

It was the officer's evidence that he aimed the laser speed measuring device at a vehicle which appeared to be speeding, activated it, and obtained a speed reading of 64 kilometres an hour. The officer stopped the vehicle and the driver identified himself the Appellant.

The officer indicated in response to a question from the trial judge that he had made a mistake and that he was on Christie Street south of Bloor, and that the same street turns into Grace Street south of Harbord Street.

It appears common ground between the parties and from documents filed on the appeal that the officer was in error. Christie Street stops at Bloor Street West and the street that continues south of Bloor Street is in fact Grace Street. However, I am of the opinion that nothing turns on this error by the officer.

It is the submission of Mr. Bonin agent for Mr. DaSilva that neither Grace Street nor Christie are 30 Kilometre per hour zones. Mr. Bonin concedes that Officer Bowman correctly testified that the location where he stopped the appellant was a posted 30 Kilometre zone. He also concedes that the decision of the Ontario Court of Appeal in the case *R. v. Clark* has held that the evidence of the officer regarding the posted maximum speed limit is evidence of a subsisting municipal bylaw regarding the permitted speed. He further concedes that by virtue of Bill Pr2 an Act respecting the City of Toronto Statutes of Ontario 2000 that the City of Toronto could pass a bylaw designating that portion of Grace St. as a 30 kilometre per hour zone.

It is however his submission that it has not. He submits that while the decision in *Clark* holds that while oral evidence of a posted speed is some evidence of a subsisting bylaw that such evidence may be rebutted by other evidence. On the appeal, Mr. Bonin has provided the court with a copy of a document certified on November 13th, 2003 by the Clerk of the City of Toronto, which he submits, indicates that the speed limit on Grace St. between Bloor Street West and Dundas Street West is 40 kilometres per hour.

The powers set out in section 136 of the *Provincial Offences Act* are broad. Section 136(2) provides that an appeal shall be conducted by means of a review. In giving judgment the learned Justice of the Peace indicated:

Examination in chief, the officer is trained and tested in the purpose and he clocks the individual 64 in the 30 zone as presently posted by the regulation sign. The defence contends that it is an incorrect sign as posted. Now, unless I have something from an engineering department, from a bylaw department, or directly from the provincial jurisdiction before this court, I am ruling that the present sign is effective.

In my opinion, while the learned Justice of the Peace was correct in so ruling, the appellant has now placed before the Court evidence of a type referred to by the Justice of the Peace which raises a doubt as to the permitted speed on Grace Street at the location where the appellant was stopped.

In the result the appeal will be allowed and an acquittal entered.

Released: May 10, 2004

A handwritten signature in black ink, appearing to read 'J. Casey', written over a horizontal line.

J. Casey

Judge, Ontario Court of Justice