

**ONTARIO COURT (PROVINCIAL DIVISION)**

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HER MAJESTY THE QUEEN

- versus -

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PAULO RAPOSO

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**TRANSCRIPT OF PROCEEDINGS**  
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Heard before The Honourable Mr. Justice D. Cooper  
at Hamilton, Ontario on April 5, 2005  
Courtroom 308

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**APPEARANCES:**

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M. Keith

Provincial Prosecutor

I. Fournier

Agent on Behalf of P. Raposo

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Submissions of Counsel

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**MR. KEITH:** The last matter Mr. Fournier has is Paulo Raposo.

**MR. FOURNIER:** Mr. Raposo's approaching you, Your Honour. For the record, it is Fournier, first initial I, acting as agent for Mr. Raposo.

**MR. KEITH:** Perhaps I can just assist, Your Honour, before Mr. Fournier starts? The charge is ...

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**HIS HONOUR:** Yes, I know.

**MR. KEITH:** ... failing to stop for a school bus.

**HIS HONOUR:** Right.

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**MR. KEITH:** And the word, 'school bus' is never given in evidence. And the word - under the definition of school bus in The Highway Traffic Act, the definition includes that that vehicle must have the words 'school bus' on it, written on it, printed on it, or signed on it, and that was never given in evidence. The officer was asked, but unable to do it. I've spoken with Mr. Fournier about it. It's my position that everyone else knew it was a school bus and the justice of the peace knew it was a school bus, and the officer knew it was a school bus. However, it's such a serious charge. I mean, as far as The Highway Traffic Act goes, the effect of a conviction for disobeying a school bus is exactly the same as careless driving.

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**HIS HONOUR:** Mm-hmm, I know.

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**MR. KEITH:** The penalties are the same. The insurance consequences are just dramatic, so I think I've spoken for both of us. If you're  
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Submissions of Counsel

5 willing to address just that fact: should the officer have given in evidence that he observed the word, 'school bus'. And if he should have, then obviously you'll allow the appeal. I'm willing to - we got it narrowed down to that one item, Mr. Fournier?

**MR. FOURNIER:** Yes.

10 **MR. KEITH:** All right. So, it wasn't given in evidence and it's required under The Highway Traffic Act. My position is still though from the description, it's a school bus. It's yellow. It's got a stop sign out ...

**MR. FOURNIER:** Your Honour?

15 **MR. KEITH:** ... the side, it's got flashing ...

**MR. FOURNIER:** To agree with my friend ...

**MR. KEITH:** lights ...

**MR. FOURNIER:** ... I called it a school bus.

20 **MR. KEITH:** And there's no other vehicles that are similar to it on the road that have a stop arm that come out the side of it. There's no other vehicle in the province that has a stop arm that comes out the side of it, to my knowledge.

**MR. FOURNIER:** I've never seen one.

25 **MR. KEITH:** The only vehicle that has a stop arm is a school bus. However, I'm in your hands.

30 **MR. FOURNIER:** Your Honour, my friend spoke well for both of us. It is just straight a technical argument and an appeal. When you open up The Highway Traffic Act, and you go to s. 175 and it says - defines a school bus. I'm not sure what version you have, but it's s. 175(1). Sorry,

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Submissions of Counsel

I'll give you the page number. I just - my Ontario Highway Traffic Act's dated.

**MR. KEITH:** I have the latest one, Your Honour.

**HIS HONOUR:** All right.

**MR. FOURNIER:** In s. 175(1), in my HTA, the last item is the definition of what a school bus is. And the Officer Stewart, very nice guy, he described a whole bunch of things: red flashing lights, stop arm. But you know something? Neither one of those are in the definition of what a school bus is. The only thing the officer said, and said that was right in the description of a school bus, was chrome yellow.

There's more that's required, just by the definition in The Highway Traffic Act, to say that this is a school bus. Nowhere in there does it say that it requires red intermittent lights. We've just grown accustomed to them. Nor does it require or says it's got the stop arm that sticks out. We've grown accustomed to them. It's a straight technical matter.

The officer was asked directly on page 10 of the transcript, 'And did it have any markings there that would suggest it was a school bus?' 'I did not make a notation of that. It was chrome yellow by The Highway Traffic Act ...'

**HIS HONOUR:** Yes?

**MR. FOURNIER:** '... as well as had the lights and a stop arm which was extended with a stop sign, and the word 'stop' written on it.'

## Submissions of Counsel

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The only thing there that denotes it as a school bus is the chrome yellow. But when you look at the definition, it is painted chrome yellow, and - which means it's a requirement. It's not, you know, 'or' or anything like that. It says, 'and'. And displays the sign 'school bus' on the front and the rear, and the words, 'Do not pass when lights are flashing.' None of that evidence is before the court. You have a yellow large vehicle and it had red flashing lights and a stop arm. And even when I was defending Mr. Raposo, I called it a school bus. Fifteen years of pushing around a police car, I called it a school bus.

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But when the officer's asked right out, 'Don't know'. If you're going to write a school bus ticket, especially one that is this serious of an offence and has the ramifications like my friend was saying, you got to know it had the word, 'school bus' on it. It's a requirement.  
**HIS HONOUR:** Intriguing.

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**MR. FOURNIER:** And even Your Worship Devellano agrees with me that he didn't say the word, 'school bus'. In her summations, and I don't know if I'm correct with this part, Mr. Keith will correct me. In the ideal of a school bus, dropping off and picking up, it's either children or challenged people. When the officer was asked if there was any of these around, his answer was, 'No.' He didn't see any.

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Submissions of Counsel

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So there's a few things in there, and I'll point that out to you so it's not like I'm just pulling something out of a hat. Page 17, bottom, line 29, I believe it is. 'Not if I'm unable to' - we got into a question because what happened is the officer also went to the red flashing lights and the stop arm. He has no authority to do so, but we got into that question, so I asked him if he saw any children. 'I was able to see that there were no people that actually were - there were no kids that were actually visible to me the entire time, which was the first area of concern.'

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Because I was - I told him - I was being a little ignorant. Because I said, 'Where's your authority to go through the school bus? You don't have it.' I was a police officer. You don't have authority to go through a school bus. And I apologized to him on the stand, because I told him, 'I'm going to be ignorant', and that was me being ignorant, and then I backed off. I just asked him, 'Where's your authority?'

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But that's not the crux of it. The crux is simply it's a technical one. When the officer's asked right out the markings on this vehicle that denote it to be a school bus, he made no notation of any. He doesn't recall there being any.

**HIS HONOUR:** Did you make this same argument before the learned justice of the peace?

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Submissions of Counsel

**MR. FOURNIER:** Yes.

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**HIS HONOUR:** And she took the position that if it looks like a duck and quacks like a duck, it must be a duck?

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**MR. FOURNIER:** Yes. But I understand, because I, like I said, even I called it a school bus. According to the HTA, the officer only hit chrome yellow, according to the definition of what a school bus is, the only thing he touched was chrome yellow. Red flashing lights aren't required, stop arm's not required, but the words, 'school bus' are, and 'Do not pass when lights are flashing', that's required. And it's an 'and', so it requires both. And that's - it's just a technical argument just on that purpose, and that alone.

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**HIS HONOUR:** Any case law either way on this?

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**MR. FOURNIER:** Just how can it? No. Guess that's what we're here for. I'm going to let you be the lead. I apologize now.

**HIS HONOUR:** I'm known for common sense, not wisdom.

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**MR. FOURNIER:** Well, if common sense says it's a school bus, I'm looking for wisdom to say that's it's not because it's not carried out as according to what the HTA requires it to be.

**HIS HONOUR:** Okay. Anything else from the prosecution?

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**MR. KEITH:** No, Your Honour.

## REASONS FOR JUDGMENT

5 COOPER, J. (O. C. J.):

Well, I am not normally an overly technical person. I think it is pretty obvious that this was a school bus, and as Mr. Fournier freely admits, he referred to one. But the definition of school bus is conjunctive. It is s-s (a) is painted chrome yellow, and s-s (b) displays in the front and rear the words, 'school bus' and on the rear, there are the words, 'Do not pass when signals flashing.'

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Provincial statutes, in my view, are usually extremely technical where the defendants are concerned. I do not see why it should not cut both ways. And the officer freely admits, in answer to Mr. Fournier's questions, the flashing red lights were there, the wig-wag arm out the side was there, and cars were stopped. But he does not define it as required.

This is a rather unusual case. I do not think it is highly likely to recur again, even in the realm of provincial offences. I think I will give the defence the benefit of the doubt on this.

Defendants, as I say, who are charged under extremely scrupulous provincial statutes, probably far more exact than the criminal law in many ways, are put to severe onuses. And as I



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Reasons for Judgment

5 say, I do not see any good reason why this should not go the other way. It was an obvious oversight, but it is a very clear definition which has not been met.

10 So the appeal will be allowed, the conviction quashed. And if the fine has been paid, it will be returned.

15 But in the future, Mr. Raposo, pay more attention to what you are doing.

**MR. RAPOSO:** Thank you very much, Your Honour.

**MR. KEITH:** Thank you, Your Honour.

**MR. FOURNIER:** Thank you, Your Honour.

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Certification

5 I, Kimberly Straughan, certify that this document is a true and accurate transcript of the recording of R.v. Paulo Raposo in the Ontario Court of Justice held at 45 Main Street East, Hamilton ON, taken from Recordings No(s). 308-44/2005, which has been certified in Form 1.

June 14/05  
date

Kimberly Straughan  
Signature of Authorized Person

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