SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Guilbault, 2010 NSSC 26

Date: 20100205
Docket: Ann No. 310447
Registry: Annapolis Royal

Between:

Patrick Guilbault

Appellant

v.

Her Majesty the Queen

Respondent

Judge:	The Honourable Justice David P. S. Farrar
Heard:	December 15, 2009, in Annapolis Royal, Nova Scotia
Counsel:	Darren MacLeod, for the Appellant Lloyd Lombard, for the Respondent

By the Court:

[1] The Appellant, Patrick Guilbault, appeals from the decision of The Honourable Judge Jean-Louis Batiot dated March 10, 2009. The Appellant was charged that:

> On or about the 30th day of October, 2007, at or near Inglisville, Nova Scotia, did operate a motor vehicle while disqualified from so doing by reason of the legal disqualification in the Province of Nova Scotia of his right or privilege to operate a motor vehicle in that province, contrary to Section 259(4)(b) of the **Criminal Code**.

[2] The matter was heard before Judge Batiot on November 10th, 2008, by decision dated March 10, 2009, the Appellant was found guilty of the offence.

[3] The Appellant appeals from the conviction on the following grounds:

1. The learned trial judge erred in holding that Mr. Guilbault had the necessary *mens rea* to be convicted of the offence in question;

2. The learned trial judge erred in holding that the doctrine or presumption of regularity applied to this case.

[4] Stated another way, and the sole issue for determination on this appeal, is whether Section 260 of the *Criminal Code*, along with the "presumption of regularity", is sufficient to prove the Appellant's knowledge, and thus *mens rea* that his license was suspended. The Crown relies solely upon the certificate from the Registry of Motor Vehicles to prove the Appellant's *mens rea*.

[5] At the time of trial in this matter, the Crown called one witness, Cst. Jason McLean. Constable McLean gave evidence that the Appellant was stopped and he did not have a driver's license. As proof of the Plaintiff's suspension, a certificate from the Registrar of Motor Vehicles was tendered into evidence. The certificate provides, in part, as follows:

> Pursuant to Section 286 of the **Motor Vehicle Act**, this is to certify that according to the records of the Registry of Motor Vehicles the privilege of obtaining a driver's license of

> Patrick Guilbault, Date of Birth: 28/12/1958 of 1159 Crisp Rd, Inglisville, NS
>
> was revoked effective 8th day of January, A.D., 2002. Under the Provisions of Section 278 of the **Motor Vehicle Act** (impaired driving - 253(A) CC).
>
> Pursuant to Section 264(2) of the **Motor Vehicle Act**, this is to further certify that subsequent to the above-mentioned revocation a driver's license has not been issued to the person.

[6] There is no issue that the Appellant, at the time of being stopped by the police, did not have a license to operate a motor vehicle in the Province of Nova Scotia. Mr. Guilbault argued at trial, and on this appeal, that the Crown had failed to prove that he had the requisite knowledge of his suspension. The Appellant argued the certificate of the Deputy Registrar of Motor Vehicles was insufficient to prove the *mens rea* of the offence.

[7] The trial judge's reasons for convicting the Appellant of the offence are concisely stated at p. 5 of his decision:

> The accused would have been appraised of the prohibition pursuant to Section 260 of the **Criminal Code of Canada** at the time of conviction. A presumption of regularity applies, and the accused knows he is prohibited: R. v. **Heisler** [1967] 1 C.C.C. 97 (NSSC)

[8] The learned trial judge is referring to Section 260 of the *Criminal Code* when he concludes that the Plaintiff would have been appraised of his prohibition. It provides:

> 260(1) If a court makes a prohibition order under Section 259 in relation to an offender, it shall cause
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> (a) the order to be read by or to the offender;
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> (b) a copy of the order to be given to the offender; and
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> (c) the offender is to be informed of subsection 259(4).

[9] Section 259(4) of the *Criminal Code* creates an offence for anyone who operates a motor vehicle while being disqualified from doing so. It also provides that the offender may be liable to a term of imprisonment not to exceed five years.

[10] The Appellant argued at trial, and on the appeal, that the Crown had not established that Mr. Guilbault was advised of his prohibition from driving and the potential liability he faced if he did so.

[11] The Appellant relies heavily on the decision of the Ontario Court of Appeal in *R. v. Molina*, (2008) 90 O.R. (3d) 223, for the proposition that presumption of regularity is not applicable to the terms of Section 260(1) of the *Criminal Code*.

[12] In *R. v. Molina, supra*, the accused was charged with operating a motor vehicle while disqualified from doing so. At the initial trial, [2006] O.J. No. 4034, a number of admissions were made by Mr. Molina which may be summarized as follows:

1. On the date of the offence, namely August 8th, 2005, there was in place a Prohibition Order.

2. The Prohibition Order was entered into evidence by consent of the Crown and Defence and marked as an exhibit.

3. On the date of the offence, Mr. Molina was, in fact, operating a motor vehicle at the time and place as indicated in the Information.

4. Mr. Molina, at the time of the offence, was aware that he was prohibited from operating a motor vehicle.

[13] The trial judge reviewed the Prohibition Order and found that it did not comply with Section 260(1)(c) of the *Criminal Code* and, in particular, it did not inform Mr. Molina that if he operated a motor vehicle while prohibited, that he would be guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

[14] At paragraph 21 of the trial decision the court held:

> ... That acknowledgement is signed by Mr. Molina and by a witness who appears to have been a police officer. Clearly, the acknowledgement relates to the contents of the order and does not relate to any other information or explanation that may have been given to Mr. Molina independent of the order. That is, there is nothing in the order itself to indicate that he had been advised otherwise than by someone reading the order to him or him having read it, by him receiving a copy of the order and having the order explained to him and that he understands the terms and conditions of the order. There is nothing to indicate that he has been advised by a judge or a clerk of the court of s. 260(1)(c) save and except as may be contained in the order.

[15] At paragraph 24, the trial judge set forth the "presumption of regularity" as follows:

> The presumption of regularity is applied where the matter is,
>
> (1) not easily proved,
>
> (2) involves a mere formality of detail of required procedure and,
>
> (3) subject to circumstances of the particular case that add an element of probability that the matter was done.

[16] The trial judge further acknowledged that the presumption of regularity can apply to charges relating to driving while disqualified (See paragraph 23).

[17] The trial judge continued, at paragraph 28:

> **28** If there is a presumption of regularity in play at all there has been evidence led by the Crown itself in providing the court only with the prohibition order as a relevant exhibit that would put that presumption aside and require the Crown to otherwise prove compliance with s. 260(1)(c).
>
> **29** I find that the presumption of regularity does not apply for that reason. ...

[18] In other words, the court did not find that the presumption of regularity could not apply to Section 260 of the *Criminal Code* but rather, on the facts in *R. v. Molina, supra*, and the wording of the Probation Order, the presumption had been rebutted and, once rebutted, it was incumbent upon the Crown to led evidence to show Section 260 of the *Criminal Code* had been complied with.

[19] The Summary Conviction Appeal Court in *R. v. Molina*, [2006] O.J. No. 3806, explained further and, not only found that the presumption of regularity applied, but also and that the trial judge had correctly applied the doctrine in the circumstances.

[20] The Summary Conviction Appeal Court reviewed the requirements of the presumption of regularity and its application in circumstances similar to that before it, at paragraph 15 it held:

> **15** The Crown also relies on *R. v. Scott* (1980), 56 C.C.C. (2d) 111, where the Alberta Court of Appeal applied the presumption of regularity as constituting sufficient proof that the warning sections required to be explained to a person placed on probation were indeed met. The Court adopted the conditions placed on the presumption of regularity in Wigmore, "Treatise on the Anglo-American System of Evidence in Trials at Common Law on Evidence, 3rd Ed. (1940), Vol. IX, p. 488 as follows:
>
> > First, that the matter is more or less in the past, and incapable of easily procured evidence; secondly, that it involves a mere formality, or detail of required procedure, in the routine of a litigation or of a public officer's action; next, that it involves to some extent the security of apparently vested rights, so that the presumption will serve to prevent an unwholesome uncertainty; and, finally, that the circumstances of the particular case adds some element of probability.
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> I note that substantially the same wording is carried forward in the 1981 edition of Wigmore, as revised by Professor Chadbourn at p. 625. Of importance, in *Scott* the required notice sections of the Code relating to probation orders were acknowledged by the accused to be printed on the reverse side of the probation order. Accordingly, there was no alleged deficiency in the form of order used.

[21] The Summary Conviction Appeal Court then goes on to discuss the applicability of the presumption in a criminal law context and sets forward the Crown's position on the appeal that it is the Defence who must lead "evidence to the contrary."

[22] In addressing this argument, the Summary Conviction Appeal Court held:

> **21** There seems little doubt that the presumption of regularity can apply when its underlying conditions are satisfied. It is not, however, an absolute presumption and rather a rebuttable one, as a matter of a proper interpretation of our criminal law principles. Closely tying in with that concept is the last requirement within the Wigmore test, namely, that the circumstances of the particular case add an element of probability that the questioned matter was in fact done.
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> **22** In my opinion the "evidence to the contrary" need not be led by the defence, but rather can arise from within the Crown's case. Here the prohibition order, Exhibit 1, bears the accused's signature and acknowledgment, but that acknowledgment relates to having been advised of and understanding the contents of that order as printed on the form used therein. The form is in my opinion deficient in that it does not advise the accused of the provisions of Section 259(4) in that it fails to advise that a person who drives while prohibited is liable to be prosecuted by indictment, nor does it say anything about penalty other than to say that he is liable to "custody and supervision". "Custody and supervision" is a phrase used in the *Youth Criminal Justice Act*. It is not a phrase used as such in the Criminal Code. The two words constituting that phrase are capable of being construed as gaol and probation or some other form of supervision, but when used together as a phrase the words smack more of a youth court penalty provision than one arising out of the Criminal Code.

[23] The Summary Conviction Appeal Court continued at paragraph 25:

> **25** While the Crown argues that the trial judge erred in not applying the presumption of regularity, in my view the trial judge did apply it, and did so correctly. Far from making it probable that the act had been done, the evidence available to the trial court here made it unlikely that there was compliance with Section 260(1) in that the only evidence on point, the signature and acknowledgment of the accused, relates to a deficient and inadequate level of warning. ...

[24] As can be seen, the court found the doctrine of regularity applied but there was "evidence to the contrary" led by the Crown itself which called into question the fourth part of the Wigmore Test on the presumption of regularity. The evidence called into question the probability that the act had been done. Once the issue was in doubt the evidentiary burden shifted back to the Crown to show it had actually been done.

[25] The Crown appealed the decision of the Summary Convictions Appeal Court to the Court of Appeal, (2008) 90 O.R. (3d) 223.

[26] The Court of Appeal essentially agreed with the reasons for judgement of the Summary Conviction Appeal Court, at paragraph 21 it held:

> [21] I agree with the result reached by the summary conviction appeal judge and with the reasons he articulates, ...

[27] It is also clear that the Ontario Court of Appeal is confining its comments to the facts of the particular case before it at paragraphs 22 and 23:

> [22] In short, the fourth Wigmore requirement for the application of the presumption -- "that the circumstances of the particular case add some element of probability" -- did not exist in this case.
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> [23] Nor, for that matter, did the second Wigmore requirement -- "that [the matter] involves a mere formality, or detail of required procedure, in the routine of a . . . public officer's action" -- apply on the facts here. The requirement that an offender disqualified from driving be "informed of subsection 259(4)" means more than that the offender be simply advised of its existence; "informed" means that the details of the significant penal exposure triggered by the application of that section must be brought home to the offender. Nothing less than that prerequisite is an element of the offence of driving while disqualified. Informing an offender about the penal consequences of a breach is not simply a routine formality or procedural detail.
>
> [Emphasis added]

[28] I do not read the decision as suggesting that the presumption of regularity could never apply to Section 260 of the *Criminal Code* but rather on the facts in *R. v. Molina, supra*, it did not apply.

[29] The defective notice, which simply made reference to Section 259 of the *Criminal Code* and not the penal consequences, caused the courts, at all three levels, concern. The courts, on my reading of the decisions, were not precluding the operation of the presumption of regularity to Section 260 of the *Criminal Code* in all circumstances but rather limited its application to the facts before them.

[30] If that was what was intended by the court, it could of simply said so, rather it relied on the reasoning of the Summary Conviction Appeal Court Judge who

clearly stated that the presumption applied and that the trial judge had applied that presumption correctly.

[31] If it had held otherwise it would go against the weight of judicial authority from other Canadian jurisdictions including Nova Scotia. I will briefly review the law from the other Canadian jurisdictions that have addressed this issue.

Nova Scotia

[32] In *Heisler v. The Queen*, [1969] N.S.J. No. 115 (N.S.S.C.), the accused was charged pursuant s. 225(5) of the *Criminal Code* [now s. 259(4)]. The Crown tendered the certificate from the Registrar of Motor Vehicles to prove the disqualification. At paragraph 16, the court held:

> **16 Nothing more is required in the certificate other than the particulars required by subs. (4). The essential requirement is the allegation that the accused is in fact disqualified. There is no further requirement for other particulars specified**.
>
> [Emphasis added]

Further at paragraph 18, the court ruled on the issue of *mens rea* holding:

> **18** The learned magistrate found as a fact in this case that the accused was operating the motor vehicle on 24th December 1964. The Crown, in addition, had to establish that the appellant was in fact disqualified. This is purported to do by virtue of the certificate of the Registrar. This contained the essential facts which it was necessary to establish in order to prove the offence. There is no requirement under the Code for any additional evidence. When these facts had been proved, it was incumbent upon the accused to rebut what essentially constituted a *prima facie* case. **With the establishment of these essential facts, the Crown was entitled to rely on the presumption that a man intends the natural consequences of his act in order to prove the necessary *mens rea.***
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> [Emphasis added]

[33] In *R. v. Lloyd*, [1978] N.S.J. No. 485 (N.S.S.C. App. Div.), the accused's acquittal was overturned. The Crown had relied on the certificate from the Registry of Motor Vehicles to sustain a conviction pursuant to s. 238(3) of the *Criminal Code* [now s. 259(4)]. At paragraphs 35 to 37, the Court of Appeal

referred, with approval, to *Heisler v. The Queen, supra*, where the court held that the tendering of the certificate was sufficient to show the rebuttal presumption that the notice had been served on the accused.

[34] In *R. v. Buchanan*, [1989] N.S.J. No. 15 (N.S.C.A.), the accused's license had previously been revoked as a result of a *Criminal Code* conviction on April 22, 1986 and he had been prohibited from operating a motor vehicle for one year. As a result of the conviction, the Province of Nova Scotia revoked the accused's driver's license. The accused was later caught operating a motor vehicle on November 12, 1986. The Crown relied upon and tendered the Certificate from the Registry of Motor Vehicles to prove the accused's disqualification. The accused was convicted at trial, acquitted by the Summary Conviction Appeal Court and the conviction was reinstated by the Court of Appeal.

[35] It is clear from these authorities that the manner of proceeding by the Crown in the present case fills the evidentiary requirement of proving *mens rea*.

Alberta

[36] In *R. v. Gale*, [1995] A.J. No. 295 (Alta. Q.B.), a case cited by the Appellant, the court convicted the accused after holding that the presumption of regularity applies to Section 260 of the *Criminal Code*. The court in *R. v. Gale, supra*, analysed the issue of *mens rea* in paragraphs 25 to 43. The court held at paragraph 32:

> **32** The appellant argues on appeal, as at trial, that the above provision means that proof of the notice having been mailed is required to prove mens rea. No such proof was led at trial. The respondent Crown counters by arguing that section 260(4) does nothing but create one method of proving mens rea, and does so by creating an evidentiary shortcut for the Crown. On a plain reading of the above section, the Crown's argument is clearly the correct one. The heading for that section, "onus", further supports that section 260(4) provides an evidentiary shortcut and not an exhaustive list of ways in which to prove mens rea. Finally, the Alberta Court of Appeal in R. v. MacCuish (1979), 14 C.R.(3d) 380 at 387 had this to say about service of the notice of suspension:
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> > Proof of service of notice of suspension would, no doubt, be decisive evidence of guilty knowledge, but in the present case it is not a statutory requirement that notice in a prescribed form and substance be served.

> I am satisfied that what was said in MacCuish is still applicable and binding upon me regarding the present section 260(4).
>
> [Emphasis added]

[37] The Appellant here, as in *R. v. Gale*, *supra*, argues that the accused cannot be found to have had the *mens rea* required to have committed the offence because the presumption of regularity should not be applied to Section 260 of the *Criminal Code*. The court in *R. v. Gale*, *supra*, addressed that issue and held at paragraphs 37 to 41:

> **37** However, the appellant nonetheless invites the Court to read into section 259(4) a Charter requirement of actual notice needing to be proved, thereby destroying the doctrine of regularity. The appellant mentioned Reference re Section 94(2) of the Motor Vehicles Act, [1985] 2 S.C.R. 486 to underscore the importance of not incarcerating an accused without a proper mental element having been proven.
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> **38** Even if Reference re Section 94(2) stood for the proposition that there could never be incarceration without mens rea (it instead says that imprisonment plus absolute liability violates section 7 of the Charter), the doctrine of regularity does, in fact, prove a mens rea. Moreover, the doctrine of regularity is nothing but an evidentiary shortcut. If there is an accused who in fact did not know of the suspension, evidence can easily be led of that lack of knowledge, as in Prue and Baril, supra, in which the accuseds in fact lacked any knowledge of their suspension and were accordingly acquitted for lack of mens rea.
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> **39** Admittedly, common law rules, such as the doctrine of regularity, can violate the Charter: R. v. Daviault, [1994] 3 S.C.R. 63 at 93. Even if this doctrine violates sections 7 and/or 11(d) of the Charter, which I do not think it does, I am of the opinion that such a breach would be saved by section 1. The importance of ensuring safe roads by keeping those who have been convicted of criminal driving activities off the roads is pressing and substantial; overcoming an evidentiary difficulty in proving mens rea is rationally connected to this objective; the infringement is minimal in that the accused can easily lead evidence of lack of knowledge; and a minor violation of these rights is an acceptable means of achieving the important end which the doctrine of regularity promotes.
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> **40** Finally, even if I thought that the doctrine of regularity violated the Charter, which I do not, I am nevertheless bound by Alberta Court of Appeal authority, although arguably obiter dicta, which predates the Charter. In R. v.

MacCuish (1979), 14 C.R.(3d) 380 (Alta C.A.), the Court (at 387) affirmed that the doctrine of regularity as defined in Lock operates in Alberta:

> Guilty knowledge may be established by inference fairly drawn from facts proved in evidence and may be sufficient to establish mens rea beyond a reasonable doubt.

41 Such an inference was, in fact, drawn by the Court of Appeal at 388:

> ... The forwarding of MacCuish's licence to the minister pursuant to s. 109(5), as certified by the deputy registrar, can, in my opinion, support no other inference but that MacCuish knew that his licence was suspended ...

However, in MacCuish, the accused had admitted to the police officer that he knew his license was suspended for three years, and that evidence was not excluded in that pre-Charter case. The Court of Appeal therefore did not need to invoke the doctrine of regularity, but did anyway. However, the fact that the Court went out of its way to affirm this doctrine means that, even if I wanted to avoid it, which I do not, I could not.

[38] I agree with the reasoning in *R. v. Gale, supra*.

Saskatchewan

[39] The courts in Saskatchewan have reached a similar conclusion to Alberta, Nova Scotia and British Columbia (as will be seen later in this decision).

[40] In *R. v. Rorquist*, [1980] S.J. No. 522 (Sask. C.A.), the court overturned the accused acquittal and held at paragraph 12:

> **12** In light of the foregoing facts, when the certificate is produced in accordance with Section 238(4), setting out the suspension or cancellation, the only reasonable probability and presumption is that the person therein named was notified of such cancellation or suspension as required by Subsection (15) of Section 86. Thus, I must conclude that the certificate provided for in Section 238(4) has the evidentiary value, as set out in the Criminal Code and, as well, is prima facie evidence that the person named therein had knowledge of the suspension or cancellation of his licence. Support for this conclusion, founded on the doctrine of regularity, is to be found in the judgment of the Ontario Court of Appeal in Regina v. Lock (1974), 18 C.C.C. (2d) 477.

[Emphasis added]

[41] In *R. v. Dell*, [1991] S.J. No. 595 (Sask. Q.B.), the accused's *Criminal Code* conviction was upheld where the accused was charged for operating a motor vehicle while disqualified by the province of Saskatchewan. The Crown in that case had proven the charge by relying upon the Certificate from the Registry of Motor Vehicles pursuant to Section 260(5) of the *Criminal Code*. The court applied the presumption of regularity in upholding the conviction.

[42] In *R. v. Larsen*, [1992] S.J. No. 158 (Sask.C.A.), the accused's license had been suspended on May 4, 1988. The Certificate did not identify the particulars of the offence which caused the suspension on May 4, 1988 and the Crown did not tender evidence regarding the particulars. The accused was subsequently convicted of operating a motor vehicle on April 2, 1990 pursuant to Section 259(4) of the *Criminal Code*. In that case, the Crown had solely relied upon the Certificate from the Registry of Motor Vehicles to establish the accused's disqualification. Defence advanced that the Crown had not proven the accused's *mens rea* to commit the offence.

[43] In the present case, as in *R. v. Larsen, supra*, the Appellant chose not to testify. At page 10, the court in *R. v. Larsen, supra*, held:

> The result of this resolution of the two issues may be summarized by paraphrasing the words of Martin J.A. in Lock. Because the appellant did not introduce any evidence of lack of knowledge of the disqualification he ran the risk of being convicted by failing to discharge the evidential burden of introducing such evidence. It is clear that the learned trial judge at the end of the whole case entertained no reasonable doubt with respect to the accused's knowledge of a material element of the offence and had no choice but to convict.

[44] By choosing not to testify, the Appellant failed to discharge the evidential burden he had to show he did not have knowledge that his license was suspended.

British Columbia

[45] The courts in British Columbia have followed a similar line of reasoning.

[46] In *R. v. Chapman*, [2009] B.C.J. No. 539 (B.C.A.C.), the accused had his driver's license suspended for a period of 10 years. He was caught operating a

motor vehicle during the 8th year of his suspension. The Crown tendered the Certificate from the Registry of Motor Vehicles to prove the conviction. The court applied the presumption of regularity and convicted the accused of driving while prohibited.

[47] In *R. v. Wiltshire*, (1997) 31 M.V.R. (3d) 248 (B.C.S.C.), the court held at paragraphs 24 and 25:

> **24** In my view that would be an unreasonable and unduly narrow reading down of the section. **Common sense, if nothing else, suggests that "reasonable particularity" in respect of the certificate which is intended to particularize the disqualification naturally assumes the underlying Criminal Code conviction which forms the foundation of the restriction of the right or privilege to operate a motor vehicle in the first instance. The mens rea which the Crown is required to prove is not with respect to the underlying conviction, but rather to the accused's knowledge that he was prohibited from driving. That was proved by the admission of the certificate, the operation of s. 260(1), and the doctrine of regularity**.
>
> **25** For these reasons, I hold that the learned Provincial Court Judge was correct in concluding that s. 260 was sufficient ground upon which to find that the accused was deemed to have notice that he was prohibited from driving. Accordingly, the appeal must be dismissed.
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> [Emphasis added]

[48] Further at paragraph 17 in *R. v. Chapman*, *supra*, the court refers to *R. v. Thimsen*, [1993] B.C.J. No. 395 (B.C.S.C.), where the court held that the Crown did not have a burden to prove compliance with Section 260 to prove the offence. On that issue, the court held:

> The doctrine arises, " ... where acts are of an official nature, or require the concurrence of official person, a presumption arises in favour of their due execution. In these cases the ordinary rule is ... "everything is presumed to be rightly and duly performed until the contrary is shown ...", R. v. **Kapoor** (1990) 52 C.C.C. (3d) 41.
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> Mr. Ray for the Appellant, also argues that what Romilly P.C.J. does is shift the burden to the accused, which he says is inappropriate, given R. v. **Oakes** 24 C.C.C. (3d) 321.

> I do not accept that there is any shifting of onus as alleged. The fact that the Code enunciates a procedural requirement for the Court, and the fact that the Crown is not required to lead evidence that there has been compliance with this procedure, does not create a reverse onus on the accused. The s. 260(1) requirements are in no way a component of the offence of driving while prohibited. There is no affirmative legal presumption going to the substance of the charge, as there was in **Oakes** (supra). The burden of displacing the presumption remains with the party seeking to avoid its operation, R. v. **Kapoor** (supra).
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> The presumption of regularity is properly applicable to the terms contained in s. 260(1). The requirements of s. 260(1) are acts of an official nature that should be presumed to be rightly and duly performed until the contrary is shown. I adopt the reasons of Romilly P.C.J. and hold that the presumption applies.

Summary

[49] I conclude that the presumption of regularity applies to Section 260 of the *Criminal Code* and applies to the circumstances of Mr. Guilbault. The learned trial judge committed no error of law in finding that the presumption of regularity was sufficient to prove the *mens rea* elements of the offence, and absent evidence to the contrary, the provisions of Section 260 of the *Criminal Code* had been complied with.

[50] The appeal is dismissed.

Farrar, J.