Court of Queen's Bench of Alberta

Citation: R v Ahmed, 2019 ABQB 13

Date: 20190111
Docket: 180631343S1
Registry: Edmonton

Between:

Her Majesty the Queen

Appellant

- and -

Arshad Ahmed

Respondent

Reasons for Decision
of the
Honourable Mr. Justice John T. Henderson

I. OVERVIEW

[1] On April 10, 2017, the Respondent was holding a cell phone or smart phone in his right hand while he was also operating a motor vehicle. At the same time, he was intermittently looking at the cell phone screen and then looking ahead. These actions were seen by a police officer who stopped the Respondent and charged him with "distracted driving", contrary to s 115.1(1)(b) of the *Traffic Safety Act*, RSA 2000, c T-6, as amended (the "*Traffic Safety Act*"). That subsection prohibits a motorist from driving while at the same time holding, viewing, or manipulating "a hand-held electronic device or a wireless electronic device".

[2] Based on the evidence presented at trial, the learned Traffic Commissioner found that the Respondent had not been holding a "hand-held electronic device" or a "wireless electronic device" but instead, had been holding a "cell phone" or a "smart phone" while driving. The learned Traffic Commissioner concluded that this would have been an offence if the Respondent had been charged under s 115.1(1)(a) of the *Traffic Safety Act* which prohibits driving while holding or manipulating a "cellular telephone, radio communication device or other communication device ...". However, the learned Traffic Commissioner concluded that holding a cell phone or a smart phone did not violate s 115.1(1)(b). For this reason, the learned Traffic Commissioner acquitted the Respondent.

[3] The Crown appeals the acquittal on the grounds that the leaned Traffic Commissioner erred in his interpretation of the "distracted driving" provisions of the *Traffic Safety Act*. Specifically, the Crown contends that the learned Traffic Commissioner erred when he concluded that a cell phone is not a "hand-held electronic device" or a "wireless electronic device". The Crown also contends that the learned Traffic Commissioner erred when he concluded that the provisions of s 115.1(1) of the *Traffic Safety Act* create two separate offences. Instead, the Crown argues that only one offence is created by s 115.1(1) and that subsections (a) and (b) merely provide different mechanisms by which the offence can be committed. As a result, the Crown argues that a motorist using a cell phone while driving can be charged and convicted of an offence under s 115.1(1) and that any particularization of the offence under subsections (a) or (b) is unnecessary and irrelevant.

II. ISSUES TO BE DECIDED

[4] The issues on this appeal involve the proper statutory interpretation of the "distracted driving" provisions of the *Traffic Safety Act*. More specifically, the issues which need to be addressed are the following:

1. Do the words in s 115.1(1)(b), in their ordinary and grammatical sense, include cell phones and smart phones?
2. Should cell phones and smart phones be excluded from s 115.1(1)(b), when that subsection is read in context with the scheme of the *Traffic Safety Act*?
3. Does the purpose of the *Traffic Safety Act* and the intention of the Legislature, suggest that cell phones and smart phones should be excluded from s 115.1(1)(b)?
4. Did the Respondent by "holding, viewing or manipulating" a cell phone or smart phone while driving a motor vehicle commit an offence under s 115.1(1)(b)?

III. ANALYSIS

a. Standard of Review

[5] The issues on this appeal relate to the interpretation of the *Traffic Safety Act*. This is a question of law and is reviewable on a standard of correctness: ***Housen v Nikolaisen***, [2002] 2 SCR 235, 2002 SCC 33 at para 8; ***R v Charles***, 2006 ABCA 216 at para 6.

b. Principles of Statutory Interpretation

[6] In ***Rizzo & Rizzo Shoes Ltd (Re***), [1998] 1 SCR 27**,** the Supreme Court adopted the modern approach to statutory interpretation. The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[7] The Supreme Court has confirmed this approach to statutory interpretation in numerous decisions, including recently in ***Thibodeau v Air Canada,*** 2014 SCC 67 at para 112. See also ***Bell ExpressVu Limited Partnership v Rex,*** 2002 SCC 42 at paras 26 and 27, where the Court noted the important role that context must inevitably play when a court construes the written words of a statute, and ***ATCO Gas and Pipelines Ltd v Alberta (Energy and Utilities Board),*** 2006 SCC 4 at para 48, where the Court stressed that a court must consider the total context of the provision to be interpreted "no matter how plain the disposition may seem upon initial reading".

[8] The Alberta Court of Appeal in ***Alberta v ENMAX Energy Corporation,*** 2018 ABCA 147, also emphasized the importance of context in statutory interpretation and, specifically, the need to consider the purpose of the statutory provision in the context of the legislative scheme. The Court explained (at para 70):

> The modern rule of statutory interpretation requires courts to take a unified textual, contextual and purposive approach to this task: Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis Canada, 2014) [Sullivan] at 7-8. A court must consider not only the textual wording of the statutory provision in dispute but also the purpose of that provision and all relevant context. That includes the legislative scheme of which the provision forms a part. (emphasis added)

[9] The need to consider the purpose of the statutory provision in the relevant context is consistent with the *Interpretation Act*, RSA 2000, c I-8, s 10, which requires that Alberta legislation be construed as being remedial and must be given that fair, large and liberal construction that best ensures the attainment of its objects.

[10] In ***Geophysical v EnCana***, 2017 ABCA 125, the Court of Appeal also emphasized the importance of giving effect to the intention of Parliament. The Court explained that a strict grammatical construction need not be adhered to where it does not give effect to the intention of Parliament in enacting legislation (at para 79). In support of this statement, the Court cited Pierre-André Côté, at p 324 of his work, *The Interpretation of Legislation in Canada*, 4th ed (Toronto: Thomson Reuters Ltd, 2011). The same approach was directed by the Supreme Court of Canada in ***R v Hasselwander***, [1993] 2 SCR 398 where the Court said that "even with penal statutes, the real intention of the legislature must be sought, and the meaning compatible with its goals applied".

[11] As a result, the modern approach to statutory interpretation rejects the notion that statutory interpretation requires nothing more than a strict grammatical construction of the words of the statutory provision, but it still requires that the words of the provision be read in its grammatical and ordinary sense: ***Rizzo*** at para 21. Therefore, the express words used in the statutory provision under consideration remains both the starting point for the exercise of

statutory interpretation and the focal point of the analysis: ***Williams Lake Indian Band v Canada (Aboriginal Affairs and Northern Development)***, 2018 SCC 4 at para 195.

c. The Relevant Statutory Provisions

[12] The distracted driving provisions of the *Traffic Safety Act* are found in ss 115.1 to 115.5. Section 115.1 is most relevant to this appeal. It provides that:

> **Cellular telephones, electronic devices, etc.**
>
> **115.1(1)** Subject to this section and the regulations made under section 115.5, no individual shall drive or operate a vehicle on a highway while at the same time
>
> (a) holding, viewing or manipulating a cellular telephone, radio communication device or other communication device that is capable of receiving or transmitting telephone communication, electronic data, electronic mail or text messages, or
>
> (b) holding, viewing or manipulating a hand-held electronic device or a wireless electronic device.
>
> **(2)** An individual may drive or operate a vehicle on a highway while using a cellular telephone or radio communication device in hands-free mode.
>
> **(3)** Subsection (1)(a) does not apply to
>
> (a) the use of a 2-way radio communication device, only for the purposes set out in the regulation, by an individual driving or operating an escort, pilot or trail vehicle who is required by regulation under this Act to maintain 2-way radio communication, or the use of a cellular telephone or other communication device by that individual for those purposes when 2-way radio communication is not functional or is unavailable,
>
> (b) the use of a 2-way radio communication device, only for the purpose of maintaining communication with the individual's employer, by an individual driving or operating a vehicle who is required by the individual's employer to maintain 2-way radio communication while the individual is acting within the scope of the individual's employment, or the use of a cellular telephone or other communication device by that individual for that purpose when 2-way radio communication is not functional or is unavailable,
>
> (c) the use of a 2-way radio communication device, only for the purpose of participating in a search, rescue or emergency management situation, by an individual driving or operating a vehicle, or the use of a cellular telephone or other communication device by that individual for that purpose when 2-way radio communication is not functional or is unavailable, or

(d) the use of a cellular telephone or other communication device, only for the purpose of contacting an emergency response unit, by an individual driving or operating a vehicle.

(4) Subsection (1) does not apply to an individual driving or operating an emergency vehicle while the individual is acting within the scope of the individual's employment.

(5) Subsection (1) does not apply in respect of a vehicle that

(a) is not on a highway, or

(b) is parked in a manner specified in a regulation under this Act.

[13] Additional "distracted driving" offences are described in 115.2 to 115.4.

- Section 115.2 prohibits, with some exceptions, a person from operating a motor vehicle if a "display screen" is activated and visible to the driver.
- Section 115.3 prohibits, with some exceptions, a person from using a global positioning system navigation device while driving.
- Section 115.4 contains a general provision which prohibits a motorist from engaging in any activity which distracts the driver from the operation of a motor vehicle.

[14] The legislation also provides that the Minister may make regulations dealing with the "distracted driving" provisions in the *Traffic Safety Act*: s 115.5.

d. Issue #1 – Words read in their "Grammatical and Ordinary Sense"

[15] The starting point of the analysis is to consider the words of s 115.1(1)(b) in their grammatical and ordinary sense: ***Williams Lake Indian Band*** at para 195.

[16] As was noted by the learned Traffic Commissioner, the *Traffic Safety Act* does not contain any definitions of the words or phrases found in the "distracted driving" provisions. The *Distracted Driving Regulation*, Alta Reg 113/2011, does contain two definitions but those are not applicable to the present analysis.

[17] The express words of s 115.1(1)(b) prohibit the use of "hand-held electronic devices" or "wireless electronic devices" while a person is driving.

[18] Cell phones and smart phones are now very widely used throughout Canada and the developed world. I take judicial notice of the fact that these devices are intended to be hand-held. I take judicial notice that the devices are powered by battery and are thus electronic. I take judicial notice that the devices operate wirelessly.

[19] There can be no reasonable doubt that a cell phone is both a hand-held electronic device and a wireless electronic device.

[20] There can be no reasonable doubt that a smart phone is both a hand-held electronic device and a wireless electronic device.

[21] Using the grammatical and ordinary sense of the words in s 115.1(1)(b), I conclude that both a cell phone and a smart phone fall squarely within the provisions of the subsection. However, this is not the end of the analysis because, as noted by the Supreme Court in ***ATCO Gas***, *supra*, it is necessary to consider the total context of the provision to be interpreted "no matter how plain the disposition may seem upon initial reading"

e. Issue #2 – Context of the Scheme of the Legislation

[22] The learned Traffic Commissioner concluded that when s 115.1(1)(b) is considered in the context of other sections of the *Traffic Safety Act*, the plain and ordinary meaning of the words of s 115.1(1)(b) should not prevail and that neither cell phones nor smart phones should be included among the "hand-held electronic devices" or "wireless electronic devices" referred to in the subsection. For this reason, the Respondent was acquitted.

[23] The foundation for the decision of the learned Traffic Commissioner was that s 115.1(1) did not create a single offence but instead created two separate offences (see Reasons dated May 14, 2018, p. 6 ll. 19 – 41; p. 7 l. 41 to p. 8 l. 2). He came to this conclusion for the following reasons:

1. Subsections 115.1(1)(a) and 115.1(1)(b) are separated by the word "or". This suggested to the learned Traffic Commissioner that the legislature intended to separate "communication devices" referred to in s 115.1(1)(a) from "electronic devices" and "wireless electronic devices" in referred to in s 115.1(1)(b). Thus, he concluded that the subsections give rise to two separate offences (see Reasons, p. 7, l. 26 to p. 8, l.2).
2. The "distracted driving" provisions create a series of different offences. In addition to the offences created by ss 115.1(1)(a) and 115.1(1)(b), further separate offences are created by s 115.2 (electronic devices with screens) and s 115.3 (GPS devices). In addition, a general distracted driving provision is contained in s 115.4 (see Reasons p. 8, ll. 2 – 15).
3. Subsection 115.1(3) creates several exceptions to the offence when communication devices are used for certain specified work-related purposes. These exceptions provide an accused person with defences, but they are applicable only to charges which are prosecuted under s 115.1(1)(a). The defences are not available if the accused person is charged under s 115.1(1)(b) (see Reasons p. 8, l. 17 to p. 10, l.1).

[24] The Crown argues that the rationale provided by the learned Traffic Commissioner for abandoning the plain and ordinary meaning of the words in s 115.1(1)(b) should be rejected.

i. <u>Use of Disjunctive "or"</u>

[25] The first issue considered by the learned Traffic Commissioner was that the provisions of ss 115.1(1)(a) and 115.1(1)(b) are separated by the disjunctive word "or".

[26] Appeal courts have repeatedly held that separate offences are not necessarily created when the disjunctive "or" is used in legislation: ***R v Charles***, 2006 ABCA 216; in the context of *Traffic Safety Act* offences, see also ***R v Roberts***,1999 ABQB 3.

[27] The use of the disjunctive "or" can suggest that two separate offences are created, but the use of the disjunctive is not determinative. Accordingly, the use of the word "or" in s 115.1(1) does not, on its own, suggest that two separate offence are created. More importantly for the purpose of this appeal, the use of the word "or" in s 115.1(1) does not, on its own, suggest that cell phones or smart phones should be excluded from the definition of "hand-held electronic devices" or "wireless electronic devices" in s 115.1(1)(b).

ii. Multiple Offences Created by "Distracted Driving" Provisions

[28] When reading the whole of the "distracted driving" provisions it becomes immediately apparent that there is substantial overlap throughout ss 115.1 to 115.4. For example, consider a motorist holding a smart phone while driving. Those simple facts could potentially give rise to an offence under several "distractive driving" provisions:

- The motorist could potentially be charged under s 115.1(1)(a) which specifically prohibits the use of a "cellular telephone";
- The motorist could potentially be charged under s 115.2 (display screens) because all smart phones have display screens and, in our example, the screen would be visible to the motorist (note - display screens on cell phones are in some circumstances included in s 115.2 – see s 115.2(2)(b));
- The motorist could potentially be charged under s 115.3 (GPS devices) because most, if not all, smart phones also have GPS systems.
- The motorist could potentially be charged under the general catch-all provision, s 115.4 because the using the smart phone could potentially mean that the motorist was "engaged in an activity that distracts" him from the operation of the vehicle.

[29] If the motorist could potentially be charged under any of these provisions, then there would be no logical reason why the motorist could not also be charged under s 115.1(1)(b) (electronic devices).

[30] The fact that there is overlap among the various "distracted driving" provisions is not of consequence when interpreting the provision of a statute. It is presumed that the provisions of legislation are meant to work together logically as parts of a functioning whole. The parts are presumed to form a rational, internally consistent framework; because the framework has purpose, the parts are also presumed to work together dynamically, each contributing something toward accomplishing the intended goal: *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis Canada, 2014), at para 11; ***R v LTH***, 2008 SCC 49 at para 47.

[31] As a result, the "distracted driving" provisions create a substantial overlap, but this does not, on its own, suggest that 2 separate offences are created by ss 115.1(1)(a) and 115.1(1)(b) or that a cell phone or a smart phone are not included in the electronic devices referred to in s 115.1(1)(b).

iii. Defence in 115.1(3) only Available to 115.1(1)(a) Devices

[32] The learned Traffic Commissioner quite correctly noted that the exceptions in s 115.1(3) are applicable only to those devices listed in s 115.1(1)(a). "Hand-held electronic devices" and "wireless electronic devices" do not receive the same protection afforded by s 115.1(3). For this

reason, the learned Traffic Commissioner concluded that cell phones and smart phones should not be included within the electronic devices referred to in s 115.1(1)(b). He explained that if this interpretation were not accepted, prejudice to an accused person could arise in those cases where a police officer used s 115.1(1)(b) to charge for a distracted driving offence involving the use of a cell phone, thus denying the accused person one of the potential defences available in s 115.1(3).

[33] It was for this reason that he found that the Crown had not proven the distracted driving offence as charged in s 115.1(1)(b), despite having concluded that the Respondent was using a cell phone or smart phone while driving.

[34] The issue raised by the learned Traffic Commissioner regarding s 115.1(3) is a legitimate and serious concern. There is no logical or practical reason to explain why the exceptions in s 115.1(3) are not available as defences to those charged with cell phone violations under s 115.1(1)(b). This legitimately calls into question whether cell phones should be included in s 115.1(1)(b).

[35] Support for the Traffic Commissioner's conclusion can potentially be found via the use of the maxim *expressio unis est exelusion alterius* (to express one thing is to exclude another). Using this maxim would suggest that because the Legislature included specific reference to cell phones in s 115.1(1)(a) but not in s 115.1(1)(b) it must be inferred that cell phones are not be included s 115.1(1)(b). However, as the Alberta Court of Appeal has observed in Reasons for Judgment Reserved, this maxim "has often been held to be the weakest of the canons of construction": ***Apex Corporation v Ceco Developments***, 2008 ABCA 125 at 41, leave to appeal refused, 391 NR 383 (SCC); ***R v CWK***, 2005 ABCA 446 at 63.

[36] There are reasons to question the interpretation of the leaned Traffic Commissioner. For his interpretation to be supported, it would be necessary to infer that the words of s 115.1(1)(b) read: "holding, viewing or manipulating a hand-held electronic device or a wireless electronic device, *other than those specifically referred to in (a)".* Those are not the words used by the Legislature in (b). Adding text to a statutory provision is generally a function for the Legislature and is not a function for the Courts.

[37] I also observe that the solution proposed by the learned Traffic Commissioner (ie, excluding cell phones and smart phones from s 115.1(1)(b)) would not fully address the concerns which he identified. The very same concerns would continue to exist if a police officer charged a motorist who was using an activated cell phone with violating s 115.2 (display screens). This would be an offence unless the cell phone was being used in "hands-free mode" (see s 115.2(2)(b)). An accused person charged with an offence under s 115.2 does not have the defences available under s 115.1(3). Thus, the anomaly in relation to s 115.1(3) is not solved simply by excluding cell phones and smart phones from s 115.1(1)(b).

[38] The Crown argues that to resolve the issue identified by the learned Traffic Commissioner, the Courts would need to go further and hold that the exceptions set out in s 115.1(3) are available to any defendant charged with a distracted driving offence – regardless of the section charged – provided that the evidence establishes that the defendant falls within those classes of people who are permitted to use certain communication devices for the permissible purposes set out in s 115.1(3). The Crown concedes that "this interpretation admittedly strains the opening words of s 115.1(3)". I conclude that the proposal suggested by the Crown goes far beyond what would be permitted on any application of the rules of statutory interpretation.

[39] The concerns raised by the learned Traffic Commissioner are legitimate. The Legislature cannot have intended that the defences for legitimate cell phone use, as provided by s 115.1(3), should be dependent upon which of several distracted driving provisions the charge is advanced under. The charging section is often made at the discretion of a police officer without any regard to the consequences which may flow from it. For this reason, the decision on the charging section may be completely arbitrary. The Legislature cannot have intended that the legitimacy of defences would be based upon arbitrary decisions of a police officer.

[40] However, while the concerns are legitimate, the solution is more complex. One potential solution is that s 115.1(1)(b) should be interpreted as excluding cell phones and that any cell phone charges must be advanced under s 115.1(1)(a). That solution has its own problems because it requires that the Court infer words into the subsection which are simply not there. This solution would also not address potential cell phone charges under s 115.2 or other subsections.

[41] Ultimately the concerns with the s 115.1(3) defences arise because of inelegant drafting of the legislative provisions. The real solution is for the Legislature to respond with amendments to address the concerns.

iv. Conclusion – Context of Scheme of Legislation

[42] The scheme of the "distracted driving" provisions of the *Traffic Safety Act* may suggest that cell phones and smart phones should be excluded from s 115.1(1)(b). This interpretation is not determinative because there are problems associated with this approach. Nevertheless, this potential interpretation must be considered in the context of the intention of the Legislature and the words used by the Legislature in their ordinary and grammatical sense.

f. Issue #3 – Intention of Legislature - Purpose of the Legislation

[43] The *Traffic Safety Act* is public safety legislation. It contains a complex array of provisions which govern, amongst other things, standards for the general operation of motor vehicles on public roadways, the authorization of Regulations for the implementation of "Rules of the Road", the licensing, disqualification and suspension of persons who are permitted to operate motor vehicles, the registration and licensing of vehicles which can operate on public highways, the insurance requirements for all motor vehicles operating on public highways, the licensing of those persons entitled to operate driver training schools, those entitled to train drivers and to act as driver examiners, the inspection of vehicles operating on public roadways and the licensing of those persons entitled to conduct such inspections, the obligations of drivers who are involved in motor vehicle accidents, the investigation of motor vehicle accidents "for the purposes of analyzing and enhancing the safe use of highways", the use and operation of off-highway vehicles, the use and operation of commercial motor transport vehicles on public roadways, the imposition of penalties for failing to comply with the legislation or regulations and the rights and obligations of those who have been injured as a result of the use or operation of a motor vehicle.

[44] It is apparent from the extensive provisions of the *Traffic Safety Act* and the numerous Regulations passed pursuant to the Act, that the purpose of the legislation is to provide protection for and to enhance the safety of motorists, passengers in motor vehicles and pedestrians. The goal of the legislation is to prevent or minimize injury to persons and damage to property, while at the same time permitting the legitimate and lawful use of public highways by citizens.

[45] The specific provisions relating to "distracted driving" have a similar purpose. Sections 115.1 to 115.5 were added to the *Traffic Safety Act* in 2010 by the passage of the *Traffic Safety (Distracted Driving) Amendment Act*, 2010, SA 2010, c 23. At the time that the proposed legislation was presented to the Legislature, the use of cell phones and other electronic devices were becoming much more prevalent in our Province and the use of those devices by motorists was giving rise to substantial harm. The Bill was sponsored by Mr. Johnston, who provided the following summary during the legislative review:

> As a former police officer, I've witnessed first-hand the dangerous consequences of distracted driving. If there's one thing I know for sure, we have to do something about this. So many collisions and tragedies could have been prevented if drivers were simply more attentive and careful when they were behind the wheel...
>
> Talking or texting on a hand-held cellphone while trying to drive is dangerous ...
>
> The challenge we face is to create a law that is comprehensive, practical, effective, and enforceable, and I think Bill 16 strikes the right balance ... I am proposing a new, comprehensive offence that restricts drivers from engaging in distracting activities, including, but not limited to, using hand-held cellphones or other wireless electronic devices, programming GPS units while driving, reading, writing, or grooming.
> (emphasis added)
>
> Alberta Hansard, 27th Legislature, Third Sess, October 26, 2010, p 956

[46] I conclude that the purpose of the "distracted driving" legislation is to enhance public safety and to reduce personal injury and property damage arising from the use of a variety of electronic and non-electronic devices. The legislation was intended to achieve these objectives by creating comprehensive, practical, effective, and enforceable prohibitions.

[47] The Legislature also recognized that several exceptions were required. During legislative review, Mr. Johnston introduced amendments to clarify those exceptions, including hands-free phones, radio communications for industry when part of a person's direct duties, search and rescue, emergency services personnel and motorist who need to contact emergency services (Alberta Hansard, 27th Legislature, Third Sess, October 27, 2010, p 992).

[48] The "distracted driving" legislation was intended to be comprehensive, practical, effective, and enforceable. The legislation was intended to be broad in scope. As drafted, the legislation attempted to identify numerous activities which are distracting, and which, because of this, are prohibited. The legislation also contains two catch-all prohibitions – s 115.1(1)(b) for "electronic devices" and s 115.1(4)(1) for any "activity" that is distracting.

[49] The terms "hand-held electronic device" and "wireless electronic device" are broad and were intended to be expansive. If the Legislature had intended to exclude cell phones or smart phones from the scope of s 115.1(1)(b), then it could have employed clear wording to achieve this result. It did not do so.

[50] I conclude that the intention of the legislature and the purpose of the legislation would be defeated if cell phones or smart phones were excluded from the definition of the terms "hand-held electronic device" or "wireless electronic device" in s 115.1(1)(b).

g. Conclusion – Proper Interpretation of 115.1(1)(b)

[51] A proper interpretation of s 115.1(1)(a) requires giving the words of the subsection a meaning in their grammatical and ordinary sense, in the context of the other "distracted driving" provisions and taking into consideration the purpose of the legislation and the intention of the Legislature.

[52] The language of s 115.1(1)(b) in its grammatical and ordinary sense clearly suggests that a cell phone or a smart phone should be included within the words "hand-held electronic device or wireless electronic device". Similarly, the intention of the Legislature is clear. It intended to implement comprehensive, practical, effective, and enforceable "distracted driving" offences for the purpose of improving public safety. The Legislature intended the provisions to be interpreted broadly. This suggests that the words in s 115.1(1)(b) should include cell phones and smart phones.

[53] Consideration of the context of the legislation could potentially (but not necessarily) lead to a contrary interpretation, primarily because of the concerns raised by the learned Traffic Commissioner in relation to the defences outlined in s 115.1(3). Specifically, it is very difficult to reconcile that a person charged with a cell phone violation under s 115.1(1)(b) would not have available the defences outlined in s 115.1(3) when the very same person committing the very same offence would have those defences available if he had been charged under s 115.1(1)(a).

[54] It should be noted that the evidence in this case provides no indication that the Respondent had been using his cell phone or smart phone for any of the purposes identified in s 115.1(3) and thus he would not have had a defence even if he had been charged under s 115.1(1)(a).

[55] When interpreting s 115.1(1)(a) it is important to consider the principles of statutory interpretation as explained by ***Rizzo*** and the authorities which have followed. That requires that I consider the cumulative effect of the express language of the legislative provision, the context of the "distracted driving" provisions and the intention of the Legislature.

[56] Using this approach, I conclude that the terms "hand-held electronic devices" or "wireless electronic devices" in s 115.1(1)(b) must be read broadly and must include cell phones and smart phones.

h. Issue #4 - Did the Respondent Violate 115.1(1)(b)?

[57] For the reasons given above, I conclude that the words "hand-held electronic device" or "wireless electronic device" in s 115.1(1)(b), when properly interpreted, must include cell phones and smart phones. As a result, a motorist who drives a motor vehicle while "holding, viewing or manipulating" a cell phone or smart phone commits an offence under s 115.1(1)(b).

[58] In the present case, the Respondent was charged under s 115.1(1)(b). The evidence discloses that he was holding, viewing, or manipulating his cell phone or smart phone. As a result, I conclude that he violated s 115(1)(b) of the *Traffic Safety Act*.

IV. CONCLUSION

[59] For these reasons, I conclude that the learned Traffic Commissioner erred when he acquitted the Respondent. I would therefore allow the appeal and substitute a conviction on the single count of distracted driving.

[60] The Crown submits that, in the unusual circumstances of this case, any monetary penalty should be deemed served by the Respondent's many appearances in Court. As a result, I impose a fine of $100, but give no time to pay and instead deem the Respondent's attendance in Court to satisfy the monetary penalty. The regulatory authorities will deal with any demerit points which are applicable.

Heard on the 6th day of December 2018.
Dated at the City of Edmonton, Alberta this 11th day of January 2019.

John T. Henderson
J.C.Q.B.A.

Appearances:

Ryan Abrams and Adam Badari
for the Appellant

Arshad Ahmed
Self-Represented Litigant