

THE REGIONAL MUNICIPALITY OF YORK
Applicant

- and - ROCCO CARNAVALE et al. (as listed in Schedule "A")
Respondent

OCT 14, 2021.

Mr. Bendick only appearing &
appearing for the Applicant.

See typed endorsement attached

Pgs 1 to 3.

Myra Kheg
LACK

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Newmarket

APPLICATION RECORD

The Regional Municipality of York
Legal and Court Services
Prosecution Branch
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The Regional Municipality of York v Rocco Carnavale et al. (as listed in Schedule “A” to Application)

Endorsement – October 14, 2021 – Ct. File CV-21-3334-000

1. This Application was heard by virtually (by Zoom) due to the Covid-19 emergency.
2. The Applicant seeks an order for *Mandamus* with *Certiorari* in Aid.
3. At issue is the quashing by Justices of the Peace of 109 Certificates of Offence laid against Respondents for the offence of failing to stop for a red-light contrary to s. 144(18.1) and pursuant to s. 207 of the *Highway Traffic Act*. These are Red Light Camera offences. The offence dates varied between March 16 to September 11, 2020. It appears that the quashing orders were based on the failure of the provincial offences officers to either serve the Offence Notice within 30 days of the offence date, or file the Certificates of Offence within 7 days of the date of service of the Offence Notice.
4. The filing of the Certificate of Offence commences the proceeding. The Applicant’s position is that the time period to serve and file the Certificates of Offence are limitation periods related to the commencement of a proceeding and that these time periods were suspended by virtue of O. Reg. 73/20 made under the *Emergency Management and Civil Protection Act*, and later extended under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*. By failing to apply O. Reg. 73/20, the Justices of the Peace committed jurisdictional error or an error in law in quashing these Certificates of Offence for the reasons given.
5. When the 109 Certificates were quashed by the Justices of the Peace, York Region court staff stopped sending the Certificates of Offence for the Justices to deal with until this Application could be brought. I am told that there 7,311 such Certificates currently being held.
6. The first issue to be dealt with is whether service of notice of this proceeding on the Respondents named in the 109 Certificates should be dispensed with under rule 16.04 of the *Rules of Civil Procedure*.
7. I find that service of Notice of this Application on the 109 Respondents should be dispensed with. A Respondent was required to respond to the Offence Notice within 15 days. York Region court staff did not send any Certificates of Offence to Justices of the Peace for review until mid-April 2021 since Chief Justice Maisonneuve extended the timeline to respond to Offence Notices until February 26, 2021 and the Regional Senior Justice of the Peace for York Region did not provide approval to recommence consideration of the Certificates of Offence by the Justices of the Peace until the beginning of April 2021. None of the Respondents responded to the Notices within the extended timeframe. When a Respondent does not respond to the Notice, the Respondent is not entitled to further notice of the proceeding in which the Justice of the Peace considers the Certificate of Offence and receives none. Therefore, it follows that the Respondent is not entitled to notice of this proceeding. However, if I am wrong, I would dispense with notice on the 109. Subrule 16.04(1) of the *Rules* authorizes the Court to dispense with service of an originating process where it is “impractical for any reason to effect prompt service” and “where necessary in the interests of justice”. The interpretation of “impractical” is central to resolution of this issue. I prefer the meaning of

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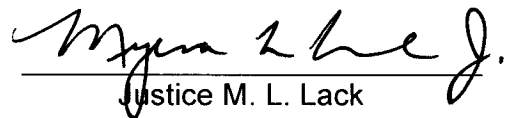
“impractical” as defined by the British Columbia Supreme Court in *Credit Foncier Franco-Canadien v. McGuire*, 1979 CanLII 366 (BC SC), as “not capable of being done usefully or is capable of being done but at too great a cost”. I do not accept that “impractical” means “impracticable”, which has been defined as “unable to be carried out or done.” The word “impracticable” was used by the legislature in rule 37.07(2) and if that is what the legislature wanted to convey in 16.04(1) it would have used that word. I find it would be impractical for the Applicant to serve 109 Respondents with notice. I also find that it is necessary in the interests of justice to dispense with service. It is necessary that the issue be dealt with expeditiously, and as I have already noted, by failing to respond to the Certificate of Offence a Respondent is not entitled to further notice.

8. The next issue is whether the Justices of the Peace erred in quashing the 109 Certificates of Offence for the reasons set out on the court record. I have reviewed all 109 Certificates, which are exhibited in the affidavit in support of this Application, and in each case the reason given by the Justice who quashed a certificate is: “filing date is past 30 days”.
9. I find that the Justices of the Peace were in error. The time for service of the Offence Notice, as well as the time to file the Certificate of Offence, are limitation periods associated with the commencement of a proceeding. By virtue of s. 1 of O. Reg. 73/20, these limitation periods were suspended between March 16 and September 14, 2020 due to the Covid-19 pandemic. The subject matter Offence Notices and Certificates of Offence were all served and filed within this time period. By failing to apply the mandatory provision suspending the limitation period as set out in s. 1 of O. Reg 73/20, Her Worship DeBartolo and His Worship Ecker, respectively, erred in law in quashing the Certificates of Offence, with which each respectively dealt.
10. The next issue is the appropriate remedy, if any. The Applicant seeks *mandamus* with *certiorari* in aid. Counsel appropriately points out that there is an issue as to whether *certiorari* is available because it is limited to jurisdictional error and if not available, how does one quash a disposition that quashes a process.
11. The Supreme Court of Canada in *Kipp v. Attorney General (Ontario)* 1964 CanLII 20 (SCC), considered the quashing of an indictment by the County Court. The Crown brought an application for *mandamus* which was granted. In upholding the issuance of *mandamus*, the Supreme Court noted at p. 60: “It is common ground that the Crown has no right of appeal from this erroneous quashing of the indictment. The only remaining question is whether an order of *mandamus* should issue directing the County Court Judge to proceed with the trial. Again, for the reasons given by Grant J., I am of the opinion that it should.” The Supreme Court held that the fact that the lower court committed an error in law, as opposed to jurisdictional error, did not preclude the issuance of *mandamus*.
12. The Ontario Court of Appeal applied *Kipp* in *R. v. Beason*, 1983 CanLII 1873.
13. The Ontario Court of Appeal in the *Corporation of the City of London v. Young et al.*, 2008 ONCA 429, applied *Kipp* and *Beason* to hold that *mandamus* is the appropriate recourse when a Justice of the Peace quashed a Certificate offence in their review of the Certificate pursuant to s. 9 of the *Provincial Offences Act*. The *Young* case is on all fours with the present one. Central to the holding – as here – is the fact that there is no right of appeal under the *POA* with respect to an order quashing a Certificate offence. In all of these cases, it was implicit that the

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the *mandamus* order had the effect of overriding the lower court decision to quash. I find that the proper remedy here is simply *mandamus* and the requirements for *mandamus* have been met.

14. For these reasons, based on the authorities, I find that *mandamus* should issue.
15. The Applicant also seeks an order dispensing with service of this Application of the alleged offenders named in the 7,311 Certificates of Offence, which have not yet been placed before Justices of the Peace and a declaration that would be binding in those cases. I decline to make either order since those matters are currently hypothetical.
16. For these reasons I make the following orders:
 - (a) An Order abridging the time for filing the Application Record and Factum of the Applicant; and
 - (b) An Order dispensing with the need for service of Notice of Application CV-21-3334-0000 on the Respondents listed in Schedule "B" to Notice of Application CV-21-3334-000; and
 - (c) An Order of *mandamus* directed to Her Worship DeBartolo and His Worship Ecker in connection with their respective reviews of the Certificates of Offence listed in Schedule "B" to Notice of Application CV-21-3334-0000 (or other presiding Justices of the Peace before whom those specific Certificates of Offence may be placed) to proceed in accordance with s. 205.19 of the *Highway Traffic Act* or s. 9 of the *Provincial Offences Act* in the event that this Court's order is issued, or the Certificates of Offence are reviewed after s. 205.17(2) and 205.19 of the *Highway Traffic Act* have been repealed (the repeal is effective November 1, 2021); and
 - (d) A Declaration in connection with the Certificates of Offence listed in Schedule "B" to Notice of Application CV-21-3334-0000 that the time to serve the Offence Notices and to file the Certificates of Offence was suspended between March 16, 2020 and September 14, 2020 and that the requirements to serve the Offence Notice and file the Certificates of Offence comply with the regulatory and statutory requirements sufficient for the Court to proceed to enter a conviction in accordance with s. 205.19(2) of the *Highway Traffic Act*.


Justice M. L. Lack