that s. 124 does not provide that exhaustive declaration of the applicable law. I think it is clear from a review of s. 22 that the power that it gives the officers defined under that Act, s. 22 of the Truck Transportation Act, is paramount for the safety of the public in requiring the vehicles to enter into the weigh stations.

I have had the opportunity to, as I said at the outset, to read the Ricci decision and it is my opinion that Ricci can be distinguished on its

facts because in that case the judge did not refer to s. 21 and 22 of the Truck Transportation Act. It dealt basically with a logging truck on its own. With respect to the justice of the peace in our case, although she may not have specifically read the case, it's clear from her remarks that are contained in the transcript that she considered that case and it certainly is not a ground for an appeal for a justice of the peace or a judge, for that matter, to have read every case and I think it was prudent for her at least to have considered that case.

I find that there was no error by the justice of the peace in the conviction that she has imposed. I believe that I am also supported by the decision of Mr. Justice Takach in the decision of Her Majesty the Queen v U-Pack Disposals Ltd.. Again I have reviewed that case, the relevant transcript of the submissions and the decision of the justice of the peace and then the decision of Mr. Justice Takach in Milton. That was on October the 8th, 1998. Again, I find support in that his decision is basically what I have said earlier, - that the officer that is defined in s. 22 of the Truck Transportation Act, does not have to have reasonable and probable grounds at the various investigation or inspection stations. Yes, if an officer who is on the road in a secondary highway or some other road in the province, wants to stop a truck, then that officer must, under s. 124 of the Highway Traffic Act, have reasonable and

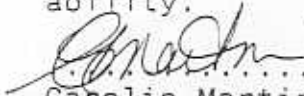
probable grounds to have that truck go to the nearest weigh station, but I find that that is not the situation in this case. We are dealing with a different set of facts. The s.22 of the Truck Transportation Act is directed towards a different issue. For the reasons stated herein, I dismiss the appeal.

MR. MCNAMEE: Thank you, Your Honour.

MR. MCDOUGALL: Thank you, Your Honour.

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THIS IS TO CERTIFY that the foregoing is a true and accurate transcription from the record made by sound recording apparatus, to the best of my skill and ability.

  
Carolin Martin,  
Court Reporter.

Transcript Ordered.....August 26, 1999

Transcript Completed.....October 18, 1999

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