CASE/FILE NO: 3161-999-00-1705002B-00

ONTARIO COURT OF JUSTICE
(PROVINCIAL DIVISION)
(REGION OF PEEL)

BETWEEN:

HER MAJESTY THE QUEEN

Respondent(s)

and

SHAWN CASSISTA

Applicant(s)

Motion to grant a Stay of Proceedings

TAKE NOTICE that an Application will be brought by SHAWN CASSISTA the Applicant, before the presiding Justice of the Ontario Court of Justice (Provincial Division), Courtroom #M5, at 950 Burnhamthorpe Rd W on the 17th day of March, 2014, at 1:30 p.m. or as soon thereafter as the Applicant may be heard, for an Order directing the prosecution of the charges herein (Drive Motor Vehicle, No Permit contrary to the Highway Traffic Act – Section 7 (1) (a)), which occurred on 7th day of August, 2013 be stayed on the grounds stated below.

Grounds for Stay of Proceedings

1) The Defense motions this honourable court to grant a Stay of Proceedings for permanent discontinuance of this matter based on the grounds that the Highway Traffic Act (HTA) applies to *"corporations"* only;

2) Given the maxim; *omnis persona est homo, sed non vicissim,* **Every man is a person, but not every person is a man** (BL4 P2152), it is clear and evident that it cannot be construed that a person is absolutely a man for as; *homo vocabulum est naturae, persona juris civilis,* **Man is a term of nature; person of civil law** – Calvin (BL4R P869);

3) And, for all Acts of legislation where the definition of a word is not provided, the Legislation Act, 2006 provides the definition;

4) The word *"person"* is not defined in the HTA, whereas the Legislation Act, 2006, under the Definitions section states:

> *87. In every Act and regulation,*
> *"person"* ***includes a corporation*** *("personne");*

5) Moreover, the Defense has found the essential word in the above definition to be the word *"includes"*;

6) The purpose of defining a word within a statute is so that its ordinary dictionary meaning is not implied or assumed by the reader. A definition by its terms excludes non-essential elements by mentioning only those things to which it shall apply;

7) The definition of the word *"definition"* is as follows: *A description of a thing by its properties; an explanation of the meaning of a word or term. The process of stating the exact meaning of a word by means of other words. Such descriptions of the thing defined,* ***including all essential elements and excluding all nonessentials, as to distinguish it from all other things*** *and classes (BL6 P423)*;

8) A Maxim of Law states: *Inclusio Unius Est Exclusio Alterius,* ***The inclusion of one is the exclusion of another.*** (BL4R P906). It must necessarily be so that the certain designation of one person is an absolute exclusion of all others;

9) To reaffirm this, another Maxim of Law states: *Expressio unius personae est exclusio alterius,* ***The mention of one person is the exclusion of another;***

10) And once again, another Maxim of Law states: *Designatio unius est exlusio alterius, et expressum facit cessare tacitum,* ***The designation of one is the exclusion of the other; and what is expressed prevails over what is implied***;

11) In accordance with several authoritative sources, the word *"includes"* is defined as:

- **INCLUDE (*Lat. – inclaudere*): *To shut in, keep within. To confine within, hold, as in an inclosure, take in, attain, shut up, contain, inclose, comprise, comprehend, embrace, involve.*** (BL4R P905)
  - Black's Law Dictionary Revised 4th Edition

- **INCLUDE: *To enclose within limits; made up of.***
  - The Winston Canadian Dictionary New Revised Edition

- **INCLUDE: *Contain, comprise, cover, embrace, encompass, incorporate, involve, subsume, take in.***
  - Collins Essential Canadian English Dictionary and Thesaurus.

- **INCLUDE: 1. *put, hold, or enclose within limits 2. contain, comprise.***
  - Gage Canadian Dictionary.

12) Furthermore, the Defense is of the view that it is axiomatic that the statutory definition of the word *"includes"* excludes unstated meanings of that term;

13) The phrase "including, but not limited to", as commonly employed in the legal profession, inherently implies that, without the qualifier, the term INCLUDING is limiting in nature;

14) This is further evidenced by the definitions of a "*peace office*" within the Legislation Act, 2006, as well as the Criminal Code of Canada. Both of which use the word "*includes*" in restricting what kind of person is a peace officer;

15) It is clear and evident that the use of the word "*includes*" when codifying the definition of the word "*peace officer*", is restrictive in its use, for it limits to define what exactly a peace officer is so as to provide society with an absolute determination regarding who is, and who is not a peace officer;

16) If the word "*includes*" is used in an expansive sense, then no kind of assurance would be afforded to members of society to know exactly what person may or may not be a "*peace officer*". If this is the case, used expansively, the definition would then be open to subjective interpretation as to the meaning of the word "*peace officer*". Therefore the word "*includes*" must be utilized restrictively when defining the word "*peace officer*";

17) When the word "*includes*" is used in the definition of the word "*person*" in the Legislation Act, 2006, it is only reasonable to conclude, that the use of the word "*includes*" in defining the word "*person*", must also be used restrictively;

18) If the use of the word "*includes*" is restrictive in one definition and then used expansively in the other, then the defense is of the view that Parliament has written laws that are vague and uncertain, for a reasonable man who reads the Act, which is either unknown or uncertain would be hard pressed to know the difference in the use of the word "*includes*". For ***Misera est servitus, ubi jus est vagum aut incertum "It is a wretched state of slavery which subsists where the law is vague or uncertain."*** (BL4R P1151);

19) Therefore it is clearly evident to the Defense that what has been defined in the Legislation Act, 2006 regarding the word *"person"* in relation to the word *"includes"* is the intention of Parliament to exclude anything other than a *"corporation"*;

20) In other words, the word *"includes"*, in accordance with the Legislation Act, 2006, excludes anything that is not a corporation as being defined as a *"person"*. This Act specifically **includes only a corporation** and **by implication excludes the potential of any other thing in the universe from being defined or considered as a person**;

21) When a term is defined within a statute, that definition is provided usually to supersede and not enlarge other definitions of the word found elsewhere, such as in other Acts or Codes, or dictionary sources;

22) And whereas, *"Every law of Canada shall…, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights" – Canadian Bill of Rights*

23) In matters where the law is vague or uncertain, the following Maxims of Law offer the following in guiding this court:

- *A verbis legis non est recedendum,* ***The words of a statute must not be departed from.*** A court is not at liberty to disregard the letter of a statute in favor of a supposed intention. (BL7 P1620)

- *In dubio, haec legis constructio quam verba ostendunt,* ***In doubtful cases, the construction of the law is what the words indicate.*** (BL7 P1644)

- *Ambiguitas contra stipulatorem est,* ***Doubtful words will be construed most strongly against the party using them.*** (BL4R P105)

24) Where the words of a statute must be strictly observed, and a supposed intention is to be avoided, and where the Crown is the party referring to, relying on and using the HTA, it is respectfully submitted that the word *"person"*, which the definition is **not** provided in the said Act, but is in the Legislation Act, 2006, must be construed as being limited to corporations, and does not extend to mere individuals, physical persons or natural persons;

25) Therefore, with the support of the authoritative sources above, it is the view of the Defense that it is the duty of the judiciary to construe legislation as it is written, not as it might be read by a layman, or as it might be understood by someone who has not even read it;

26) Therefore, the principle that ***every man is a person, but not every person is a man*** is clearly upheld by the intention of the legislator when it defined the word "*person*" in the Legislation Act, 2006;

27) In the wise words of Judge Irving in **Rex. v. Sung Chong (1909), 14 B.C.R 275 (C.A.) 1909 1900-09**:

> *"Where a restraint is sought to be put upon any person in respect of the exercise of any of those natural rights, I think it is the duty of the Court to assume that* ***the legislature did not intend to interfere with them, unless clear and unequivocal words have been used.****"*

28) In accordance with this case law, the judiciary was specific in stating that clear unequivocal language must be used by the legislator when defining the words which express the legislative intent;

29) It is then self-evident to the Defense that the legislator did not intend for the word "*person*" to include or mean a "*man*" otherwise it would have stated such with clear and unequivocal language in the definition of "*person*" in the Legislation Act, 2006;

30) It is the view of the Defense that presumptions can not be used in determining the meaning of a statute. A person reading a statute cannot be required by statute or by judge made law to read anything into an Act of parliament that is not expressly spelled out in that Act;

31) It is self evident to the Defense that there are inherent jurisdictional limitations to the HTA, for it is clear that this act does not apply to other territorial jurisdictions such as South Africa or California, nor does it apply to children, to private property, or on waterways;

32) The Defense is of the view that there is a presumption at play *prima facie*, that the Defendant is under the jurisdiction of the HTA;

33) Considering a presumption is an inference in favour of a particular fact, the Defense brings to the attention of this honourable court, that the presumption is inferring that the Defendant is automatically under the jurisdiction of the HTA;

34) A presumption which is not rebutted, is held to be true, however, when a presumption is challenged, that presumption is absolved because a presumption in and of itself, is not a fact;

35) Through the direction of this motion, the Defense does hereby rebut the presumption that the Defendant is subject to the jurisdiction of the HTA. As this Maxim of Law states: *Semper presumitur pro negante*, ***The presumption is always in favour of the one who denies*** (BL4R P1527);

36) The Defense asserts that the court has not been provided with any evidence that the Defendant is a corporation subject to the HTA, and has further not been provided with any evidence proving the Defense is a person subject to the aforementioned Act. As the following Maxims of Law solidify:

Affirmanti non neganti incumbit probation, ***The burden of proof is upon him who affirms, not upon him who denies*** (BL4R P81), and;

Actore non probante reus absolvitur, ***When the plaintiff does not prove his case, the defendant is acquitted (or absolved).*** (BL4R P53);

37) Therefore, I move this honourable court to enter an order to grant a Stay of Proceedings for permanent discontinuance of this matter based on the grounds that the Crown has failed to provide evidence which directly proves that the Defendant is under the jurisdiction of the HTA, and obligated to perform under the act, and therefore lacks *in personam* jurisdiction, thus rendering the charges against the Defendant void *ab initio*.

Ministry of the Attorney General | Ministère du Procureur général

Ontario

GENERAL FORM FOR AFFIDAVIT
FORMULE GÉNÉRALE D'AFFIDAVIT

I, Shawn Cassista
Je soussigné(e),

of [redacted], MISSISSAUGA, ONT.
de

make oath and say as follows:
déclare sous serment que :

THAT THERE ARE GROUNDS FOR A STAY OF PROCEEDINGS AND I AM BRINGING FORWARD 2 MOTIONS BEFORE TRIAL:

) THE HTA APPLIES TO CORPORATIONS ONLY, AT THE LEGIS-LATION ACT, 2006 STATES: 87. IN EVERY ACT & REGULATION, "PERSON" "INCLUDES" A CORPORATION.

AND WHEREAS A MAXIM OF LAW STATES: "INCLUSIO UNIS EST EXCUSIO ALTERIUS."

2) THE OTHER MOTION IS A SECTION 7 CHARTER APPLICATION.

AFFIRM

Shawn Cassista
Signature

~~Sworn~~ by the said Shawn Cassista
Déclaré sous serment par

before me, L. MacKenzie
devant moi

at Miss
dans le/la

on the 25 day of Feb, yr 2014
le jour de an

L. MacKenzie
(A commissioner, etc. / *Commissaire, etc.*)

LESLIE ANNE MACKENZIE, a Commissioner, etc.,
Regional Municipality of Peel, for the
Corporation of the City of Mississauga.
Expires November 8, 2014

he order of the Full Court, dated the 21st of April, 1909, in the ase reported *ante* pp. 241, 256. Heard by CLEMENT, J., at hambers in Vancouver, on the 29th of June, 1909.

L. G. McPhillips, K.C., for the insurers: The award of the rbitrator is *ultra vires*, in that it provides that the hole of the $1,500 is to be paid in sums of $10 per week unless said applicant should not so long live." The only ower of the arbitrator was to order this payment during icapacity (*b.* of 3, First Schedule) and subject to the right of iview (9 of First Schedule); and a point of this nature could robably not be raised in an issue. Further, the rules made by e Lieutenant-Governor in Council, as they appeared in the azette, 1904, pages 353 and 1,164, are *ultra vires* insofar as ey provide for the procedure under section 6 of the Act (the ction under which the application was brought). The only ithority in the Act for making the rules is sections 2 and 5 of e Second Schedule. Section 5 merely refers to appearance by party other than the parties to the arbitration; and section 2 fers only to the rules respecting the decision of questions tween the applicant and the respondent and not to questions tween the applicant and an insurance company; and the first o lines of the schedule provide that the provisions of that hedule shall apply for settling any matter which under this t is to be settled by arbitration. And section 6 does not ovide that the question as to whether the respondent is titled to a sum of money from the insurer is to be settled by bitration.

S. S. Taylor, K.C., for the applicant: Section 6 of the Act in elf provides that the question of whether the respondent was titled to any money from the insurers should be decided by an plication to a judge of the Supreme Court as distinguished m an action in the Court; and therefore authorizes a judge order an issue.

CLEMENT, J.: The rules made under section 6 are *ultra vires*, d section 6 in itself, apart from the rules, does not authorize to order an issue. Any right which the applicant might have der this section as against the Insurance Company must be

decided in an action commenced by writ of summons in the ordinary way. I, however, reserve the question of costs until after the decision in any action to be brought, provided that if no action be brought within three months this application shall stand dismissed with costs.

Application dismissed.

CLEMENT, J. (At Chambers)
1909
June 29.

DISCOURDI v. SULLIVAN GROUP MINING CO.

SULLIVAN v. MARYLAND CASUALTY CO.

REX v. SUNG CHONG

FULL COURT
1909
June 7.

REX v. SUNG CHONG

Municipal law—By-law regulating hawkers—Construction of—Validity—Regulation and prohibition—Difference between—Vancouver Incorporation Act, 1900, Cap. 54, Sec. 125, Sub-Sec. 110.

Where a municipal by-law was passed prohibiting hawkers and peddlers of vegetables and similar products from pursuing their calling throughout the municipality during certain hours on market days:—

Held, per HUNTER, C.J., dissenting, that the by-law was regulatory and not prohibitory in its provisions and therefore *ultra vires* the Council.

Per IRVING, J.: The by-law in question was not authorized by the statute.

Per MORRISON, J.: A statutory power to pass by-laws regulating a trade does not authorize the prohibition of such trade or the making it unlawful to carry on a lawful trade in a lawful manner.

APPEAL from the decision of CLEMENT, J., at Vancouver, on the 17th of September, 1908, dismissing an application for a writ of *certiorari* removing into the Supreme Court a conviction of the defendant for an infraction of the Market By-law, No. 630, of the City of Vancouver. Section 4 of the by-law, on which the conviction was had, reads:

Statement

"No peddler shall peddle any dairy produce (except milk) or garden or field produce or fruit in any part of the City before the hour of 10 o'clock on any market day as defined in section 2 hereof, and no person other than a consumer, buying for his own use, shall buy, or bargain for any goods exposed in the market before the

The appeal was argued at Victoria on the 15th and 19th of January, 1909, before HUNTER, C.J., IRVING and MORRISON, JJ.

Farris, for appellant (defendant): A by-law must be strictly construed against the municipality: *Re Taylor and Winnipeg* (1896), 11 Man. L.R. 420; *Re Brodie and the Corporation of Bowmanville* (1876), 38 U.C. Q.B. 580. The legislation in question is only as to market days, which would appear as if it was the interest of the market and not that of the public which was concerned.

[HUNTER, C.J.: We cannot presume bad faith as to governmental bodies.]

No, but we must see if the legislation is reasonable, and they are not reasonable in attempting to restrain a person from doing a lawful thing in a lawful manner.

[*Per curiam:* It is plain that sub-sections 64 or 66 of section 125 are not intended to apply. The question, then, is had the Council power under sub-section 110, relating to hawkers, to pass this by-law?]

The question is what power had the council to regulate—

[MORRISON, J.: Prohibit.]

Partially prohibit and partially regulate. The Court must be satisfied that there is a substantial prohibition on the individual pursuing his business or calling: *O'Dea* v. *Crowhurst* (1899), 63 J.P. 424.

J. K. Kennedy, for respondent Corporation: The intention of the by-law is to prevent the forestalling of the market, and in doing so, the Council is decidedly within its powers.

Farris, in reply: The by-law should state in terms that the intention was to prevent forestalling.

Cur. adv. vult.

7th June, 1909.

HUNTER, C.J.: I think the by-law impugned may be supported under sub-sections 68 and 110 of section 125 of the Incorporation Act.

It was argued that a prohibition on a peddler from peddling garden produce before 10 a.m. on market days was not an enactment regulating peddlers, and reliance was placed on the case

of *Municipal Corporation of City of Toronto* v. *Virgo* (1896), A.C. 88. It was there held that a by-law which purported to be passed under the regulating powers possessed by the City of Toronto, and which prohibited peddlers from plying their trade at all on certain streets was in reality *pro tanto* prohibitory, and therefore to that extent *ultra vires*, but I am unable to see how it can be quoted as an authority in support of the proposition that a by-law which allows peddling during certain hours and forbids it during certain hours, can be said to be prohibitory and not regulatory. In fact Lord Davey says, at p. 93:

"No doubt the regulation and governance of a trade may involve the imposition of restrictions on its exercise both as to time and to a certain extent as to place where such restrictions are in the opinion of the public authority necessary to prevent a nuisance or for the maintenance of order."

I would dismiss the appeal.

IRVING, J.: In my opinion we should upset this conviction on the ground that the fourth clause of the by-law is *ultra vires* of the powers conferred upon the City of Vancouver.

There are two sub-sections (if at all) under which this clause 4 can be upheld, *viz.*: sub-section 63, "for establishing markets and stock yards and for regulating the same"; and sub-section 66, "for preventing or regulating criers and vendors of any vegetables, etc., from practising their calling in any public markets, public sheds and vacant lots, and the streets and lanes adjacent to the market." The Legislature by section 66 expressly authorized the Council to prevent and regulate criers from practising their calling in the streets and lanes in the City adjacent to the market. If it was intended that the City should have the power that they profess to exercise by this clause 4 of the by-law, the words "adjacent to the market" would be wholly unnecessary.

The question is not absolutely plain, but in such a case as the present, which restrains or limits a man's right to carry on his trade in the ordinary way, we ought to be satisfied that the right has been taken away from him before we uphold any by-law to that effect.

Among the normal rights which are available to every British subject against all the world are (1) personal safety and freedom;

(2) one's good name; (3) the enjoyment of the advantages ordinarily open to all the inhabitants of the country, *e.g.*, the unmolested pursuit of one's trade or occupation and free use of the highways; (4) freedom from malicious vexation by legal process; and (5) to one's own property.

Where a restraint is sought to be put upon any person in respect of the exercise of any of these natural rights, I think it is the duty of the Court to assume that the Legislature did not intend to interfere with them unless clear and unequivocal words have been used.

In this case there is an interference with the right of the peddler to carry on his business at the hour he thinks best suited for peddling, and there is also an interference with the right of the citizen to purchase in (to him or her) the most convenient market.

I would quash the conviction.

MORRISON, J.: The City of Vancouver passed a by-law to regulate their market, section 4 of which reads as follows [already set out.]

For an infraction of this section of the by-law the defendant was fined, and the matter is brought before us by *certiorari* proceedings.

One of the grounds upon which this by-law is sought to be quashed is that the provision in question is unreasonable. A very effective answer to this ground of objection is found in the course of the decision of Lord Hobhouse in *Slattery* v. *Naylor* (1888), 13 App. Cas. 446 at pp. 452-3, where in part he says that in determining whether or no a by-law is reasonable it is material to consider the relation of its framers to the locality affected by it, and the authority by which it is sanctioned. And then his Lordship goes on to point out that where the Legislature has taken the precaution to ensure that the Council represents the feelings and interests of the community for which it makes laws; that, if it is mistaken, its composition may promptly be altered; that its by-laws shall be under the control of the Supreme executive; and that ample opportunity shall be given to criticize them in the Legislature; then there should be strong reluctance shown before questioning the reasonable character of

by-laws made under such circumstances, and there should be doubt whether they ought to be set aside as unreasonable by a Court of law unless it be in some very extreme case. And again in *Hanrahan* v. *Leigh-on-Sea Urban Council* (1909), 1 K.B. 78 L.J., K.B. 238 at p. 241, Walton, J., says:

"We must construe these by-laws (sanitary) according to their plain sense, without regard to the consequences, the Legislature having assumed that the local authorities would act in a reasonable manner."

But assuming that the provision is a reasonable one, yet the point is raised that it is *ultra vires* the Council because it is a prohibition and not a regulation of the business of hawkers.

Mr. *Farris* laid stress upon Lord Davey's observation upon certain authorities cited in *Municipal Corporation of City of Toronto* v. *Virgo* (1896), A.C. 88, that all through them the general principle may be traced that a municipal power of regulation or of making by-laws for good government without express words of prohibition does not authorize the making it unlawful to carry on a lawful trade in a lawful manner.

Here the appellant was prohibited during a certain period from plying his trade at all as in the *Virgo* case. The continuity of the trade's existence was broken.

Lord Davey goes on to say that the real question is whether under a power to regulate and govern hawkers, etc., the Council may prohibit, there being no question of any apprehended nuisance; and he continues (p. 93):

"No doubt the regulation and governance of a trade may involve the imposition of restrictions on its exercise both as to time and to a certain extent as to place where such restrictions are in the opinion of the public authority necessary to prevent a nuisance or for the maintenance of order."

There is no question of nuisance or maintenance of order here, the provision in my opinion being solely for the protection of the market. It seems to me therefore that the Council have no power to restrict the appellant as they have done in the lawful exercise of his business.

I would allow the appeal.

Appeal allowed, Hunter, C.J., dissenting.

Solicitor for appellant: *J. W. De B. Farris.*

Solicitor for respondent: *J. K. Kennedy.*