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ONTARIO COURT (PROVINCIAL DIVISION)

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HER MAJESTY THE QUEEN

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AGAINST

PUIMEI LEVESON

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P R O C E E D I N G S

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HEARD BEFORE THE HONOURABLE JUDGE E. EARLE-RENTON
on THURSDAY, November 27, 1997
at NEWMARKET, Ontario

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OFFENCE: s. 144(18) H.T.A. - Red light

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APPEARANCES:

M. Rumble, Ms.

M. Higgins, Mr.

Counsel for the Crown

Agent for the accused

Thursday,
November 27, 1997

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MR. HIGGINS: Your Honour, if I might, the third appeal, although the transcript is much longer, boils down to essentially one essential fact in the transcript itself. And I guess to expedite that, I can make this very very quick...

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THE COURT: Certainly.

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MR. HIGGINS: ...and get immediately to the meat of this. I'm prepared to admit that the Crown's case against Ms. Leveson contains certain facts issued by the Crown's first witness, Mr. Mulchan(ph). He says he's on Massifield(ph) Gate, he says he's approaching the green light, that he doesn't know how long it was green but he's sure that the light was green when he entered the intersection for him. That's all in there and that's admitted. He also says in his evidence in-chief that he didn't see the car that hit him from the left until it was in the intersection. That is clearly in the transcript. Okay. So, we have the evidence of the Crown, clearly saying that their witness is going into an intersection to turn left on a green, and he's hit from the left. Ms. Leveson is clearly identified as being the operator of the motor vehicle. And the officer says - and specifically just two passages in the officers evidence I'm
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concerned with - I can indicate that Mr. Mulchan doesn't say what colour the
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north/bound light was. He doesn't say anything about the colour of the light for Ms.
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Leveson, only his own. That's in the transcript.

THE COURT: Okay. He's turning to go south/bound, is he?

MR. HIGGINS: Yes, he's going west to turn south...

THE COURT: Right.

MR. HIGGINS: ...and he's hit by a north/bound car coming from his left on Warden. Now, the officer says in his evidence, very quickly, that he goes - this is on page 12.

THE COURT: Yes.

MR. HIGGINS: And this is at line 10. Mr. Tam who is the prosecutor says, "You had an opportunity on that date to inspect the traffic light." He says, "Yes, I did. I had an opportunity to observe the signal at the intersection from north/bound Warden, west/bound Massifield, south/bound Warden, east/bound Gibson Drive. He finds it to be functioning properly." It's my submission - and I have a case on this from your brother Judge Flaherty in Brampton, very recently. That means nothing in law. Absolutely nothing, it's a machine. What does functioning properly mean? Judge Flaherty goes into it - and I'll give you the cases. The case of Mr. Newton, I believe it's Robert Newton - yes, it is - which was argued August of 1996 in Brampton. Now, I apologize for the somewhat faint copy. My toner box was a

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little at disarray that day it seems. But Judge Flaherty in Brampton, I can indicate that the Newton appeal is actually much stronger in fact than the case we have at bar with Leveson. In the Newton appeal we have evidence from at least three people that have gone through the same intersection that day, that the lights were functioning properly, We even know that that the lights were functioning properly, through three people. But there's also evidence in the Newton transcript that the direction that Mr. Newton was travelling, there was even some stopped vehicles going in his direction stopped at the light, and he's still under(sic) the intersection. But Judge Flaherty in his decision, says - and it starts on page 12, and perhaps if you'll just read the judgment, I'll show you. I think you'll see what would apply to this case and I'll point out the last specific point in this matter which would apply. And strictly - perhaps I could point that out now, is that in this particular case His Worship Leggate says specifically in Reasons for Judgment that the officer indicated he observed the lights through several cycles and he found them to be working correctly. But that's not exactly what he said, but he did say they were functioning properly. And then on page 18, His Worship on line 13 says, "I believe from that we can

conclude the lights for north/bound and south/bound traffic certainly for north/bound traffic was red at the time the first witness entered the intersection and began to pass through it. Now, that's based on his testimony that his light was green, but there's no indication before the court that when his light is green and the other one is red, when this one is red and this one is green and this one is yellow, this one is amber, all they says(sic) is they're functioning properly and that's contained in His Honour Flaherty's decision. So, if you could read that part, that's basically the meat and potatoes of this appeal.

THE COURT: Ms. Rumble.

MS. RUMBLE: Yes, Your Honour. As I see it here, in a charge of failing to stop for a red light, the Crown has to prove that a vehicle entered the intersection on the red light. So, the issue as I see it is, was there proof beyond a reasonable doubt that the light was red. The evidence was before His Worship, Justice of the Peace Leggate, was that the light for the opposite direction of traffic was green and the officer said the lights were working properly. So, the issue was, can the justice of the peace take judicial notice of the fact that working properly means, if one way is red - or if one way is green, the other way is automatically red. Respectfully, and I

don't have a case on judicial notice, but as I recall, the test is something like, is it something that's so calm and so well known that any regular person in society would know that. And if it's a situation like that, then a court can take judicial notice of a fact. Respectfully, my submission would be notwithstanding the decision of Judge Flaherty, and the only way I can get around that is to say respectfully that the court is not bound by it and I ask the court to find differently that as a matter of judicial notice any person who has ever dealt with an intersection, who are most adults in our community at least, knows that if the light for one direction is green, the light for the other direction is red. That's the only way in my submission that this court can find that Justice of the Peace Leggate did not err as to find that he was correct in taking judicial notice of the fact that working properly means green one way, red the other way. If the court finds that that's not something that His Worship could take judicial notice of, that he had to have direct evidence from the officer saying, "working properly means red one way, green the other way", then I'll concede that there wasn't evidence to establish beyond a reasonable doubt that the offence was committed. But respectfully, my submission is that that is something that His Worship

could take judicial notice of.

THE COURT: Anything by way of response, Mr. Higgins?

MR. HIGGINS: Very briefly, Your Honour. It's my submission that I think my friend's submission on judicial notice would be very over-powering had it be something other than a set of traffic lights as she put it "in today's society". How many intersections have multiple phase lights, advance green arrows, advance green/yellow arrows, right turns permitted on red. All of these are contained within the intersection, multi-phase, there are sensors to change lights at times, there are multiple sets of lights, there are intersections where there's four lights, some for left turn, some for right turn. It's my submission that when Justice Leggate indicates that this an absolute liability offence, all the Crown may day in a case like that is prove the offence, and there is no defence. And (inaudible) from the Court of Appeal in '92 says so. I don't think that it's a tremendous burden or threshold to jump. As Judge Flaherty says, for the Crown to say "When I looked at those lights, now this one was green, that one was red", there you can draw the inference. ~~Because once the inference is drawn, there is no defence.~~ I suppose on a secondary and very - I don't want to muddy this, because I think Judge Flaherty's

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decision, it's my respectful submission, should stand. But there's also the fact of 144(18) in its context. The responsibilities on a driver facing a red light, and there's no evidence I submit that she was ever doing it here, are that when she approaches the intersection she shall stop. (a) at a marked stop line or, (b) if none, then before entering the nearest crosswalk or, if none, then (c) before entering the intersection. Those are the three places that you can stop when you're approaching a red light. There's no indication here as to whether or not any of them are present. However, there is direct evidence from the Crown that the first time this person saw this vehicle, it was in the intersection. And again, even on that, it makes it a little muddier, and I suppose it's secondary, but there's no evidence that she ever approached a red light and failed to stop at the germane areas. There's just no evidence whatsoever. It was already in the intersection when the other witness first saw it. I mean, I suppose - it's secondary, but it just adds to it with regards to the evidence itself. I mean, it's absolute liability if you can't defend it when the evidence was proven. So, I think the threshold should be maintained, that at least it better prove that the light facing her was red.

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MS. RUMBLE: Your Honour, if I could just briefly respond to that extra point. Respectfully, I would just like to correct my friend in that 144(18) doesn't talk about a place where the vehicle must stop. That's a stop sign offence under 136, talks about the place where the vehicle has to stop. 144(18), it deals with red lights, simply says: "Every driver approaching a traffic control signal showing a circular red indication and facing the indication, shall stop his or her vehicle and shall not proceed until a green indication is shown". So, it doesn't say where, it just says "they shall stop". That's the only submission I wanted to make.

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MR. HIGGINS: I stand corrected, I apologize, I should have said 144(5), which sets out where a person is required to stop. It's a sub-section, it's 144(5). I stand corrected and I apologize.

THE COURT: Mr. Higgins, she caught you out.

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MR. HIGGINS: Only on a sub-section, Your Honour, only on a sub-section.

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EARLE-RENTON, J.: (Orally)

I do not necessarily agree with Judge Flaherty in the conclusion that he reached. At page 12 of his judgment, which is right at the very beginning, he says: "~~A court cannot take judicial notice of the functioning of a machine.~~" That is a very broad statement.

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And because it is so broad, I am not able to adopt that. On the other hand, with respect this particular matter, I cannot go quite so far as Ms. Rumble would ask me to go in taking judicial notice of something which is so common as the interaction of stop lights. There are so many variations and combinations. It would not have been difficult for the crown's witness, had the question been put to him or her to establish the actual functioning of the lights at that particular intersection, so that he or she would have been able to say: "After my observation of the functioning of these lights at that intersection, I concluded that when the light in this direction was green, the light in a certain other direction was red". So for that very narrow reason, I find that I am persuaded by Mr. Higgins' proposition. I think the appropriate disposition then is to allow the appeal and to enter an acquittal.

MR. HIGGINS: Thank you very much, Your Honour.

THE COURT: Thank you both.

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TRANSCRIPT ORDERED: November 27, 1997
TRANSCRIPT COMPLETED: November 4, 1998
ORDERING PARTY NOTIFIED: November 4, 1998

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10 C. Dubé

Chantal Dubé

Certified Court Reporter

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