

ONTARIO COURT OF JUSTICE
PROVINCIAL OFFENCES APPEAL COURT

RHONDA M. DONOVAN

R U L I N G

BEFORE THE HONOURABLE JUSTICE P. MITCHELL
on May 12, 2009 at HAMILTON, Ontario

CHARGE: Disobey Red Light

APPEARANCES:

L. Clayton

Provincial Prosecutor

I. Fournier

Agent on behalf of R. Donovan

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PROVINCIAL OFFENCES APPEAL COURT

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1.
Ruling - Mitchell, J.

TUESDAY, MAY 12, 2009

R U L I N G

5 MITCHELL, J. (Orally):

In this matter the court's opinion would be, and therefore a ruling would be that - well, first a comment - I would believe that there are not conclusive decision in the area that is being presented as to the necessity for the inclusion of the section number under the *Highway Traffic Act* to make the Certificate of Offence complete and regular on its face.

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In *R. v. Sivaguru*, as referred to, I do note paragraph 17 wherein Justice Clark, sitting as an appellate judge of the Provincial Offences Court wrote, "To be regular on its face the offence notice must set out what is referred to as the "who," "what," "where," "when" and "result of conviction." And then went on to define the who, is who is commencing the process, which is an informant; the second is the name of the defendant; what the process, is the statute name and section number; the where and when are self-explanatory. The result of conviction is the set fine amount.

That comment in that paragraph appears to be in complete agreement with what was adopted by Justice Cooper of this jurisdiction on April 15th, 2008 in *R. v. Cachero* and he went on in his

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Ruling - Mitchell, J.

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judgment to explain why he ruled that by not filling in the section number of the *Highway Traffic Act* in the area on the Certificate of Offence for that purpose, which I understand is a reference by Justice Cooper to the printed form of the Certificate of Offence wherein it says, "contrary to" (the *Highway Traffic Act of Ontario* being filled in by the issuer of the certificate) and then the further printed part of the form saying "SECT" which this court would accept as being references to the section, number of the act and that not being filled in on the Certificate of Offence in the case before this court would rule that certificate before this court as then not being complete.

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The court would balance that with the decision of Justice Clark again on May 26th, 2005, which is a further judgment by Justice Clark to his judgment of February 26th, 2004 where he discusses the terms full and complete. I would accept as the comment made by Justice Cooper that there are cases in my opinion going different ways of equal jurisdiction courts and that that leaves it an unclear area of the law at the present time. In my opinion it is up to the judicial system or the legislative body to clarify unclear situations where penalties are invoked.

That not having been done, I would accept Justice Cooper's judgment, follow his judgment and quash the ticket as presented.

4.
Certification

FORM 2

Certificate of Transcript
Evidence Act, Subsection 5(2)

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I, Michele Wild, certify that this document is a true and accurate transcription of Rhonda Donovan, in the Ontario Court of Justice, Provincial Offences Appeal Court, held at the John Sopinka Court House, 45 Main Street East, Hamilton, Ontario on May 12, 2009, taken from recording No. 4711-208-83/2009, which has been certified in Form 1.

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May 26/09

(Date)

Michele Wild

(Signature of authorized person)

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