

1 THE COURT: The appellant has brought two
2 summary conviction appeals before this Court.
3 Each appeal arises from his conviction in Justice
4 of the Peace Court of an offence under the city's
5 traffic bylaw, in particular, subsection 99(2) of
6 the bylaw which requires that a driver of a motor
7 vehicle wear a seatbelt while operating a motor
8 vehicle in the city.

9 I will deal firstly with the appeal on court
10 file number CR 2008-004. In that appeal, the
11 appellant attacks the decision of the Justice of
12 the Peace in convicting him in two ways.

13 Firstly, he asserts that the Justice of the
14 Peace was wrong in law in upholding the validity
15 of the seatbelt bylaw and in its application in
16 any event to taxicab operators. Secondly, he
17 asserts that the Justice of the Peace erred in
18 finding that the prosecutor had established on
19 the evidence that the appellant was not wearing a
20 seatbelt on the date in question.

21 Let me deal briefly with this second avenue
22 of attack.

23 The Rules of Court with respect to summary
24 conviction appeals require the appellant to put
25 before this Court a transcript of the trial
26 evidence. This appellant has not done so. When
27 an Appeal Court is asked to review a finding of

1 fact made by a trial Judge on the evidence heard
2 by him, it is impossible for the Appeal Court to
3 do so in the absence of a record of what that
4 trial evidence was. For this reason, the
5 appellant cannot succeed on the ground of appeal
6 in which he submits that the Justice of the Peace
7 made an error in finding that the appellant was
8 not wearing a seatbelt or that the Justice of the
9 Peace erred in not providing sufficient reasons
10 for that finding on the trial evidence.

11 I return then to those grounds of appeal in
12 which the appellant argues that the city's
13 seatbelt bylaw is invalid and also that the
14 seatbelt bylaw does not apply to him as a taxicab
15 operator.

16 The appellant has filed an extensive written
17 brief in which he sets out his arguments that the
18 Justice of the Peace was wrong in his
19 interpretation of the bylaw and of the statutes
20 pursuant to which the bylaw was enacted by the
21 city. I would summarize the appellant's legal
22 arguments as follows:

23 (a) Neither of the parent statutes, that is
24 the Cities, Towns and Villages Act or the Motor
25 Vehicles Act, authorizes city council to make
26 bylaws on the subject matter of seatbelts; and,

27 (b) Subsection 99(2) of Bylaw No. 4063 is

1 inconsistent with either or both of the parent
2 statutes and is therefore of no effect.

3 In advancing argument (a), the appellant
4 references the bylaw making power granted to city
5 council by the Legislative Assembly in each of
6 the two parent statutes. The Cities, Towns and
7 Villages Act provides that city council has
8 general legislative powers as follows:

9 Section 70(1),

10 In addition to any power to make
11 bylaws in any other enactment,
12 council may make bylaws for
13 municipal purposes respecting
14 (a) the safety, health and welfare
15 of people, and the protection of
16 people and property.

17 ...

18 (d) transport, motor vehicles,
19 pedestrians, and local
20 transportation systems.

21 ...

22 Subsection (2),

23 The power of a municipal corporation
24 to make bylaws is subject to all
25 enactments of the Northwest
26 Territories and Canada.

27 Subsection (3),

1 The general powers to make a bylaw
2 under this section are subject to
3 any conditions on a power to make a
4 specific bylaw set out elsewhere in
5 this Act or in any other enactment.

6 Subsection (4),

7 A bylaw that is inconsistent with an
8 enactment of the Northwest
9 Territories or Canada is of no
10 effect to the extent of the
11 inconsistency.

12 It is the appellant's submission that
13 requiring people to wear seatbelts is not a
14 subject matter within the meaning of the words
15 "transport, motor vehicles, pedestrians, and
16 local transportation systems". With respect, I
17 disagree.

18 The subject matter of Section 99 of the
19 bylaw, that is the mandatory wearing of seatbelts
20 by drivers and passengers, clearly comes within
21 both paragraphs (a) "the safety, health and
22 welfare of people, and the protection of people
23 and property"; and paragraph (d) "transport,
24 motor vehicles, pedestrians, and local
25 transportation systems".

26 The seatbelt provisions of traffic Bylaw
27 No. 4063 are a legitimate exercise of the

1 lawmaking power granted to city council in
2 Section 70 of the Cities, Towns and Villages Act.

3 While it is not necessary to also find the
4 lawmaking power in the Motor Vehicles Act, I wish
5 to refer briefly to an erroneous argument that is
6 contained in the appellant's brief with respect
7 to city council's jurisdiction to enact bylaws
8 under that statute.

9 The appellant noted that Section 347 of the
10 Motor Vehicles Act sets out a long list of what
11 he terms "express areas" in which city council is
12 authorized to enact bylaws and asserted that this
13 meant that city council could enact bylaws only
14 in those "express areas". This is an erroneous
15 and disingenuous statement, for the appellant
16 would have read the introductory words of
17 subsection 347(1) where the legislature said
18 "without restricting the generality of the power
19 to make bylaws" regarding, for example, vehicles,
20 the city council can make bylaws on the long list
21 of topics that followed.

22 I turn now to legal argument (b) in which
23 the appellant asserts that Section 99 of Bylaw
24 4063 is inconsistent with the parent legislation
25 and is therefore of no effect. The alleged
26 inconsistency, which is the foundation of this
27 argument, is that the parent legislation exempts

1 taxicab operators from mandatory seatbelt use
2 whereas the city's bylaw does not. The short
3 answer to this argument is that the parent
4 legislation does not provide any such blanket
5 exemption to taxicab operators.

6 Subsection 99(2) of the city's bylaw makes
7 it an offence for a driver, including taxi
8 drivers, to operate a motor vehicle in the city
9 without wearing a seatbelt. That is the
10 subsection under which this appellant was
11 charged.

12 Subsections 99(4) and 99(5) make it an
13 offence for a driver to operate a motor vehicle
14 in the city when there is a passenger in the
15 motor vehicle who is not wearing a seatbelt.

16 Subsection 99(6), and this is the subsection
17 on which the appellant places a great deal of
18 reliance, exempts a taxicab operator from
19 liability under subsections (4) and (5) which
20 deal with passengers who are not wearing
21 seatbelts.

22 The parent legislation, to which the
23 appellant refers, is the Motor Vehicles Act which
24 of course has general application throughout the
25 Northwest Territories. Far from being
26 inconsistent, its provisions with respect to
27 seatbelts are identical. These provisions are

1 contained in Section 146 of the Motor Vehicles
2 Act and in the regulations under that Act
3 entitled "seatbelt assembly and child restraint
4 system regulations". Like the city's bylaw,
5 under the territorial legislation,

6 (a) It is an offence for a driver,
7 including taxi drivers, to operate a
8 motor vehicle in the Northwest
9 Territories without wearing a
10 seatbelt.

11 (b) It is a separate offence for a
12 driver to operate a motor vehicle in
13 the Northwest Territories when there
14 is a passenger in the motor vehicle
15 who is not wearing a seatbelt.

16 (c) There is an exemption provided
17 for taxi drivers from this second
18 type of offence, i.e., driving his
19 cab, wearing his seatbelt, but who
20 has a paying customer who is not
21 wearing his seatbelt.

22 It is thus incorrect to state that there is
23 any inconsistency between Section 99 of the
24 city's bylaw and the parent motor vehicle
25 legislation.

26 In fairness to this appellant, who is
27 self-represented and is not a trained lawyer,

1 part of the confusion stems from the fact that
2 some of these legislative enactments that have
3 been referred to were enacted some time ago and
4 contain cross-referencing to sections and
5 subsections of other enactments which have since
6 been renumbered by later amendments. One example
7 is the reference in Section 8 of the territorial
8 seatbelt regulations to subsections 146(5) and
9 146(6) of the Motor Vehicles Act. Another
10 example is the references in the preamble of
11 Bylaw No. 4063 passed in 1999 to the bylaw making
12 power in the Cities, Towns and Villages Act and
13 the Motor Vehicles Act. By reviewing the
14 contents of the appeal's written brief, one can
15 see that the appellant was not alive to the
16 problem of cross-references to renumbered or
17 amended enactments.

18 Be that as it may, the appeal brief contains
19 certain submissions or assertions that simply are
20 without merit. For example, at page 5 of his
21 written brief the appellant asserts that if in a
22 legislative enactment or in a bylaw taxicab
23 operators are exempt from some subsections, then
24 they are exempt from all subsections. Such an
25 argument has no foundation in law or in logic and
26 is erroneous.

27 At page 7 of his brief, the appellant

1 suggests that a taxicab operator may choose not
2 to wear a seatbelt or may remove an installed
3 seatbelt assembly and then is immune from
4 prosecution for not wearing a seatbelt. There is
5 no basis in law for such a proposition.

6 In Justice of the Peace Court on December
7 4th, 2007, the Justice of the Peace had, in
8 convicting the appellant, dismissed the
9 appellant's arguments on the invalidity of the
10 bylaw and on its inapplicability to taxi drivers
11 for reasons stated by the Justice of the Peace in
12 his decision. I find no error in the decision of
13 the Justice of the Peace.

14 So on appeal file number CR 2008-004, I
15 grant the appellant's request for an extension of
16 time to file his appeal however the appeal is
17 dismissed for the reasons that I have just given.

18 On the other appeal file CR 2008-005, the
19 appeal is brought by this appellant on identical
20 grounds and accordingly that appeal is dismissed
21 as well.

22 That disposes of the two appeals then, and
23 we will close court.

24 THE CLERK: Thank you, sir.

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Certified to be a true and
accurate transcript pursuant
to Rules 723 and 724 of the
Supreme Court Rules,

Lois Hewitt, CSR(A), RPR, CRR
Court Reporter