

ONTARIO COURT (PROVINCIAL DIVISION)

CHRISTOS XINOS

- APPELLANT

AGAINST

HER MAJESTY THE QUEEN

RESPONDENT

A P P E A L

H E A R I N G

BEFORE THE HONOURABLE JUDGE AUGUST
on Friday, February 9th, 1996
in courtroom L
Old City Hall
60 Queen Street West
TORONTO, Ontario

APPEARANCES

J. HOOD, MR., AGENT FOR THE MINISTRY OF THE ATTORNEY GENERAL
P. PERITI, MR., AGENT FOR CHRISTOS XINOS

U P O N C O M M E N C I N G

5 MR. HOOD: Matter number 15, please,
Your Honour, Christos Xinos.

MR. PERITI: Good morning, Your Honour. "Paul Periti" appearing as agent for the appellant. My last name is spelled P-E-R-I-T-I, the first initial "P."

10 Your Honour, this is a matter where the certificate of offence had gone to the fail to respond docket and the matter was dealt with in a conviction. I'd like to draw your attention to the section respectfully of the Highway Traffic Act that is written down on the certificate of offence. It is written down as 109; however, on the ICON print-out, someone has obviously changed it to 128. I would have been satisfied if the conviction had been entered and it had been entered in the computer as having been convicted. Unfortunately, that's not the case; so somewhere along the lines, somebody has taken the opportunity to amend this.

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25 Secondly, with respect to the Provincial Offences Act, Section 9, it deals with convictions of fail to respond. Specifically, Section 1(a), the certificate of offence would be convicted -- sorry -- would be dealt with with a conviction if it is proper and regular on its face. Section 1(b) deals -- or states that if there is an irregularity on it, that it would be quashed. In any event, I would submit that the section number being 109 and
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not 128 would be an irregularity, and that the certificate should have been quashed at the fail to respond. These are my submissions with respect to this.

MR. HOOD: Yes, Your Honour, my friend is quite correct in indicating Section 9. It is indicated that the justice of the peace shall enter a conviction or quash if it's complete and regular on its face, that being the certificate. The certificate appears -- the copy I have before me, is not complete and regular. It indicates, as my friend suggested, Section 109 instead of Section 128. So, at this point, it would be the Crown's application to ask the Court to allow the appeal and quash the certificate as to the irregularity.

THE COURT: Is this an appeal?

MR. HOOD: Yes. It appears to be an appeal. Yes.

MR. PERITI: Yes, it is, Your Honour.

THE COURT: All right. Then the appeal is allowed. The conviction and the fine are set aside, and an acquittal is entered on this charge.

MR. PERITI: Thank you, Your Honour. I thank my friend.

THIS IS TO CERTIFY THAT
the foregoing is a true
and accurate transcription
of my recordings to the
best of my skill and ability.

.....*Sharon W. Cavanaugh*.....
Sharon W. Cavanaugh
(Official Court Reporter)

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