Citation: *R. v. Brown*, 2019 YKTC 30

Date: 20190619
Docket: 18-05208
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Ruddy

REGINA

v.

CHRISTOPHER BRENT BROWN

Appearances:
Kelly McGill — Counsel for the Territorial Crown
Christopher Brent Brown — Appearing on his own behalf

REASONS FOR JUDGMENT

[1] Christopher Brown faces four counts contrary to the Yukon *Motor Vehicles Act,* RSY 2002, c. 153. Specifically, it is alleged that on August 13, 2018, Mr. Brown operated an uninsured motor vehicle contrary to s. 87(2), operated an unregistered motor vehicle contrary to s. 39, used an unauthorized licence plate on his motor vehicle contrary to s. 59, and failed to produce a driver's licence contrary to s. 37. Mr. Brown entered not guilty pleas on September 19, 2018, and the matter proceeded to trial on April 8, 2019.

[2] Mr. Brown also goes by the name Chris Ro-Bro, but for the purposes of this decision, I will refer to him as Mr. Brown, as that is the name on the Information before me.

[3] As with any regulatory offence, the burden rests on the Crown to establish, beyond a reasonable doubt, that Mr. Brown committed the offences. By and large, Mr. Brown does not dispute the circumstances giving rise to the charges. Rather, Mr. Brown asserts that the Yukon *Motor Vehicles Act* does not apply to him, and, therefore, he cannot be convicted of the offences as charged.

The Facts

[4] Evidence at trial consisted of the *viva voce* testimony of the arresting officer, Cst. Kidd, and a number of exhibits filed by agreement, including a DVD with full audio and video of the interaction between the police and Mr. Brown on August 13, 2018. From these, the relevant facts are clear.

[5] In mid-July, 2018, Mr. Brown and his spouse sent a document entitled “Notice of Claim of Right of Movement, Affidavit of Truth” to the Whitehorse RCMP detachment, City of Whitehorse Bylaw Services, and the Department of Motor Vehicles. The document sets out the Browns’ position that any laws restricting movement do not apply to them, and provides their reasons for this belief. For ease of reference, I will refer to this document as the “Claim”.

[6] On July 23, Ian Fraser, counsel with the Yukon Department of Justice sent a letter to Mr. Brown acknowledging receipt of the Claim and indicating “The Government

of Yukon does not accept your contention that you are not subject to the laws of Yukon or Canada, and urges you to act at all times in compliance with Yukon and federal legislation".

[7] On July 26, 2018, Mr. Brown and his spouse sent a response to Mr. Fraser's letter entitled "Notice of Clarity, Understanding and Intent, Affidavit of Truth" ("Notice of Clarity"), stating their position that Mr. Fraser had not responded in "the prescribed form". It asserts that the Browns do not need the government's permission to exercise their rights, and invites a response "within the prescribed method".

[8] Mr. Fraser replied by letter dated July 27, 2018 acknowledging receipt of the Notice of Clarity but declining to engage in further discussion.

[9] On July 30, 2018, the registration on the Browns' Dodge Journey expired and was not renewed until after the offence date.

[10] On August 2, 2018, the Browns sent a document entitled "Notice of Non-Response, Affidavit of Truth" to the Government of Yukon, Whitehorse RCMP, and City of Whitehorse Bylaw Services, indicating their position that they viewed the failure to respond to the Claim in the form they requested as presumptive acceptance of their claim of right to movement.

[11] On August 4, 2018, Mr. Brown's spouse had an encounter with two RCMP officers outside the Transportation Museum regarding the Dodge Journey, which had a homemade plate that read "Private RO-BRO-A". Officer inquiries indicated the vehicle registration was expired. No charges were laid.

[12] On August 10, 2018, a more confrontational encounter occurred between the RCMP and Ms. Ro-Bro in the Walmart parking lot in which each expressed differing views on the applicability of the *Motor Vehicles Act* to Ms. Ro-Bro and the Dodge Journey. No charges were laid, but the interaction led to the Browns attending at the Whitehorse detachment later that afternoon. During the exchange, the Browns explained that they were not acting in the capacity of their legal persons and the vehicle was not subject to the *Motor Vehicles Act*. The officer informed the Browns that they were required to register and insure the vehicle. Again, no charges were laid.

[13] On August 13, 2018, Cst. Kidd was conducting patrols on the South Klondike Highway. The previous day, he had received an officer awareness bulletin regarding an individual who believed the *Motor Vehicles Act* did not apply to him, and that checks showed he lived on the South Klondike Highway.

[14] At 10:49 a.m., Cst. Kidd observed the Browns' Dodge Journey stopping in the truck pullout area on the South Klondike Highway. He executed a U-turn and pulled in behind the vehicle, which bore a plate consistent with the photos he had received with the officer awareness bulletin the previous day, reading RO-BRO-A. Mr. Brown got out of the driver's seat. Mr. Brown's spouse and three children were in the vehicle.

[15] There was a lengthy exchange between Cst. Kidd and Mr. Brown with Cst. Kidd making numerous requests for licence, registration, and proof of insurance, and Mr. Brown, who identified himself as Chris Ro-Bro, indicating that he was invoking his right to free movement and explaining his view of the law.

[16] Cst. Kidd advised Mr. Brown that if he did not provide identification, the vehicle would be towed and he would be arrested for obstruction. Mr. Brown asked Cst. Kidd if he had seen the Claim, as Mr. Brown believed that his Ontario Statement of Live Birth attached to the Claim was sufficient identification.

[17] Cst. Kidd was joined by Constables Allain and Hartwick. Cst. Allain advised that the vehicle registration on the Dodge Journey had expired. At no time did Mr. Brown produce a driver's licence, registration, or proof of insurance.

[18] Cst. Kidd advised Mr. Brown that he was under arrest for obstruction and for operating a motor vehicle without insurance. Mr. Brown was handcuffed, searched, and placed in the police vehicle. Cst. Kidd read Mr. Brown his *Charter* rights and police caution. When asked if he understood, Mr. Brown did not reply, but demanded his rights to *habeus corpus*.

[19] The Dodge Journey was impounded for no insurance.

[20] Mr. Brown was taken to the RCMP detachment where Cst. Kidd was able to access a copy of Mr. Brown's driver's licence to establish identification. Mr. Brown was asked to sign a Promise to Appear, but declined and asked to be brought before a judge.

[21] The Record of Proceedings in the court file indicates that Mr. Brown was brought before the court on August 14, 2018 and consent released on an undertaking.

The Offences

[22] There is little doubt the offences are made out on these facts.

[23] With respect to count one, s. 87(2) of the *Motor Vehicles Act* makes it an offence to operate a motor vehicle that is not insured. Section 86(1) requires an operator to produce the financial responsibility card proving the vehicle is insured, upon request by a peace officer. The evidence is clear, and Mr. Brown does not dispute, that he did not provide Cst. Kidd with proof of insurance on August 13, 2018. Section 72(2) places the onus on the accused person in a prosecution to prove that a vehicle is validly insured. There was no evidence provided at trial to indicate that the Dodge Journey was insured on August 13, 2018.

[24] With respect to count two, s. 39(4) of the *Motor Vehicles Act* makes it an offence to operate a motor vehicle without a subsisting certificate of registration. Exhibit 11, a Certificate of Registered Ownership, shows that the Browns' Dodge Journey was registered up to July 31, 2018. Exhibit 12, also a Certificate of Registered Ownership, shows that the Browns re-registered the Dodge Journey on August 15, 2018, two days after the offence date. In addition, paragraph 20 of the Agreed Statement of Facts filed as exhibit 1 effectively includes an admission by Mr. Brown that the Dodge Journey was not registered on August 13, 2018.

[25] With respect to count three, s. 59 of the *Motor Vehicles Act* makes it an offence to operate a motor vehicle with a licence plate attached that is not authorized for use. Under s. 53, licence plates are provided by the Registrar at the time of registration. Section 53(3) requires licence plates to be of the type and colour prescribed. The *Motor*

Vehicles Act Regulations, O.I.C 1990/111, set out the prescribed requirements. Section 60 requires the licence plate provided to be attached to any vehicle that is parked or operated on a highway.

[26] Cst. Kidd testified that the plate affixed to the Dodge Journey on August 13, 2018 was the same as the plate located in the middle on the left side of the photograph of homemade plates attached to the Claim filed as exhibit 5. The plate was not provided by the Registrar of Motor Vehicles nor is it in the prescribed form as set out in the *Regulations*.

[27] With respect to count four, s. 36 of the *Motor Vehicles Act* requires every driver to carry their operator's licence at all times when driving a motor vehicle and to produce it upon demand by any peace officer. The issue is not whether Mr. Brown held a valid licence, but whether he failed to produce it when requested to by Cst. Kidd, an offence contrary s. 37. The RCMP video filed as exhibit 10 clearly shows that Mr. Brown did not produce an operator's licence as required.

[28] In his defence, Mr. Brown asserts that neither he nor his vehicle were subject to the provisions of the Yukon *Motor Vehicles Act* on August 13, 2018, and he, therefore, cannot be convicted of the offences.

[29] It is clear that Mr. Brown has spent considerable time and effort in mounting his defence. He has provided a large binder of materials compiling his arguments and the authorities and documents upon which he has based those arguments.

Impact of Supreme Court of Yukon Decision

[30] However, before addressing Mr. Brown's defence, I must consider the impact of the decision of the Yukon Supreme Court in *Brown v. Canada (Attorney General),* 2019 YKSC 21, released on May 15, 2019. The decision relates to a petition Mr. Brown had filed objecting to the requirement that he pay child support pursuant to an Ontario order and to the Yukon legislative provisions available to enforce that order. In reviewing the decision, it is clear that Mr. Brown advanced arguments strikingly similar to those he has advanced as his defence to the charges before me. These arguments were rejected by the Supreme Court of Yukon.

[31] In his decision, Justice Kane characterized Mr. Brown as an Organized Pseudolegal Commercial Argument ("OPCA") litigant as defined in the oft-cited decision of *Meads v. Meads*, 2012 ABQB 571, finding that:

> 242 Mr. Brown in argument reinforced this conclusion when he tried to explain that:
>
> a. an "individual" is a living natural person, whereas the terms "person" in the *Charter* and "everyone" in the Criminal Code refer to artificial entities or persons, such as corporations;
>
> b. his statement of live birth evidences that he is a natural person whereas his Birth Certificate refers to an artificial entity or person;
>
> c. artificial persons are governed by statute. Natural persons are not governed by statute;
>
> d. a natural person is governed by the laws of nature, such as do not kill another person, and only some of this natural law is contained in legislation; and
>
> e. he as a natural person is not governed by legislation regulating an artificial person.

> 243 The petitioner's submission that the *ICCPR* permits him to choose not to be recognized as any class of person and therefore free of all government obligation and legislation, is a meaningless OPCA "strawman" or divided/split person scheme: *Meads* paras. 326-330 and 445-447.
>
> 244 The above noted OPCA arguments and tactics of Mr. Brown form the foundation of his proceeding and are illogical, incorrect and have no legal merit.

[32] Crown takes the position that while the two cases involve very different domains of law, pursuant to the doctrine of *stare decisis*, I am nonetheless bound by the legal ruling finding the arguments advanced by Mr. Brown to have no legal merit. Mr. Brown seeks a decision on the merits, suggesting that the arguments he advanced before me were more knowledgeable than he was able to put before the Supreme Court of Yukon.

[33] The Supreme Court of Canada recently revisited the application of *stare decisis* in the case of *Carter v. Canada (Attorney General)*, 2015 SCC 5, regarding the constitutionality of the *Criminal Code* provision criminalizing assisted suicide. The Court noted at paragraph 44:

> The doctrine that lower courts must follow the decisions of higher courts is fundamental to our legal system. It provides certainty while permitting the orderly development of the law in incremental steps. However, *stare decisis* is not a straightjacket that condemns the law to stasis. Trial courts may reconsider settled rulings of higher courts in two situations: (1) where a new legal issue is raised; and (2) where there is a change in the circumstances or evidence that "fundamentally shifts the parameters of the debate" *(Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101, at para. 42).

[34] The summary provided by Justice Kane in the *Brown* decision seems a very concise overview of the arguments advanced by Mr. Brown in this case, such that I am

hard pressed to conclude that the exceptions to the doctrine of *stare decisis* referenced in *Carter* would apply.

[35] Mr. Brown suggests that his argument before Justice Kane was less sophisticated, noting, in particular, that his argument was not based on statutory interpretation. I am not sure that this makes it a "new legal issue" or "fundamentally shifts the parameters of the debate", but I am mindful of the fact that I do not have the full picture of Mr. Brown's argument in his family law case. I am also mindful of the fact that the two cases deal with very different legal situations, which makes the application of the doctrine of *stare decisis* less clear.

[36] To give Mr. Brown the benefit of the doubt, rather than summarily dismissing his defence on the basis of the *Brown* decision out of the Supreme Court of Yukon, I will endeavour to address his main arguments on their merits. I must note, however, that even if there is a question about whether the decision of Justice Kane in *Brown* is fully binding, it is, nonetheless, a decision I find to be extremely persuasive, in all of the circumstances.

Defence arguments

[37] Mr. Brown's main arguments fall into the following categories:

1. The definition of "person";
2. The "acting in commerce" argument;
3. The application of international covenants;

4. Application of the *Canadian Charter of Rights and Freedoms*; and
5. Officially induced error.

I will deal with each category in turn.

1. Definition of "person"

[38] Mr. Brown asserts that the law recognizes that each of us are two separate entities, natural persons and legal persons. He says that natural persons are separate from their legal person unless they are acting in the capacity of their legal person. He takes the position that the *Motor Vehicles Act* applies to legal persons and not natural persons. In his view, it is the act of registering a motor vehicle that declares that one is acting in the capacity of their legal person and therefore subject to the *Motor Vehicles Act*.

[39] This dual entity concept is often referred to as a "strawman" or "split person" scheme and has been consistently rejected by Canadian courts. Indeed, the argument was expressly rejected by Justice Kane in the *Brown* decision at paragraph 242.

[40] In *R. v. D'Abadie*, 2018 ABQB 298, the applicant brought an action for damages in relation to charges under the *Traffic Safety Act,* 170 (2)(a), on the basis the law did not apply to him. His argument involved a similar split person scheme. In rejecting the argument, Justice Ashcroft concludes at paragraph 70 that:

> …d'Abadie's litigation is based on the notorious and false OPCA 'Strawman' scheme, and that his fundamental argument is that he has a special status as "a human being with full legal capacity" who is not "a class of person", and therefore he cannot be stopped by police, ticketed, or have his "Property" seized. That is simply false. He is "a class of person", and therefore subject to the laws of Alberta and Canada.

[41] Justice Ashcroft also notes at paragraph 67 that:

> The entire 'Strawman' concept is so notoriously bad that in *Fiander v. Mills*, 2015 NLCA 31, 368 Nfld. & P.E.I.R. 80 (N.L.C.A.) Chief Justice Green concluded that simply deploying a 'Strawman' scheme creates a presumption that a litigant is vexatious, and appears in court for an abusive, ulterior purpose. …

[42] Throughout the proceedings, Mr. Brown has asserted that he is not an OPCA litigant. He takes offence at being compared to Freemen on the Land or other groups espousing similar OPCA philosophies. Notwithstanding the similarity of many of his own arguments to those espoused by OPCA litigants, he insists that he is not being vexatious. He distinguishes his arguments from those of OPCA litigants by saying that his are based on statutory interpretation, and throughout, he has simply been seeking an explanation as to why his interpretation is not a valid interpretation of the law.

[43] There are two components to Mr. Brown's argument. Firstly, he relies on numerous definitions culled from three separate law dictionaries to support his contention that, in law, humans are at the same time both natural persons and legal persons. Secondly, he points to the definition of "person" in both the federal and territorial Interpretation Acts as proof that statute law applies only to the legal person and not the natural person unless expressly stated otherwise, a position which turns on whether the word "includes" denotes a closed or an open list.

[44] With respect to the first component of his argument, it appears Mr. Brown is confused about the import of definitions found in a law dictionary. In the index to his binder, he has listed all of the excerpts from the various law dictionaries under the heading "Legislation". Law dictionary definitions, however, are not law.

[45] The law in Canada is developed in two ways: through the passing of legislation by federal, provincial, and territorial governments, and through judicial decisions, or case law, often interpreting legislation. Law dictionaries represent some company's effort to provide a quick reference for legal terminology, but they are not themselves definitive or binding statements of the law.

[46] Furthermore, one of the three law dictionaries cited, *Black's Law Dictionary,* 10th Edition, is an American publication, and thus provides summaries of how legal terms have been interpreted in American rather than Canadian law. While there are some similarities between Canadian and American legal traditions, there are also numerous differences.

[47] In addition, the various excerpts from law dictionary definitions that Mr. Brown has chosen to include and highlight in his written argument suggest Mr. Brown's interpretation of people having a dual entity in law is based on a misunderstanding stemming from the manner in which the law in Canada treats corporations and corporate liability.

[48] In law, the act of incorporation pursuant to legislation, in effect, creates a new legal entity that is treated as a "person" before the law such that it is the corporation that is liable rather than the individuals who have formed the corporation, who, in turn, are shielded from personal liability, a concept commonly referred to as "the corporate veil". Mr. Brown reads corporation to mean that people somehow have a separate "corporate" identity which he calls the legal person.

[49] While it is not necessary, in my view, to address every law dictionary definition Mr. Brown has relied on, I do want to reference one example which is illustrative of the erroneous conclusions Mr. Brown appears to have drawn in his reading of the various law dictionary definitions. The example is an excerpt from the *Canadian Law Dictionary,* 4th Edition, definition of person. On page 2 of his argument, Mr. Brown has highlighted the following passage:

> Persons are of two classes only – natural persons and legal persons. A natural person is a human being that has the capacity for rights and duties. A legal person is anything to which the law gives a legal or fictional existence or personality, with capacity for rights and duties. The only legal person known to our law is the corporation – the body corporate.

[50] As Mr. Brown has bolded as well as highlighted the final sentence from the quote, it seems the use of "legal person" and "the body corporate" in the sentence have contributed to his belief in individual persons somehow having a separate legal or "corporate" identity in Canadian law, which is the "legal person".

[51] The excerpt is actually a quote from the Manitoba King's bench decision in *Hague v. Cancer Relief & Research Institute*, [1939] M.J. No. 10. At issue was whether the defendant Institute was or was not a corporation that could be sued. The institute was created under legislation which read "There is hereby created a corporation called 'The Cancer Relief and Research Institute'. The Institute shall be a body corporate and politic". Preceding the excerpt highlighted by Mr. Brown, the presiding judge noted the Institute "is therefore a corporation or nothing. What is a corporation? According to our system of law, a corporation is a group or series of persons which by a legal fiction is regarded and treated as a person itself".

[52] The case did not in any way suggest that human beings have a separate artificial or "corporate" legal identity as Mr. Brown seems to think. The use of the phrase "the body corporate" is not used in the sense of human bodies. The case quoted is from 1939, at a time when the phrase "the body corporate" was used as a synonym for corporation. It is an archaic term that is no longer used.

[53] While corporations, meaning businesses incorporated pursuant to legislation, are treated as persons before the law, this does not mean that the converse is true. Persons or people are not treated as having separate "corporate" identities as artificial or legal persons. Mr. Brown's contention that the various law dictionary definitions support the conclusion that people have dual identities in Canadian law as both natural persons and legal persons is simply unfounded. There is nothing in Canadian law to support his interpretation.

[54] The second component of Mr. Brown's argument relates to the definition of "person" in both the federal and territorial Interpretation Acts. In the federal *Interpretation Act*, R.S.C., 1985, c. 1-21, the definition of "person" reads in s. 35(1):

> "person" or any word descriptive of a person, includes a corporation.

[55] In the Yukon *Interpretation Act,* RSY 2002, c. 125, s. 21(1):

> "person" includes a corporation and the heirs, executors, administrators, or other legal representatives of a person.

[56] Mr. Brown argues that the word "includes" in both definitions denotes a closed list, meaning that the use of "person" refers only to corporations, which, as already noted, he interprets to mean the legal person. As both Interpretation Acts include a

section that says they apply to all enactments "unless a contrary intention appears" (s. 3(1) in the federal *Act*; s. 2(1) in the Yukon *Act*), Mr. Brown says that statutes must apply only to the legal person and not the natural person, unless a term other than "person" is used.

[57] This reasoning turns on Mr. Brown's interpretation of the word "includes". Again, he relies on excerpts from law dictionary definitions to support his interpretation. In materials Mr. Brown kindly prepared for a case management meeting to assist me in understanding his argument, he argued that the fact that the definition of "include" in *Black's Law Dictionary* as being a partial list referenced "including", "including without limitation" and "including but not limited to", but did not reference "includes" with an "s" must mean that "includes" with an "s" means something different, which he interpreted to mean "includes" denotes a closed rather than a partial list.

[58] I suggested "include" and "includes" were not different words with different meanings; they were different conjugations of the same word dependent on whether the subject of the phrase was singular or plural: i.e. person include<u>s</u>; person<u>s</u> include.

[59] At trial, Mr. Brown responded to my comment by arguing that "includes" can be construed in the "imperative" and indicate a closed "list" (p. 5 of written argument). For this, he relies on excerpts from the definition of "includes" in the *Canadian Law Dictionary*:

> However, in other <u>contexts</u>, "<u>includes</u>" suggests a comprehensive description of the definition…
>
> But the word "<u>include</u>" is susceptible of another construction, which may become <u>imperative</u>, if the <u>context</u> of the act is sufficient to shew that it is

> not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to "mean and include", and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions. (emphasis added)

[60] Based on this excerpt, Mr. Brown says that "includes" is used in the "imperative" in the definition of "person", denoting a closed list.

[61] Mr. Brown seems to have keyed in on the word "imperative" in the excerpt in answer to my point about verb conjugation. By this I mean it appears he is interpreting the word "imperative" in the sense of the imperative verb tense. However, "imperative" is a word with more than one meaning. In addition to a verb tense, it can also mean necessary or obligatory, which is clearly the manner in which it is being used in the excerpt, rather than as a verb tense.

[62] I would also note that the excerpt refers to both "include" and "include<u>s</u>" in suggesting that either may, at times, denote a closed rather than an open list. This is contrary to Mr. Brown's original argument that "include" denoted an open list while "includes" denoted a closed list.

[63] The point that Mr. Brown appears to have missed in the excerpt is that it is not the tense that the verb "to include" is conjugated in that determines whether it denotes a closed or an open list when used in a statutory definition section. It is the context in which it is used.

[64] To the extent Mr. Brown can be said to address the question of the context in which "includes" is used in the Interpretation Act definitions of "person", he does so by

noting numerous examples of words, such as "everyone" used in other Acts and concluding that "person" must mean something different. An example of this can be seen on page 7 and 8 of his argument in relation to the *Charter of Rights and Freedoms*, in which he concludes that "everyone" means the human being and "person" refers to the artificial person/corporation because "security of the person" in s. 7 is synonymous with "surety of the corporation".

[65] Mr. Brown's convoluted approach to statutory interpretation is to cherry-pick various words and phrases, often wholly unrelated or taken out of context, from various law dictionaries, statutes, and cases, and weave them together in a way that supports the conclusion he wants to reach. With respect, this is not the correct approach to statutory interpretation.

[66] The proper approach to statutory interpretation is that stated by the Supreme Court of Canada in *Rizzo v. Rizzo Shoes Ltd. (Re),* [1998] 1 S.C.R. 27, in which the Court endorses the modern principle of statutory interpretation set out in Driedger's *The Construction of Statutes,* (2nd ed. 1983):

> Today there is only one principle or approach, namely, 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.

[67] What is important about this approach is that we do not discount the normal or everyday meaning of words in statutory interpretation. Just because a word is used in legislation does not mean it is no longer used in the ordinary sense of the word. The focus is on the context in which the word is used and the object of the *Act*.

[68] Applying this approach to the definition of “person” in the federal and territorial Interpretation Acts, Mr. Brown’s interpretation is simply not supportable. Firstly, there is nothing to suggest that “includes” is used to denote a closed list in the definition. In fact, the definition in the federal *Act* clearly suggests otherwise. To conclude that “person includes a corporation” denotes a closed list simply makes no sense, firstly, because it is not a list. If Parliament had intended that the definition of “person” be limited to corporations, they would have used “person means a corporation” rather than “includes”.

[69] Secondly, there is nothing in the context of the definition, or in either *Interpretation Act*, to suggest Parliament or the Yukon Legislature intended that the ordinary, everyday meaning of “person” as a human being was to be excluded from the definition. Had that been the intention, one would have expected them to expressly say so, or more likely, to use a word other than “person” in the first place.

[70] The intent of the definition, in both Acts, is clearly to include corporations, as a distinct legal entity, in the definition of “person” not to exclude human beings or natural persons from the definition. To suggest otherwise makes absolutely no logical or legal sense.

2. The “acting in commerce” argument

[71] Mr. Brown argues that the Yukon *Motor Vehicles Act* only applies to individuals who are operating motor vehicles “in commerce”, rather than for private use. This is based on his combined reading of s. 91 of the *Constitution Act*, *1867* and the *Canada*

Transportation Act, S.C. 1996, c. 10. His argument is also intertwined with his dual entity or split-person argument, rejected in the previous section of this decision.

[72] Section 91 and 92 of the *Constitution Act*, *1867* set out the division of powers between the federal Parliament and provincial Legislatures. Each section includes a list of subject areas in which each government is constitutionally entitled to legislate. Mr. Brown has interpreted s. 91(2) "The Regulation of Trade and Commerce" as meaning that the federal government can only pass laws for the purpose of regulating trade and commerce. As the section makes no mention of the ability to make laws governing individual or natural persons living or travelling upon the land of Canada, he concludes that Canada can only make laws in relation to "persons (corporations)" engaged in commerce.

[73] He then notes the economic references in the *Canada Transportation Act* as further proof that any legislation relating to transportation or motor vehicle use must only apply to persons engaged in commerce.

[74] Having already addressed and rejected Mr. Brown's dual entity argument, I do not propose to address it again in this section. With respect to the remainder of his "acting in commerce" argument, in my view, the argument represents a fundamental misunderstanding of both the division of powers in Canada and of the impact of one *Act* on the interpretation of another.

[75] Section 91 of the *Constitution Act*, *1867* sets out the areas in which federal Parliament can legislate. The *Canada Transportation Act* regulates several transportation industries in Canada, so would fall within the federal Parliament power to

legislate under s. 92(2) in regulating trade and commerce. However, motor vehicle or highway legislation is typically enacted in Canada by provinces, under the authority in s. 92(13) of the *Constitution Act*, *1867*, authorizing them to enact legislation with respect to "Property and Civil Rights in the Province" (see *Sivia v. British Columbia (Superintendent of Motor Vehicles),* 2014 BCCA 79, paragraph 64-65).

[76] As the Yukon is a territory, rather than a province, its power to enact legislation is set out in the *Yukon Act*, S.C. 2002, c. 7, through which federal Parliament has delegated to the Yukon Legislature the power to make laws in enumerated subject areas. With respect to the *Motor Vehicles Act*, the power to enact would fall under s. 18(1)((j) "property and civil rights", and (y) "the imposition of fines, penalties, imprisonment or other punishments in respect of the contravention of the provisions of a law of the Legislature".

[77] Accordingly, the *Canada Transportation Act* and the Yukon *Motor Vehicles Act* are enacted by two different governments under two different empowering sections. There is nothing in the Yukon Legislature's authority to create motor vehicle legislation under s. 18(1)(j) of the *Yukon Act* limiting it's application to the operation of motor vehicles in commerce. Nor is that authority somehow limited by federal Parliament's power to regulate trade and commerce under s. 91(2) of the *Constitution Act*, *1867*.

[78] With respect to the interpretation of the provisions of the Yukon *Motor Vehicles Act*, the existence of the *Canada Transportation Act* does not operate, contrary to Mr. Brown's belief, to limit the application of the Yukon *Motor Vehicles Act* to motor vehicles being operated for commercial purposes.

[79] Mr. Brown highlights s. 3 of the *Canada Transportation Act* as support for the argument that economic or commercial goals of the *Act* affect interpretation of the Yukon *Motor Vehicles Act*. Section 3 reads: "This *Act* applies in respect of transportation matters under legislative authority of Parliament."

[80] Mr. Brown seems to be interpreting the section as meaning the *Act* applies to transportation related legislation enacted by provincial or territorial governments. However, it must be noted, if the foregoing analysis has not already made it clear, that Parliament refers to the federal government. Provincial and territorial governments are referred to as Legislatures or Legislative Assemblies, not as Parliament. Accordingly, the proper interpretation of s. 3 of the *Canada Transportation Act* would be that it applies only to those transportation matters that fall within the federal government's powers.

[81] The provisions of the *Canada Transportation Act* have absolutely no impact on the interpretation of the Yukon *Motor Vehicles Act*. Indeed, an Act of Parliament would only have bearing on an Act of the Yukon Legislature if sections are expressly incorporated into the Yukon legislation. An example of this can be seen in s. 2.01 of the Yukon *Summary Convictions Act*, RSY 2002, c. 210, which expressly incorporates provisions of the *Criminal Code* relating to summary convictions matters. There is no such provision in the Yukon *Motor Vehicles Act* incorporating provisions of the *Canada Transportation Act*.

3. Application of International Covenants

[82] Mr. Brown relies on the provisions of various international covenants and declarations, including the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic*, *Social and Cultural Rights*, and the *Declaration on Human Rights Defenders*. He refers to several specific articles or sections within these documents in support of his defence. However, the law is clear that international covenants and declarations do not have supra-constitutional status. They are not enforceable laws in Canada unless and until Canada enacts domestic legislation to implement their commitment as a signatory. Once this is done, the international covenants are relevant to the question of interpretation.

[83] It should be noted that Justice Kane does a very thorough analysis of the law in relation to the application of international covenants and declarations in paragraphs 86 through 116 of his decision in Mr. Brown's family law case. There would be little utility in repeating the analysis. I would instead adopt Justice Kane's comments for the purposes of this decision.

[84] Mr. Brown does argue that s. 26 of the *Charter* allows him to invoke protections under international covenants. Section 26 reads:

> 26 The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.

[85] However, in my view, the reference to "rights or freedoms <u>that exist in Canada</u>" does nothing to change the law on international covenants. They do not "exist in Canada" until such time as Canada enacts legislation.

4. Application of the *Charter*

[86] The question then becomes what laws have been enacted in Canada pursuant to these international covenants. The only provisions that have been referred to in this trial which can be said to fall into this category, would be those enshrined in the *Charter*.

[87] Mr. Brown argues ss. 2(d), 7, 8, 9, 10(a), 15, and 24(2) of the *Charter* apply.

[88] Section 2(d) is the freedom of association. Mr. Brown says his right to freedom of association was violated as the police awareness bulletin lumped him in with the Freemen on the Land. In effect, he is arguing that he was unfairly associated with a group with whom he does not identify.

[89] The purpose of the freedom afforded in s. 2(d) is commonly understood as ensuring that individuals of a common mind with a common purpose cannot be prohibited from coming together to take collective action. Mr. Brown's take appears to be the inverse of the protected freedom. As such, it does not, in my view, amount to a violation of the freedom the section was intended to protect.

[90] Mr. Brown's concern about being lumped in with the Freeman on the Land is also part of his argument in relation to s. 15, the equality provision, which reads:

> 15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination

> and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[91] Mr. Brown concedes that he does not fall within any of the enumerated groups, but says, quite rightly, that application of the section is not necessarily limited to those groups.

[92] He argues that, in addition to being treated as a Freemen on the Land, he was discriminated against because the police would not recognize his assertion that he was not acting in his capacity as the legal person. He further asserts that the police attempts to "force him to identify" amounted to discrimination as they were attempting to create "joinder" between his legal person and his natural person to make him subject to the provisions of the *Motor Vehicle Act*.

[93] In my view, Mr. Brown's argument under s. 15 must fail on the basis that I have already rejected the dual entity argument, as have courts across Canada. If the dual entity or split person scheme is not legally valid, there is no basis for concluding that Mr. Brown was unfairly discriminated against pursuant to s. 15 as a result.

[94] The next issue is the application of s. 7 which reads:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[95] Mr. Brown's interpretation of s. 7 flows from his belief that "person" in law means the "artificial/incorporated" person. To this he adds the federal *Interpretation Act* definition of "security":

> ***security*** means sufficient security, and ***sureties*** means sufficient sureties, and when those words are used one person is sufficient therefor, unless otherwise expressly required

[96] Based on this, Mr. Brown has determined "security of the person" to mean "surety of the corporation". He says s. 7 guarantees the human being the right to the surety of the artificial/incorporated person, which he says allows a human being to exercise their rights against any statute that is in conflict with their natural or fundamental rights.

[97] Having already rejected Mr. Brown's assertion that there is both a natural person and an artificial/incorporated/legal person on the basis there is no legal merit to the argument, his interpretation of s. 7, is equally invalid.

[98] Mr. Brown's assertion that his right to free movement under the *International Covenant on Civil and Political Rights* must also be considered under s. 7, as challenges to the constitutionality of motor vehicle legislation on the basis it infringes a right to free movement have been framed under the s. 7 right to liberty.

[99] A review of the case law, however, makes it clear that the right to free movement does not include the right to operate a motor vehicle on public roads. In *R. v. Neale* (1986), 28 C.C.C. (3d) 345 (Alta. C.A.), the Court of Appeal quoted from the Supreme Court of Canada decision in *R. v. Dedman* (1985), 20 C.C.C. (3d) 97, in noting:

> While one can speak of the liberty to operate a motor vehicle, we agree with Le Dain J. speaking for the majority in *Dedman* (1985), 20 C.C.C. (3d) 97, that the right to circulate in a motor vehicle on a public highway "is not a fundamental liberty like the ordinary right to movement of the individual, but a licensed activity that is subject to regulation and control

> for the protection of life and property." The ordinary right of movement is protected, but circulation in a motor vehicle is not.

[100] Similarly, the B.C. Court of Appeal in *Buhlers v. British Columbia (Superintendent of Motor Vehicles)*, 1999 BCCA 114, concluded:

> 94 It is important to remember that in all of the cases mentioned above which discuss the right or privilege of driving a motor vehicle, that discussion takes place in the context of statutes governing the driver's use of public highways. Without access to public highways, the right to drive a motor vehicle as presently understood, would be for all practical purposes meaningless. Driving a motor vehicle considered only as an extension of the individual's right to move freely, might well be thought to contain a "liberty" component; but driving a motor vehicle on a public highway involves the use of the Crown's property, and directly affects the rights of all other drivers and pedestrians to move freely and safely. It is the duty of the Crown to protect the safety of all, which underlies its right to regulate and control the use of its highways through licensing statutes, and the limitations on individual rights which they necessarily impose. The right to operate a motor vehicle on a public highway is therefore more correctly to be characterized as a privilege which the Crown may restrict without infringing the liberty interests protected by s.7 of the Charter.

[101] Based on the established case law, the Yukon *Motor Vehicles Act* cannot be said to violate Mr. Brown's right to free movement insofar as such a right is included in s. 7 of the *Charter*.

[102] With respect to s. 8, the right to be secure against unreasonable search or seizure, Mr. Brown argues that the impoundment of the Dodge Journey was a breach of s. 8 as the police had no lawful right to seize his property. Section 235 of the *Motor Vehicles Act*, however, gives a peace officer the authority to impound a vehicle if the officer has reasonable grounds to believe a person is driving contrary to s. 72, the requirement to maintain minimum liability insurance. As Mr. Brown did not provide proof

of valid insurance, I am satisfied Cst. Kidd had the requisite grounds to impound the vehicle.

[103] I should pause here to address an argument raised by Mr. Brown in relation to Cst. Kidd's authorities. Mr. Brown argues that while a peace officer is defined as a member of the RCMP in the *Motor Vehicles Act*, an

> "officer" means a member of the Royal Canadian Mounted Police or a person appointed pursuant to section 2 to administer or enforce all or any portion of this Act, including those persons employed in connection with the operation of weigh scales established pursuant to the *Highways Act*.

[104] He goes on to suggest that as the Yukon *Interpretation Act* defines "or" as including "and", this means that Cst. Kidd was acting as an "officer" and not a "peace officer" when enforcing the provisions of the *Motor Vehicles Act*. This interpretation makes no sense. The definition is clearly intended to illustrate that there are others in addition to RCMP members who may have legislated authority to enforce certain provisions of the *Motor Vehicles Act*. Even if "or" is read as "and/or" in the definition, it does not change the fact that RCMP members are peace officers. They have a broad range of authorities under numerous Acts, but whatever Act they are enforcing does not change the fact that they are at all times peace officers. Furthermore, s. 235 of the *Motor Vehicles Act* references "peace officer" not "officers", therefore, "peace officer" is the applicable definition.

[105] With respect to s. 9, Mr. Brown argues that his detention was arbitrary as the police had no right to detain him. This argument is really tied to Mr. Brown's belief that

he is not subject to the provisions of the *Motor Vehicles Act* unless he is acting in commerce in the capacity of his legal person, arguments that I have rejected.

[106] In this case, the evidence indicates that Cst. Kidd, through the officer awareness bulletin, had reasonable grounds to believe that Mr. Brown was operating an unregistered vehicle with homemade plates. In the circumstances, I am satisfied that any detention for investigation was not arbitrary. In addition, s. 112 provides peace officers with authority to arrest without warrant if they have reasonable and probable grounds to believe the person has committed one of the enumerated offences, including operating a motor vehicle without valid registration or insurance, or with an unauthorized plate (ss. (b), (c), and (d)) all of which clearly apply.

[107] Mr. Brown's argument with respect to his s. 10(a) right, upon arrest or detention, "to be informed promptly of the reasons therefore", is that his s. 10(a) right was violated as Cst. Kidd articulated "offences" but did not articulate "crimes". He relies on the *Canadian Law Dictionary* definition of "crimes" to indicate that provincial offences are "quasi crimes".

[108] It is true that provincial/territorial offences are frequently referred to as "quasi criminal"; however, the s. 10(a) right does not say that a person has the right to be informed of "crimes" upon arrest or detention. The right is to be informed of the reason for arrest or detention. The s. 10(a) requirement is informational. A reason must be provided.

[109] The evidence clearly indicates Cst. Kidd did inform Mr. Brown of the reasons for both detention and arrest, referencing both the *Motor Vehicles Act* offence of driving

with no insurance and the *Criminal Code* offence of obstruction. The fact that Mr. Brown does not believe he was obligated to provide identification and therefore not guilty of obstruction, does not mean that he was not informed of the reasons for his arrest and detention. An argument that the reason provided does not amount to a legally valid reason for detention would be framed under the s. 9 right against arbitrary detention, which I have already addressed.

5. Officially Induced Error

[110] The final point to be addressed is whether the defence of officially induced error is available to Mr. Brown. His argument is actually framed as one of estoppel. Essentially, Mr. Brown is of the view that the failure of the government to respond to the Claim in his “prescribed form” means there has been “estoppel by acquiescence”, and they have effectively accepted his contention that he is not subject to the *Motor Vehicles Act*.

[111] In addition, Mr. Brown seems to have viewed the fact that the RCMP did not charge him or his spouse in any of the three prior interactions outlined in the facts as tacit acceptance of his position.

[112] While estoppel does not exist as a defence to a strict liability offence, in fairness to Mr. Brown, I felt it important to address whether the actions of the government and the RCMP can be said to amount to officially induced error.

[113] The defence of officially induced error was discussed by the Supreme Court of Canada in *Lévis (City) v. Tétrault*, 2006 SCC 12, affirming its decision in *R. v. Jorgensen*, [1995] 4 S.C.R. 55, as requiring the following:

> 26 After his analysis of the case law, Lamer C.J. defined the constituent elements of the defence and the conditions under which it will be available. In his view, the accused must prove six elements:
>
> (1) that an error of law or of mixed law and fact was made;
>
> (2) that the person who committed the act considered the legal consequences of his or her actions;
>
> (3) that the advice obtained came from an appropriate official;
>
> (4) that the advice was reasonable;
>
> (5) that the advice was erroneous; and
>
> (6) that the person relied on the advice in committing the act. (*Jorgensen*, at paras. 28-35)
>
> 27 Although the Court did not rule on this issue in *Jorgensen*, I believe that this analytical framework has become established. Provincial appellate courts have followed this approach to consider and apply the defence of officially induced error (*R. v. Larivière* (2000), 38 C.R. (5th) 130 (Que. C.A.); *Maitland Valley Conservation Authority v. Cranbrook Swine Inc.* (2003), 64 O.R. (3d) 417 (C.A.)). …

[114] Applying this framework to the evidence before me, I cannot conclude that the defence of officially induced error is made out. While the Government of Yukon did not respond in the form that Mr. Brown wanted, Mr. Fraser's letters made it clear that the government did not agree with Mr. Brown's interpretation of the law. Thus, I cannot conclude that the government provided Mr. Brown with erroneous advice that he relied on to his detriment.

[115] With respect to the three interactions between the Browns and the RCMP, the RCMP have the discretion to charge or not charge. Accordingly, the decision not to lay charges in any of the three interactions with the Browns would not be sufficient to establish the defence of officially induced error.

[116] The evidence of the interaction between Ms. Ro-Bro and the RCMP on August 4, 2018 seems to have led Ms. Ro-Bro to conclude, as noted in her affidavit, that the RCMP were taking no issue with the Browns' expressed position. However, in both of the interactions on August 10, 2018, in the Walmart parking lot and at the Whitehorse RCMP detachment, the evidence is clear that the RCMP advised the Browns that if they did not comply with the provisions of the *Motor Vehicles Act* they could be charged. In the circumstances, I cannot conclude that the RCMP provided erroneous information that the Browns relied upon amounting to officially induced error.

Conclusion

[117] Having considered Mr. Brown's arguments, I find that there is absolutely no legal merit to Mr. Brown's interpretation of the law, which he has advanced as his defence to the charges before me. In the result, I conclude that the territorial Crown has met its burden to prove the offences beyond a reasonable doubt. As Mr. Brown has not advanced a valid legal defence, I find him guilty of all four counts as charged.

RUDDY T.C.J.