

ONTARIO COURT (PROVINCIAL DIVISION)

HER MAJESTY THE QUEEN

against

DOMINIC RUSCITTI

A P P E A L P R O C E E D I N G S

BEFORE HIS HONOUR JUDGE L. BUDZINSKI
on APRIL 2nd, 1993, at BRAMPTON, Ontario

CHARGE: Section 182(2) - H.T.A.

APPEARANCES:

A. STEVENSON, Ms.

Prosecutor for the Crown

S. PARKER, Esq.

Agent for the Defendant

Friday, April 2nd, 1993

MS. STEVENSON: If we could deal with number 26,
Dominic Ruscitti?

MR. PARKER: Good afternoon, Your Honour.

THE COURT: Yes, sir.

MR. PARKER: For the record the name is Parker,
initial S. I appear as agent in the absence of
the appellant.

THE COURT: Yes.

MR. PARKER: This is an appeal against a
conviction under the Highway Traffic Act under
Section 182(2) of disobeying a sign. The sign in
question as described by the officer on page two
of the transcript, at line 20, of no heavy trucks.
The officer continues on, "No heavy trucks to be
using that road unless they are--they have a
permit or any access for that road for a purpose."
The officer then describes the sign. I have a
copy of Regulation 486, which my friend is
familiar with, which indicates on the top right
hand corner a drawing or what appears to be a
silhouette of a vehicle, commercial vehicle of
some type or another, with a circle around it and
a line at an angle going through the diagram. But
at the bottom left hand portion of that page, Item
31, "A no heavy truck sign shall..." then it
describes the sign followed by the diagram.
Under the Highway Traffic Act there is absolutely
no definition of a heavy truck, and certainly
there is nothing on this sign to indicate other
than by --unless there's a permit in force as the
officer has described in his evidence. Under the

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definition section under the Highway Traffic Act the closest one can get to it is definition of a commercial motor vehicle, means, "A motor vehicle having permanently attached thereto a truck or delivery body and includes ambulances, hearses, casket wagons, fire operators, buses and tractors used for hauling purposes on the highways." It doesn't say what a heavy truck is, and even under Part 8 of the Highway Traffic Act concerning weights of vehicles it gives various definitions, but again, nothing to do with even a truck let alone a heavy truck as one can glean a definition.

His Worship in his decision upon argument or after argument concerning the fact that this should have been a by-law offence, or at least a by-law should have been presented to the court. His Worship made it quite clear in his judgment that if he was charged under the by-law and this is at page 10, the second paragraph approximately line 22, "If he was charged under the by-law then that by-law must be present." But before that he says, "The defendant is charged under Section 182 of the Highway Traffic Act which is governed by the Provincial Offences Act." And if His Worship appears to be sticking by that definition we don't have a definition as to what a heavy truck is.

THE COURT: It was 182--I do not have a copy of that.

MR. PARKER: Any sign that must conform to the regulations and every driver must obey that sign. It would be my respectful submission that this is the sign that is to be posted to support a by-law

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5 and it is the by-law that governs what weights--a
by-law could be passed for different weights and
different vehicles to define what a heavy truck is
on different roads. It could be different on any
given road, and if that by-law wished to be
enforced, then the municipality has to erect the
sign as described in the regulation. But it is
the by-law that enforces the use of that road.

10 THE COURT: The penalty that deals with this
infraction, the alleged infraction of the H.T.A.,
says...

MR. PARKER: Penalty?

THE COURT: The penalty section.

15 MR. PARKER: Well, it would be the set penalty for
\$90.00 now. Then it may have been \$78.75.

THE COURT: There is an offence--I do not mean the
amount. There is a section in the H.T.A. that
deals with disobeying signs, is that correct?

MR. PARKER: Well, there is a section. Yes, 182.
Yes.

20 THE COURT: Okay, and the penalty section of 182,
I do not have that in front of me. The penalty
section, the one that constitutes the offence.

MR. PARKER: There isn't a penalty section.

THE COURT: There is not?

25 MR. PARKER: No. 182(2) simply says that where
signs do conform to the regulations, then a driver
must obey them. That's what 182 says.

THE COURT: So, if some one were to go through an
octagonal stop sign...

MR. PARKER: Yes.

30 THE COURT: Okay.

MR. PARKER: They're not charged with disobeying a

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sign under 182, they're charged with disobeying a stop sign which defines how a stop sign is to be erected and locations and where one is to stop. It is very precise as to where a stop sign is located. It describes, as I say, what other markings on the roadway, if they do exist, where one is suppose to stop. In fact, if you're referring to a stop sign, the Section makes no reference that you shall, in fact, shall not stop where the stop sign is, it's irrelevant. Basically where the stop sign is, it describes where one is suppose to stop in relation to the intersection.

THE COURT: And how would a sign say with respect to, if you look at the exhibits you filed or the documents you filed, the one way do not enter sign. The breach of that provision falls under what, a special section?

MR. PARKER: Yes, I believe it does. Probably going wrong way on a one way street or something along those lines, but I may be corrected on that aspect. But the issue there is that there is a-- I'm not too familiar with that.

THE COURT: The point I am trying to make is just to clarify your point. What I hear you saying is a) there is no definition of a heavy truck and that is problem a), and problem b) is that there is no penalty section for disobey a sign, that there is no Highway Traffic Act penalty for disobey a sign?

MR. PARKER: Well, it would appear that there is under the short form wording under the Provincial Offences Act, yes there is.

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MR. PARKER: What Section does that say and how does it relate to it?

MR. PARKER: Well, it just gives the short form wording, basically, disobey sign that's all it says.

THE COURT: But there is no section within the Highway Traffic Act that says anyone who contravenes this section is subject to a penalty?

MR. PARKER: No, that's correct.

THE COURT: And all of the short form Section numbers, do they apply--they apply to by-laws as well as to Highway Traffic Act offences or no?

MR. PARKER: No, they don't.

THE COURT: Just to Highway Traffic Act offences?

MR. PARKER: No. This would be if the by-law--if this truck did not, or vehicle did not conform to what is required under the by-law, then it would be the by-law number that would be charged because this vehicle was travelling on a road that this by-law says you can't travel on. And it's the sign that supports that by-law.

THE COURT: Let me just stop you there for a moment. Let's hear from the Crown on this matter.

MS. STEVENSON: Well, Your Honour...

THE COURT: You understand the point that concerns...

MS. STEVENSON: Absolutely.

THE COURT: Right.

MS. STEVENSON: And I went through the Highway Traffic Act in detail attempting to address this problem, and the only other definition I could find was in one of the regulations where it's an inspection regulation for the motor vehicle

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inspections stations, and it says, "Motor vehicles are classified as follows: Light motor vehicles..." and then heavy motor vehicles and it gives the weight. "...motor cycles, propane-fuelled motor vehicles." But I'd agree that doesn't assist me very much.

THE COURT: That is a separate Act. And then the Interpretations Act has no, that I recall, has no reference to heavy truck.

MS. STEVENSON: But...

THE COURT: Let's deal with the second argument first. That there is no penalty provision under the H.T.A. for disobeying a sign. There is the short form and the amount of money, but it does not create that there is a penalty for disobeying a sign.

MR. PARKER: In all fairness, I believe it's the Provincial Offences Act that enforces or regulates penalties, not the Highway Traffic Act. Unless you have something specific such as driving under suspension, which does have its own penalty section, but I think that's one of the very few together with failing to remain and other more serious charges.

MS. STEVENSON: There's a general...

THE COURT: How does the P.O.A.--what section of the P.O.A. Act speaks to the penalties for breaches of Provincial Statutes?

MR. PARKER: Court's indulgence, Your Honour. General penalty, Section 61.

THE COURT: Sixty-one?

MR. PARKER: Of the Provincial Offences Act. There's a general penalty section.

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THE COURT: "Everyone where otherwise expressly provided by law--except for where expressly provided by law..." that means that there is a penalty section within the Act, "Every person who is convicted of an offence is liable to a fine not more than \$5,000."

MR. PARKER: It is my understanding that it was the Chief Justice of the Province that sets the fines for out of court settlements.

THE COURT: But, for example, let me just go to speeding for example. At the end of the speeding section there is a penalty?

MR. PARKER: Yes, there are. Yes.

THE COURT: Want to just read--find that?

MR. PARKER: Yes, that was 120--speeding is 128. It sets out certain dollar amounts per kilometre over the limit in various ranges.

THE COURT: May I just borrow that for a moment?

MR. PARKER: Yes, certainly. On the left hand side.

THE COURT: And the sign section is what, Section 61 you said earlier. What Section was it again?

MR. PARKER: No. The sign section is 182(2), Your Honour.

THE COURT: I just want to satisfy myself with the offence, and the second argument is whether there is an offence, is one thing, they had to find something and say--the next thing is whether this creates an offence. Okay, it says, "Every driver/operator of a motor vehicle or streetcar shall obey the instructions or directions indicated on by any sign so erected." If we look at the speeding sections, it says, "No person

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shall drive a motor vehicle at a rate greater than..." Then Section 14 says, "Everyone who contravenes this section or any by-law..." so, that's under the penalty section.

MR. PARKER: Yes, sir.

THE COURT: "...made under this Section is guilty of an offence on conviction is liable..." and then it gives the rate of payments. If we look at careless driving--careless driving is what Section?

MR. PARKER: One three zero, Your Honour.

THE COURT: My familiarity with the Act is not what it used to be.

MR. PARKER: There is a specific penalty section after that.

THE COURT: That is right. And the stop sign section?

MR. PARKER: One thirty six.

THE COURT: This is a test.

MR. PARKER: I can advise that there is no penalty section after that. It does--there's three different parts to Section 136 concerning stop signs.

THE COURT: "Every driver approaching a stop at-- shall stop his vehicle before entering..." Okay. That is when we look at Section 61, "Where otherwise expressly by law every person who is convicted of an offence is liable to a fine of not more than \$500." Well, I do not have to hear from the Crown. I am satisfied that the wording of the Section is--heavy truck...

MR. PARKER: Correct, yes.

THE COURT: Okay.

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MS. STEVENSON: Well, Your Honour. I am certainly not able to assist as far as the definition of a heavy truck and I guess my only argument would be as a driver of a heavy truck, you know what you're carrying, you know what kind of vehicles you're operating, and if you're a heavy truck you know you're a heavy truck. I would just point out to Your Honour that the evidence was that this officer experienced in this size of truck that was not allowed to be on that roadway, and this was a large dump truck he was dealing with, and he knew it wasn't to be permitted on the roadway. In evidence, he asked the driver if he knew there were signs posted on the roadway that banned trucks from using that roadway unless they were specifically delivering on that route, and he indicates he saw the sign, but his boss told him to use that route. And I think that's what swayed the justice of the peace was the fact that no evidence was called, that this was a large dump truck; visually a large dump truck and was not to be on that road, and at the trial, my submissions were that the statement is some kind of consciousness of guilt when he says, "I know, but my boss told me to use this route." And that's as far as I can assist Your Honour. I'm still in the same dilemma as I was at the trial.

THE COURT: No. Let me ask you one other question. The only definition that you know of a heavy truck falls into--what Act is that?

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MS. STEVENSON: It's the Highway Traffic Act; it's the Regulations. And it's the Regulation dealing with...

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THE COURT: With a heavy truck uses another term, does it not?

MS. STEVENSON: It doesn't use the word heavy truck, it uses heavy motor vehicle.

THE COURT: All right.

MS. STEVENSON: And that's for the purpose of the vehicle inspection station.

THE COURT: Right.

MS. STEVENSON: And I would need your indulgence just to locate it again, because...

THE COURT: I take your word for that. And for a heavy motor vehicle and for licensing purposes, do either of you know any statute or licensing regulation that designates something as a heavy truck versus something else?

MR. PARKER: It's my understanding, Your Honour, that commercial carriers can register any particular weight they wish, if they wish to pay the appropriate fee. That is the vehicle is registered to weigh a maximum of whatever they want and the fee increases accordingly as the weight goes up.

THE COURT: But you are saying that you know of no authority in the registration process that classifies a type of vehicle as a heavy truck?

MR. PARKER: To the best of my knowledge, no, Your Honour. The only thing that I know of that defines what a heavy truck is would be the by-law as enacted by the municipality.

THE COURT: Your argument is that if the Section is really--the Province could enter into, but elected not to enter into and to simply set the frame work for the municipalities to pass whatever

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Ruling

by-laws they want.

MR. PARKER: It would appear so.

5 THE COURT: I am sympathetic to the Crown's argument that there is some evidence of consciousness of guilt, but the question is consciousness of guilt to what. I think there has to be some degree--that is like someone, I suppose, looking at a magazine that falls short of being pornographic or obscene under the Criminal Code, but someone feeling guilty or ill at ease reading it because they feel it is wrong.

10 MS. STEVENSON: And you do have the evidence of the officer who indicates that's a large dump truck.

15 THE COURT: Yes. But again, there is large dump trucks and there is larger dump trucks.

MS. STEVENSON: Absolutely, Your Honour.

20 R U L I N G

25 BUDZINSKI: Prov. J. (Orally):

I think the Crown very properly argued the case, but I accept the argument put forward by counsel without a definition of heavy truck the charge must fail. So, the application is allowed. I will allow the application and I am going to quash the conviction.

30 MR. PARKER: Thank you, Your Honour. The penalty was suspended by the justice of the peace in any event, so there's nothing to refund.

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Ruling

THE COURT: All right.

MR. PARKER: If I could have my book back, please?

THE COURT: Yes. Thank you.

MR. PARKER: Thank you, Your Honour. Thank you,
Ms. Stevenson.

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



Anne Pecaric, (Ms.)
Court Reporter