SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Haylock, 2009 NSSC 247

Date: 20090818
Docket: Cr. Am. No. 286455; 286454
Registry: Halifax

Between:

Catherine D. Haylock

Appellant

v.

Her Majesty The Queen

Respondent

Judge:	The Honourable Justice Arthur J. LeBlanc.
Heard:	February 18, 2009, in Amherst, Nova Scotia
Counsel:	Kelly Mittlestadt, for the Appellant Michelle D. James, for the Respondent

By the Court:

[1] The defendant (hereafter the Appellant) appeals from her convictions and sentence on two charges, one under s. 17(c) of the *Commercial Drivers' Hours of Work Regulations*, N.S. Reg. 226/90 (as amended up to N.S. Reg. 102/99) and other under s. 83(2) of the *Motor Vehicle Act*, R.S.N.S. 1989, c. 293. She was fined $157.50 and the $387.50 on the charges, respectively.

Background

[2] The Appellant owns a trucking business. On November 21, 2006, she was driving on Route 4 near West Wentworth, NS, hauling a load of Christmas trees from Brookfield, NS. The load was destined for Woburn, Mass. She was driving on a highway restricted to commercial vehicles with registered weights of 3000 kg or less, unless performing local service pickup or drop-off along that route. The Appellant was stopped by Compliance Officer Douglas Legere. The Appellant produced a bill of lading, registration, driver's license and daily log book. Although the officer believed that she was operating the vehicle contrary to the *Motor Vehicle Act*, he did not issue a ticket. He determined, however, that certain entries in the log book had not been properly filled out. Under the *Commercial*

Vehicle Drivers' Hours of Work Regulations, N.S. Reg. 102/99, drivers of commercial vehicles are required to keep a record of the total distance travelled in any 24-hour period, and the total hours in each duty status. There is an exception for drivers of commercial vehicles not destined beyond a radius of 160 km from the point of origin. The Appellant took the position that she had operated the vehicle for less than a 160 km radius and believed that she was within the exception. The trailer, however, travelled the entire distance to Massachusetts with another driver or drivers. The vehicle compliance officer issued a summary offence ticket. He also gave her a warning with respect to driving a vehicle over 3000 kg on a restricted highway.

[3] Subsequently, on November 28, 2006, the Appellant was stopped again while driving on the restricted portion of Route 4. On this occasion, she was charged with operating the vehicle on a restricted highway that was closed to commercial vehicles with registered weights over 3000 kg. There is no issue with respect to the adequacy of the posting of notice of the restriction. The Appellant was not performing a local service, as the load of Christmas trees she was hauling had been picked up in Brookfield and was destined for Massachusetts. The Appellant stated that she was on that highway for business reasons unrelated to the

load she was carrying, dropping off paperwork for her business and doing business related to her farm property, and she believed that this was permissible.

[4] With respect to the November 21 incident involving the logbook, the Appellant was charged under s. 17(c) of the *Commercial Vehicle Drivers' Hours of Work Regulations*, which provides:

> 17 No carrier shall operate or permit a driver to drive a commercial vehicle and no driver shall have a commercial vehicle unless the driver has in his possession,
> ...
> (c) the driver's current daily log completed to the time for which the last change in duty status occurred.

[5] The November 28 stop for driving in a proscribed area led to a charge under s. 83(2) of the *Motor Vehicle Act*, which provides:

> It shall be an offence for the driver of any vehicle or for the motorman of any street car to disobey the instructions of any official traffic sign or signal placed in accordance with this Act, unless otherwise directed by a peace officer.

[6] In his decision on the charge under the Regulations, the trial judge held that the definition of a “commercial vehicle” included a trailer, regardless of whether the driver was actually driving more than 160 km from the point of origin. He rejected the Appellant’s defence that because she was driving less than 160 km from the point of origin she was exempt from the requirement to file a log book, holding that the Regulations required her to maintain a log if the trailer was

destined to travel more than 160 km. On that basis, he found her guilty on the charge under the Regulations (Transcript, pp. 32-34).

[7] As to the charge under the *Motor Vehicle Act*, the trial judge also held that the Appellant was operating a commercial vehicle on the highway with weight restrictions of 3000 kg and was not performing a local service. He found that there was no question that she was driving on Route 4 between Glenholme and Thomson Station. He continued, at pp. 34-35:

> In order to be satisfied that there was a purpose for you being there that justifies the exemption, because there was no stop and delivery, and there was no picking up of your load within that area, I have to be satisfied that there is a reasonable excuse that would suggest the activity was innocent and not law breaking, considered by a reasonable person. In other words, someone would have to say that the reason for you being there was a reasonable purpose, even though there was a proscription or there was a law restricting your place within that zone.
>
> You have indicated to me that on November 28th you had a couple of personal stops to make that were unrelated to the load that you were carrying, but those particular stops were indirectly related either to the business of trucking, or to another business that is part of your livelihood, that is operating a farm. I don't accept either. In order for me to be satisfied that the purpose for you being there was directly related and reasonably related to a purpose that was justified, I would have to be satisfied that it was necessary for you to travel on that road in order to execute that purpose. There is no evidence before me that you could not have accessed those other individuals by an alternate route, and that you were required to go in that area where you were restricted because of the load that you were carrying. There is no evidence that it was necessary for you to be there.... I don't think in this particular part of the province there is a need for direct evidence for me to come to the conclusion that Oxford or the Oxford area can be accessed by the use of the Cobequid pass, so called, as opposed to the Wentworth highway. The reason for you going to see people in oxford is not a reason, given the restriction on the Wentworth highway, for you to take your vehicle that is

proscribed from being in that particular area. It is not a reasonable excuse in the circumstances. So I find you guilty with respect to the second charge as well.

Issues

[8] The issues that have to be resolved on the following:

1. Does s. 19 of the Regulations, exempting a driver from maintaining a daily log while driving a commercial vehicle not destined beyond a radius of 160 km from the driver's home terminal, apply when the commercial vehicle is destined for a distance greater than 160 km?

2. Are the Regulations *intra vires* s. 303 of the *Motor Vehicle Act*?

3. Did the trial judge err by holding one trial on the two charges?

4. Did the trial judge err in rejecting evidence of the Appellant directed at a defence of officially induced error?

The Law

[9] The *Motor Vehicle Act* provides, at ss. 303(1) and 304(1):

Regulations respecting commercial vehicles

303 (1) Subject to the approval of the Governor in Council, the Minister may make regulations.

(a) regulating and licensing all or any class or classes of persons transporting goods for hire upon provincial highways;

(b) regulating and licensing commercial carriers and motor vehicles operated upon provincial highways;

...

(d) regulating the hours of labour for drivers or operators of commercial motor vehicles operated upon provincial highways;

...

(f) prescribing penalties for the violation of any such regulations.

...

General rules and regulations

304 (1) The Governor in Council on the recommendation of the Minister from time to time may make rules and regulations not inconsistent with this Act as he deems necessary or expedient for the purpose of fully carrying out the true intent, purpose and object of this Act.

(2) A violation of any such rules or regulations shall be deemed to be a violation of a provision of this Act.

[10] The *Commercial Vehicle Drivers' Hours of Work Regulations*, made under s. 303(1) of the *Motor Vehicle Act*, provide, in part, at s. 1:

1 (1) In these regulations

...

(d) "carrier" means a person who owns, leases or is responsible for the operation of a commercial vehicle;

(e) "commercial vehicle" means

(i) a truck, truck-tractor or trailer, or combination thereof exceeding a registered gross vehicle weight of 4500 kg...

...

(f) "daily log" means a daily record covering a twenty-four hour period which provides the information required to be kept under Sections 14 and 15 and includes mechanical or electronic records for such period produced by devices permitted under Section 21;

(g) "driver" means a person who drives a commercial vehicle on the highway;

(h) "driving time" means the period of time that a driver is at the controls of a commercial vehicle being driven on a highway;

(i) "duty status" means, in respect of a driver, any of the following periods, namely:

(i) off-duty time, other than off-duty time spent in a sleeper berth,

(ii) driving time, or

(iii) on-duty time, other than driving time;

...

(k) "home terminal" means the place of business of a carrier where the driver normally reports for work;

(l) "inspector" means motor vehicle inspector;

...

(p) "twenty-four hour period" means a period of any twenty-four consecutive hours beginning at the time designated by the carrier for the terminal from which a driver is normally dispatched;

...

(2) Any reference in these regulations to a number of consecutive days means a number of consecutive days beginning on any day and at the time designated by the carrier for a twenty-four hour period.

[11] The Regulations address the driver's hours on duty at s. 3, which provides:

3 The hours on duty of a driver include the time spent by the driver

(a) inspecting, servicing, repairing, conditioning or starting a commercial vehicle;

(b) driving a commercial vehicle;

(c) travelling as one of two drivers, except the off-duty time the driver spends resting in the sleeper berth in a commercial vehicle;

(d) participating in the loading or unloading of a commercial vehicle;

(e) inspecting or checking the load of a commercial vehicle;

(f) waiting, at the request of the carrier, for the driver's commercial vehicle to be serviced, loaded or unloaded;

(g) waiting for the driver's commercial vehicle or load to be checked at a customs or weighing check point;

(h) travelling as a passenger in a motor vehicle, at the request of the carrier, to a work assignment that will begin before he has had eight consecutive hours off duty;

(i) waiting at an en route point because of an accident or other unplanned event; or

(j) performing any other work in the capacity of or employ of a carrier or any other work for the purpose of gain.

[12] The Regulations go on to review requirements relating to daily logs, at ss. 13-20:

Daily logs

13 Subject to Section 21, every driver shall, for each twenty-four hour period, maintain a daily log in duplicate and every carrier shall ensure that each driver employed by the carrier maintains a daily log in duplicate each day.

14 The daily log referred to in Section 13 shall include the following information:

(a) date;

(b) driver's name;

(c) odometer reading;

(d) total distance driven per twenty-four hour period;

(e) truck, bus or tractor number plate or unit number;

(f) trailer number plate or unit number;

(g) name of carrier;

(h) signature of driver;

(i) name of co-driver;

(j) twenty-four hour period starting time, if different from 12:00 o'clock midnight;

(k) main office address for each carrier; and

(l) total hours in each duty status.

[13] The exception claimed by the Appellant appears at s. 19:

19 A driver shall be exempt from maintaining a daily log while driving a commercial vehicle not destined beyond a radius of 160 kilometres from the location at which the driver reported to work if the driver returned to that location

> and was released from work within fifteen hours and the carrier maintains and retains for a period of six months accurate records for the following:
>
> (a) the time the driver reports for work each day;
>
> (b) the total number of hours the driver is on duty each day; and
>
> (c) the time the driver is released from duty each day.
>
> 20 Every driver who is normally exempt under Section 19 from maintaining a daily log shall, when the driver is driving a commercial vehicle in circumstances where the driver is required to make a daily log, enter in the log the total hours on duty for the period of seven consecutive days preceding the day on which the driver is required to make a daily log.

Summary conviction appeals

[14] The scope of review of a summary conviction appeal court judge was set out in *R. v. Nickerson* (1999), 178 N.S.R. (2d) 189, [1999] N.S.J. No. 210 (C.A.), at para. 6:

> ... Absent an error of law or a miscarriage of justice, the test to be applied by the Summary Conviction Appeal Court is whether the findings of the trial judge are unreasonable or cannot be supported by the evidence. As stated by the Supreme Court of Canada in *R. v. Burns*, [1994] 1 S.C.R. 656 at 657, the appeal court is entitled to review the evidence at trial, re-examine and reweigh it, but only for the purpose of determining whether it is reasonably capable of supporting the trial judge's conclusions. If it is, the Summary Conviction Appeal Court is not entitled to substitute its view of the evidence for that of the trial judge. In short, a summary conviction appeal on the record is an appeal; it is neither a simple review to determine whether there was some evidence to support the trial judge's conclusions nor a new trial on the transcript.

The interpretation of section 19

[15] The Appellant says the conviction under the logbook regulations relating to the events of November 21, 2006, should be set aside. She asserts that the trial judge's interpretation of the legislation is unreasonable, given that she was operating a commercial vehicle for a distance of less than 160 km and should have had access to the exception pursuant to s. 19 of the *Commercial Vehicle Drivers' Hours of Work Regulations*. As noted above, that section provides:

> A driver shall be exempt from maintaining a daily log while driving a commercial vehicle not destined beyond a radius of 160 kilometres from the location at which the driver reported to work if the driver returned to that location and was released from work within fifteen hours and the carrier maintains and retains for a period of six months accurate records for the following:
>
> (a) the time the driver reports for work each day;
>
> (b) the total number of hours the driver is on duty each day; and
>
> (c) the time the driver is released from duty each day.

[16] The Crown says this position is untenable in view of the definition of "commercial vehicle," at s. 1(1)(e) of the Regulations, which includes the following:

> (e) "commercial vehicle" means

> (i) a truck, truck-tractor or trailer, or combination thereof exceeding a registered gross vehicle weight of 4500 kg....

[17] Pursuant to s. 1(1)(g), a "driver" is "a person who drives a commercial vehicle on the highway."

[18] The Appellant indicated in her evidence that she did not drive beyond Aulac, NB, a distance of less than 160 km from the pickup point. She that when she was stopped she "didn't know for sure" if she was taking the load beyond Aulac, NB, and, in the event, she did not drive past Aulac (Transcript, pp. 16 and 18). The Crown did not cross-examine the Appellant with respect to the distance between Brookfield and Aulac, or as to how far she actually drove. Nor did the trial judge address these matters. The Appellant's evidence that she was, in fact, driving less than 160 km was not challenged.

[19] There were several different combinations of truck, tractor, driver and trailer, only one of which involved the Appellant, that ultimately took the load of trees to its destination in Massachusetts. The Appellant argues that, since there was a different combination for the remainder of the route, that combination was the offending combination if the trailer travelled a distance of greater than 160 km.

However, I doubt (without deciding) that the Nova Scotia regulations would have any effect on operations of commercial vehicles outside the Province.

[20] The Crown submits that the Appellant, by virtue of being (at one time) the driver of the truck that was hauling the trailer, was driving or operating a commercial vehicle. The Crown says the distance she actually hauled the trailer – that is, the "commercial vehicle" – is immaterial.

[21] The Appellant submits that the objective of s. 19 is to regulate the distance a driver can drive a commercial vehicle without resting. If that is correct, the wording of the section is inconsistent with the purposes and objectives of the Regulations. The Appellant submits that the Nova Scotia Regulation is worded more broadly than certain similar Regulations in other jurisdictions, where the time driven by the driver appears to be the critical feature, rather than the distance travelled by a trailer or road if it is towed by different drivers.

[22] The issue can therefore be stated as follows: did the Legislature intend to regulate the distance travelled by a trailer carrying a load, or a driver? I note that, while the Appellant, representing herself, advanced her own opinion as to how the

provision should be interpreted at trial, the question of *vires* or the scope of the regulation was not directly raised before the trial judge.

[23] It appears facially inconsistent to define a driver as "a person who drives a commercial vehicle on the highway," while defining a "commercial vehicle as "a truck, truck-tractor or trailer, or combination thereof...." The phrase "combination thereof" creates an ambiguity. If it was intended that a trailer, standing alone, constitutes a commercial vehicle, there would be no need to add the words "combination thereof," as this would be redundant. It is also questionable whether a stand-alone "trailer" has any meaning, assuming that a trailer is not driven on its own, but is towed or hauled.

[24] It is presumed that the Legislature intends each word to have a meaning, thus avoiding redundancy. In *Cape Breton (Regional Municipality) v. Nova Scotia (Attorney General)*, 2009 NSCA 44, 2009 CarswellNS 253, MacDonald, C.J.N.S. cited *Sullivan on the Construction of Statutes*, and said, at paras. 40-41:

> Thus in considering whether s. 36 applies to the facts of this case, Professor Sullivan would invite us to answer three questions:

> Under the modern principle, an interpreter who wants to determine whether a provision applies to particular facts must address the following questions:
>
> > • what is the meaning of the legislative text?
> >
> > • what did the legislature intend? That is, when the text was enacted, what law did the legislature intend to adopt? What purposes did it hope to achieve? What specific intentions (if any) did it have regarding facts such as these?
> >
> > • what are the consequences of adopting a proposed interpretation? Are they consistent with the norms that the legislature is presumed to respect?
>
> Finally, in developing our answers to these three questions, Professor Sullivan invites us to apply the various "rules" of statutory interpretation:
>
> > In answering these questions, interpreters are guided by the so-called "rules" of statutory interpretation. They describe the evidence relied on and the techniques used by courts to arrive at a legally sound result. The rules associated with textual analysis, such as implied exclusion or the same-words-same-meaning rule, assist interpreters to determine the meaning of the legislative text. The rules governing the use of extrinsic aids indicate what interpreters may look at, apart from the text, to determine legislative intent. Strict and liberal construction and the presumptions of legislative intent help interpreters infer purpose and test the acceptability of outcomes against accepted legal norms.

[25] I do not accept the Crown’s view that there is no ambiguity arising from these definitions, in the context of a set of Regulations that are intended to regulate “commercial vehicle drivers' hours of work.” The Appellant contends – correctly, I believe – that the point of reference must be the driver, not the load. The title of

the *Commercial Vehicle Drivers' Hours of Work Regulations* indicates that the intention underlying the Regulations is to regulate the hours drivers work, rather than the distance the load travels. Reading s. 19 in this manner renders it consistent with the title of the Regulations.

[26] The Appellant adds that ss. 4-9 regulate the number of hours a driver may drive, and ss. 13-27 regulate the recording of the driver's daily logs, which, she submits, are designed to record what the driver does, not what the trailer or tractor does. The *Commercial Vehicle Drivers' Hours of Work Regulations* do not include a purpose provision. Pursuant to the Nova Scotia *Commercial Vehicle Trip Inspection Records Regulations*, N.S. Reg. 223/90, the driver of a commercial vehicle is required to inspect the vehicle prior to the first trip of the day and fill out an inspection report. A driver is exempt from completing an inspection report for a commercial vehicle operating within a radius of 160 km of the location at which the driver reports for work.

[27] There are similar regulations in other Canadian jurisdictions. The (now repealed) Federal *Commercial Vehicle Drivers Hours of Service Regulations 1994*, SOR/94-716, address the hours of the driver at s. 14(1), providing that a log need

not be maintained where “the driver operates a commercial vehicle within a radius of 160 km of the home terminal.” Similar language appears in the current regulations, SOR/2005-313, s. 81(2). In *R. v. Best Sleep Centre Inc.*, [2002] M.J. No. 436 (Man. Prov. Ct.), the court interpreted the 1994 Regulations, finding that their “essential and obvious purpose” was “the protection of the motoring public from accidents caused by fatigued and burned out commercial drivers” (para. 11), and to “advance safety on highways by regulating the driving or on-duty time of all commercial truck drivers [whose] vehicles exceed a certain specified weight and do not fall within the listed exemptions recited at s. 2(2) of the regulations” (para. 21).

[28] The *Motor Vehicle Act* provides authority to the Minister to make Regulations “regulating the hours of labour for drivers or operators of commercial motor vehicles operated upon provincial highways” (s. 303(d)). There is a general discretion by which “[t]he Governor in Council on the recommendation of the Minister from time to time may make rules and regulations not inconsistent with this Act as he deems necessary or expedient for the purpose of fully carrying out the true intent, purpose and object of this Act” (s. 304(1)). In *Sobeys Group Inc. v. Nova Scotia (Attorney General)*, 2006 NSSC 290, [2006] N.S.J. No. 386 (S.C.),

Richard, J. in considering the regulation-making power under the *Retail Business Uniform Closing Day Act*, said, at paras. 17-18:

> It is somewhat revealing that the power given to the Governor in Council in the *Labour Standards Code* states in part The Governor in Council may make regulations concerning any matter or thing which appears to him necessary or advisable for the effectual working of this Act. This introduces a subjective element into the power given by the legislation, whereas, in the *Retail Business Uniform Closing Day Act* this power is defined as - respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. The difference between these two approaches is substantial as stated in Driedger in *Construction of Statutes* (2d, 1983) at 328:
>
> > Sometimes the authority is to make such regulations as are necessary for carrying out the Act. It is doubtful that the words - as are necessary - add anything. In their absence, the Courts would no doubt strike down a regulation they thought unnecessary. In either case, the Courts would no doubt be the judges of necessity. Wider authority is conferred if a subjective test of necessity is prescribed. This power may be conferred on the Governor in Council to make such regulations as he deems necessary (advisable, expedient) for carrying out the purposes of the Act. In such a case ... the regulation making authority is the sole judge of necessity and the Courts will not question his decision, except possibly if bad faith were established. [emphasis by Richard J.] There is, therefore a vast difference between the two following examples and the extent of the power conferred:
> >
> > May make such regulations as may be necessary for carrying out of the provisions of this Act
> >
> > May make such regulations as he deems necessary for carrying out the provisions of this Act.
>
> It appears from this analysis that had the Minister or Cabinet (the regulating authority) been granted the power to make such regulations as he deems necessary then this court would be hard pressed to find the legal authority to question such decision. In the absence of such a subjective authority it is open to the Courts to objectively review the challenged regulations to determine if they were made under the authority of the Act, or, whether such regulations exceeded the specific authority and are thus *ultra vires* the Cabinet. [Emphasis by Richard J.]

[29] In the present legislative scheme, the Governor in Council has a discretion to make regulations under the *Motor Vehicle Act* under s. 304(1). The wording of the statute is different than that which was before Richard, J. in the *Sobey's* case. It seems appropriate to conclude that the words "as he deems necessary" makes the Governor in Council the sole judge of necessity. That being said, the regulations cannot be intended to produce absurd consequences. In *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27, [1998] S.C.J. No. 2, Iacobucci, J., for the Supreme Court of Canada said, at para. 27:

> ... It is a well established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. According to Côté, [Pierre-André Côté, *The Interpretation of Legislation in Canada* (2nd ed. 1991)] an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment (at pp. 378-80). Sullivan echoes these comments noting that a label of absurdity can be attached to interpretations which defeat the purpose of a statute or render some aspect of it pointless or futile (Sullivan, *Construction of Statutes*, *supra*, at p. 88).

[30] By the wording of the relevant provisions of these regulations, the driver of a commercial motor vehicle who drives that vehicle a single kilometre of a 1600 km trip is required to fill in the log book. An example would be a situation where one driver was required to move the vehicle from a holding facility to a service centre for repairs before a second driver assumed responsibility for driving the

vehicle the distance entered on the bill of lading. In my view, such an interpretation is illogical and is inconsistent with the objective of the Regulations.

[31] Admittedly, it is difficult in some situations to draft legislation without making it overbroad, but in this instance, the purpose and object of the Regulations is to prevent fatigue-related accidents, rather than to require a driver of a commercial vehicle to complete a log when driving a short distance. Section 303 of the Act provides that the Governor in Council, on the recommendation of the Minister may make regulations addressing the hours of work of drivers and operators of commercial vehicles on provincial highways. Professor Sullivan, writes, in *Sullivan on the Construction of Statutes* at p. 178:

> When language is over-inclusive, it applies to circumstances not only within the mischief the legislature sought to cure, but also to circumstances outside that mischief and therefore outside the intended scope of the legislation. Over-inclusion is cured by adding words of qualification which limit the legislation to applications that are appropriate to carry out the legislature's intent.... [R]eading down to cure over-inclusion is considered interpretation, providing it can be justified....

[32] It appears that the language need not be vague or capable of multiple interpretations before the court may look to the purpose of the legislation in order to narrow the interpretation of a statute. In *Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513, [1988] S.C.J. No. 22, the Supreme Court of Canada

interpreted a statute that disqualified workers who were employed because of a strike from receiving unemployment insurance benefits unless they were able to show that they were not “financing ... the labour dispute that caused the stoppage of work”. The issue was whether mandatory union dues, part of which went into a common strike fund, amounted to “financing.” L’Heureux-Dube, J., for the majority, said, at paras. 95-96:

> In my view, the Federal Court's interpretation of the word "financing" in s. 44(2)(a) is too broad. As Appellant submits, the term "financing" has to have an air of reality to it. It ought to be read as requiring active and voluntary involvement by the claimant and as implying a meaningful connection between the payment and the dispute. An individual, generally speaking, pays dues to insure membership in good standing in his or her local, to insure continued service from local executives, and to insure strike payments to him or her if the local decides to engage in a lawful strike.
>
> In the case at bar, apart from the ordinary meaning of the words, the focus is on the individual claimant and the meaning of "financing" flows from the context of which the statute's purpose is an integral element. While section 44 may be open to a broad interpretation of "financing", in my view, the purpose of the section (to disentitle strikers from benefits) as well as the purpose of the Act as a whole (to provide benefits to involuntarily unemployed persons) dictate that a narrow interpretation be given to the disentitlement provisions of that section. Any doubt, as Wilson J. pointed out in *Abrahams*, *supra*, should be resolved in favour of the claimant, particularly in the context described above.

[33] In this case, the purpose of the Regulations is to prevent driver fatigue-related accidents. Therefore the focus of the statute is to control the hours of work of drivers and operators of commercial vehicles. It is not to control the load. It must also be remembered that this is a penal statute, which interferes with

individual rights, and which must be strictly construed in favour of the claimant. In *R. v. Nova Scotia Power Inc.,* [1999] N.S.J. No. 26 (S.C.), Scanlan, J. said, at para. 15:

> In terms of the principle of statutory interpretation I refer to *R. v. St. Lawrence Cement Incorporated (c.o.b. Dufferin Construction Co.)*, [1992] O.J. No. 3770. I quote Justice Hunter at paragraph 16 of the Quick Law version, he said:
>
> > Dealing with the issue of ambiguity, I agree as set out in the factum that it has been a long standing legal principle that the Statute should be read strictly in terms of their meaning and if there is any doubt or ambiguity in the statutory language of its intent or meaning in a particular set of circumstances, then its interpretation must be resolved in favour of the accused. I further agree this presumption is also important in limiting the scope in exercising the powers of the police, Ministry of Labour or other authorities in the course of enforcing penal statutes by prosecution.

[34] Section 295 of the *Motor Vehicle Act* provides that any person who violates s. 303 is guilty of an offence and liable on summary conviction to the penalties provided for category D offences under the *Summary Proceedings Act* (s. 4B(d)), namely, fines starting at $150 for the first offence and rising for additional offences.

[35] For all of these reasons, I am satisfied that s. 19 of the Regulations cannot be read in the manner advocated by the Crown, or as adopted by the trial judge. The regulation-making power is not intended to permit the Governor in Council to

create penal provisions that are inconsistent with the objectives of the Regulations in which they appear.

Separate trials

[36] The Appellant argues that the trial judge should have held separate trials on the two charges, rather than hearing all of the evidence at one time. The Appellant was self-represented at arraignment and at trial. She had indicated that she would be self-represented and apparently was in the body of the courtroom prior to her trial being held. According to the transcript, the trial judge inquired whether she understood she was entitled to a separate trials or if she consented, to a joint trial.

[37] The Crown argues that the Appellant consented to the joinder of the two counts. It is evident, however, that a judge may not allow joinder if it is against the interests of justice. In *R. v. Clunas*, [1992] 1 S.C.R. 595, [1992] S.C.J. No. 17, Lamer, C.J.C., for the Supreme Court of Canada, held that "whether the accused consents or not, joinder should only occur when, in the opinion of the court, it is in the interests of justice and the offences or accuseds could initially have been jointly charged" (para. 33). In that case, the Appellant and his former girlfriend became

involved in an argument which culminated in a physical altercation in which she was injured. The next morning there was a second incident. In December 1988 the Appellant entered a plea of not guilty on an assault charge arising from the second incident, and a trial was scheduled for April 20, 1989. On January 31, 1989, he elected trial before a provincial court judge on a charge of assault causing bodily harm, arising from the first incident. Both charges were scheduled to be tried on April 20, 1989.

[38] At trial in *Clunas*, after discussion with Crown counsel, the court decided to proceed with one trial on both informations. At trial, some of the witnesses testified as to both alleged assaults. In the course of making objections reference was made to the fact that the questions objected to related to a defence of self-defence. The Chief Justice said, at para. 18:

> It seems to me that, if there had been an agreement to proceed upon one case and to read in the evidence from that case into another case, a motion to that effect would have been made. It is clear to me, with all due respect for contrary views, that we are here facing a situation where a trial was conducted simultaneously as regards two distinct informations. This was done at the suggestion of the defence and, therefore, with the accused's consent. That is also amply clear to me.

[39] The issue was whether the trial judge was correct in holding one trial, rather than two separate trials or one trial following the other. The Chief Justice

considered whether a court had jurisdiction to follow this procedure, and concluded, at paras. 33-34:

> ... I would say that when joinder of offences, or of accuseds for that matter, is being considered, the court should seek the consent of both the accused and the prosecution. If consent is withheld, the reasons should be explored. Whether the accused consents or not, joinder should only occur when, in the opinion of the court, it is in the interests of justice and the offences or accuseds could initially have been jointly charged.
>
> I would adopt the American federal *Rules of Criminal Procedure* formulation, which is as follows:
>
> > The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.
>
> I would also add, quoting from the Law Reform Commission's Working Paper 55, at p. 39, the following:
>
> > ... any particular aspects of the rule in favour of severance would have to be inapplicable in order for this judicial joinder to occur. This rule would thus reflect the rule for unsuccessful severance on a joint charge.

[40] In this case, the trial judge had the following exchange with the Appellant prior to the start of the trial:

> MS JAMES [Crown counsel]: There are two matters Your Honour.
>
> THE COURT: Yes.
>
> MS JAMES: I'm prepared to deal, even though they're separate offence dates, I'm prepared to deal with the matters together, if that's agreeable, or separately, either way.

THE COURT: Any problem with that, Ms. Haylock.

MS. HAYLOCK: No.

THE COURT: No? Okay, good. [Trial transcript, p. 1]

[41] In *R.v. Lalo*, 2003 NSSC 154, 2002 CarswellNS 594 (S.C.), Robertson, J. referred to the various factors the court ought to consider in deciding whether to conduct a joint trial. She stated, at paras. 6-8:

> In *R. v. Shrubsall*, [1999] N.S.J. No. 496 (N.S. S.C.), Docket: CR 162262, Saunders, J. canvassed the decision relating to the "interests of justice" often quoted is *R. v. Cuthbert* (1952), 103 C.C.C. 14 (B.C. C.A.). Justice Lambert had listed the six most commonly referred to factors:
>
> > 1. the factual and legal nexus between the counts;
> >
> > 2. general prejudice to the accused;
> >
> > 3. the undue complexity of the evidence;
> >
> > 4. whether the accused wishes to testify on some counts, but not on others;
> >
> > 5. the possibility of inconsistent verdicts; and
> >
> > 6. the desire to avoid a multiplicity of proceedings.
>
> In *R. c. Cross* (1996), 112 C.C.C. (3d) 410 (Que. C.A.) Justice Michel Proulx of the Quebec Court of Appeal set out the following factors:
>
> > (1) the sufficiency of the factual and legal connection between the various counts, (2) the risk of coming to contradictory verdicts, (3) the possibility of having recourse to similar act evidence, (4) the complexity and the length of the trial having regard to the nature of the evidence to be called, (5) the prejudice caused to the accused

> with respect to his right to be tried within a reasonable time, (6) the prejudice caused to co-accused, (7) antagonistic (incompatible) defences, (8) the inadmissibility of evidence against a co-accused, (9) the manifest desire of the accused to testify on certain counts, etc.

Justice Saunders, in comment on the factors set out in *Cuthbert* and *Cross* stated:

> Essentially it amounts to a balancing of the accused's right to be tried fairly upon the evidence admissible against him on a given charge without other improper or unduly prejudicial evidence being weighed against him, and the community's right to see justice done in a reasonably efficient and cost-effective manner.
>
> It should be understood that such lists are not static. Every case may bring its own unique features that ought to be kept in mind when the trial judge is asked to consider a motion to sever counts.

[42] It is clear, then, that the weight to be attached to each factor varies from case to case depending on the circumstances, and additional factors may also be considered.

[43] As to the factual and legal and nexus between the counts, the infractions are dissimilar and allegedly occurred on different dates. The only commonality is that on both occasions, the Appellant was stopped on the same highway with a load of Christmas trees destined for Massachusetts. In one instance, two inspectors were present, while on the other occasion there was a single inspector. Different inspectors testified in respect of each offence. Admittedly, the warning about driving on the restricted highway took place on the same day as the log book

offence, November 21, but the offence alleged to have occurred on November 28 does not relate to the logbook offence. Further, the two offences carry different legal consequences.

[44] There appears to be little, if any, actual prejudice to the Appellant from the joining of the two counts. It appears that the trial judge made it clear that there was evidence presented in respect of each count and that the Appellant could provide evidence of her own and call witnesses with respect to each count. Although the Appellant suggests that the joining of the two counts confused the trial judge and led him to bar the Appellant from offering evidence in support of a defence of officially induced error, I am not convinced that the transcript points to any confusion arising from the two charges being tried together.

[45] A possible drawback of joining informations and conducting a single trial is that it is difficult to determine whether the defendant will testify on both informations. Often this decision is made after the Crown evidence. The decision to have one trial, rather than separate trials, precludes the defendant from only testifying in one and not the other. The Crown suggested during the course of the appeal hearing that she would not have cross-examined the Appellant on one or the

other if the Appellant had indicated that she did not want to give evidence on a specific charge. Such a pledge, despite its bona fides, is rather impossible to enforce. The Crown contends that the Appellant was not before the court for the first time and says there is no indication that she was lacking in any knowledge of procedure.

[46] The Appellant maintains that the trial judge should have informed her of the consequences of waiving her right to remain silent on both informations, and that if she elected to testify she would be subject to cross-examination on both. If she had made a claim that she did not want to testify or did not need to testify, then it is likely that the trial judge would have held separate trials. The issue of the adequacy of the instruction to the Appellant, who was self-represented at trial, is not before me, not being a ground of appeal. I note that self-represented parties frequently do not have extensive knowledge of intricacies of trial procedure.

[47] I do not believe that there is a danger of inconsistent verdicts in this case. The Appellant was found guilty on both counts. It is possible that the judge could have found her guilty of one count and not the other. However, this would have meant different, but not inconsistent, verdicts.

[48] Avoiding a multiplicity of proceedings by trying several counts together is a laudable objective, provided that the accused is not prejudiced. On a review of the trial transcript, it is clear that the trial judge had sufficient evidence from the Crown witnesses to make out each charge. Whether or not the Appellant had testified would not have mattered. It is evident that she wanted to testify on the regulated highway charge, as she attempted to introduce conversations between herself and others concerning her claim that she had not been charged in the past. All of the evidence as to the weight of the vehicle, the restriction on the highway, the load she was carrying and the placement of signs erected at the exits was sufficient for the trial judge to make a finding of guilt on that charge.

Officially-induced error

[49] In *Lévis (Ville) c. Tétreault*, 2006 SCC 12, 2006 CarswellQue 2911, the Supreme Court of Canada, *per* LeBel, J., set out the elements of officially-induced error, accepting, at paragraph 26, the elements identified by Lamer, C.J.C. in *R. v. Jorgensen*, [1995] 4 S.C.R. 55, 1995 CarswellOnt 985:

> (1) that an error of law or of mixed law and fact was made;

> (2) that the person who committed the act considered the legal consequences of his or her actions;
>
> (3) that the advice obtained came from an appropriate official;
>
> (4) that the advice was reasonable;
>
> (5) that the advice was erroneous; and
>
> (6) that the person relied on the advice in committing the act.

[50] During her submission, the Appellant informed the trial judge that she had been in court previously with reference to a restricted highway charge, which was not pursued. She suggested that this led to her belief that she was not in breach of the Act. The trial judge prevented her from raising this point. The following exchange took place:

> MS. HAYLOCK: I'm not exactly sure what's appropriate to bring into the discussion at this point in time. I would, with regard to the matter of trucking on highway 4...
>
> THE COURT: I don't necessarily want to know what your opinion might be concerning the laws of the land. You may or may not agree with them.
>
> MS. HAYLOCK: Absolutely.
>
> THE COURT: You don't make the laws, I don't make the laws. Somebody else does.
>
> MS. HAYLOCK: Correct. I have been in this court before for that same charge. It's been perhaps worded differently, but I have been here. On each occurrence the charge has been dropped because, from my, what I knew, because I was not, I wasn't breaking the law. The evidence that I gave was that, such that the charge was dropped. On these particular, on this particular occasion, on both occasions I wasn't doing anything differently than I had before. And actually I had a conversation here in this courtroom with other members of ...

THE COURT: Well, I don't want to get into that.

MS. HAYLOCK: Oh I can't, okay. Okay, sorry.

THE COURT: I don't know what ... anyway.

MS. HAYLOCK: I was under the impression that as long as I was leaving highway 4 and not returning to highway 4 that the matter was, that I was in compliance. I guess that's the best way to say that.

THE COURT: All right. So you're talking about the, the offence of November 28th?

MS. HAYLOCK: Yes sir.

[51] The trial judge subsequently raised the question of officially-induced error with the Crown, specifically with reference to the interpretation of s. 19 of the regulations, in response to the Appellant's argument that the logbook requirement applied to the driver, not the trailer:

MS. HAYLOCK: Is it where the trailer is destined or the driver, where the driver is destined?

THE COURT: We're talking about the trailer.

MS. HAYLOCK: No, we're talking about the driver.

THE COURT: I'm talking about the trailer. That's my understanding of the section. Now Ms. James, is that the way in which it is interpreted by those that apply it?

MS. HAYLOCK: No.

MS. JAMES: That's my understanding.

MS. HAYLOCK: No.

> THE COURT: I'm talking to Ms. James at this particular point in time, because if in fact there is an application of that particular section that is completely different than what I read, because it is interpreted officially, then it might very well amount to some defence that Ms. Haylock would be entitled to.

[52] After an adjournment to permit counsel for the Crown to consult the officer, the following exchange occurred:

> MS. JAMES: ... is that the interpretation of commercial vehicle is either truck, tractor or trailer, or any combination thereof, so exactly as Your Honour had indicated.
>
> THE COURT: The only reason I was asking for that was if there was such a ... Ms. Haylock appears to be adamant with respect to her interpretation. If there was information that was regularly provided to her through individuals in authority then there might be something...
>
> MS. JAMES: An officially induced error type of ...
>
> THE COURT: An officially induced error that looked, this is confusing enough, this is the way we interpret it. But if there's, she has not given any particular evidence with respect to that, and I am satisfied, based on what you have said....

[53] As such, it appears that the evidence which the Appellant attempted to offer related to the logbook charge, not the restricted highway charge. Given the result of the appeal on the logbook charge, any potential defence that might have existed is irrelevant. Nonetheless, the trial judge later raised the question of officially-induced error with Crown counsel, inquiring as to the nature of the advice which may have been provided to the defendant. Crown counsel was permitted to make

inquiries of someone in the courtroom and returned to advise the trial judge as to the interpretation of the relevant provisions.

[54] The trial judge acknowledged that the defendant was potentially entitled to raise the question of officially-induced error. He had earlier, however, prevented her from addressing this issue in her evidence, when he did not permit her to relate the nature of the discussions and advice she had received from the Department of Transportation. There was no *voir dire* to determine the admissibility of the Appellant's evidence as to what had transpired on previous occasions. I am mindful that the Appellant had received a warning with respect to the signage offence on November 21, one week before she was charged. The warning significantly affects the merits of the argument advanced by the Appellant. I am satisfied that, even if she had received relevant information from officials of the Department in the course of previous court appearances, the warning of November 21 would have made it unreasonable for her to rely on such advice or to offer it in defence of the charge of November 28.

Conclusion

[55] With respect to the charge of failing to fill in the log book under s. 17(c) of the Regulations, I am satisfied that the conviction should be overturned. The interpretation of s. 19 of the Regulations advanced by the Crown and followed by the trial judge is not consistent with the purpose of the Regulations or with the wording of the Regulations in their entirety. I am satisfied that the Regulations must be read down in these circumstances.

[56] On the charge of failing to obey a traffic sign under s. 83(2) of the *Motor Vehicle Act*, I cannot agree, on the basis of the record, that a different result would have occurred if the trials had been held separately, or that the Appellant was denied an opportunity to advance a valid defence of officially induced error. Consequently, the conviction and penalty on that charge is affirmed.

J.