

DATE: 20111212
DOCKET: M40511

COURT OF APPEAL FOR ONTARIO

Rosenberg J.A. (Chambers)

BETWEEN

Her majesty The Queen Ex Rel. The Regional Municipality of York

Applicant

and

Samantha Magno

Respondent

Hans J. Saamen, for the applicant

Frank Magno, for the respondent

Heard: December 12, 2011

ENDORSEMENT

[1] The applicant seeks leave to appeal pursuant to s. 139 of the *Provincial Offences Act* from the decision of Wright J. dismissing an appeal from a charge contrary to s. 78.1 of the *Highway Traffic Act*. The case concerns Ms. Magno's use of a cell phone while driving her motor vehicle. There no longer seems to be any contest that while she was driving Ms. Magno became ill and used the cell phone to contact her mother so her

mother could contact her physician. Ms. Magno had a serious pre-existing heart condition.

[2] The justice of the peace dismissed the charge on the basis of the exception in s. 78.1(4). Wright J. disagreed with that decision, but he dismissed the municipality's appeal on the basis of the exception in s. 78.1(5) or the common law defence of necessity. Ms. Magno was not represented by a lawyer in front of Wright J., and he raised these issues to avoid a miscarriage of justice.

[3] While I should not be taken as agreeing with all the reasons of Wright J., I am satisfied that this is not a proper case for special leave to appeal. The respondent has now been before three courts for a matter stemming from a medical emergency. It is not in the public interest that this matter be further prolonged. Nor is special leave required for the due administration of justice. The municipality seeks a decision on the interpretation of relatively new legislation. There will be other opportunities to explore the meaning of the exceptions in s. 78.1 and the application of the common law defence of necessity.

[4] Accordingly, the application is dismissed.

A handwritten signature in black ink, appearing to read "Mr. Justice Wright", is located in the lower right quadrant of the page. The signature is fluid and cursive, with a large, stylized initial "W".