

The Latest on Driving with a Cell Phone



Ontario is one jurisdiction with legislation prohibiting people from driving while using a cell phone. While the legislation appears clear, some ambiguity may have developed concerning the precise limits of the prohibition. That ambiguity has now been resolved by the recent Ontario Court of Appeal case of *Her Majesty the Queen v. Kazemi*.

In that case, the accused was driving home from work alone. While stopped at a stop light, a policeman saw her with her cell phone in her hand. The evidence before the Court was that the cell phone had been on the seat but that it had dropped to the floor of the car while she was driving. When she got to the red light, she picked it up and that is when the policeman saw her.

The legislation prohibits people from driving “while holding or using a hand-held wireless communication device...”. The issue was whether or not the accused was “holding” the cell phone for the purposes of this section.

At trial, the judge determined that her admission that she had the cell phone in her hand was sufficient to merit a conviction.

She appealed to the Ontario Court of Justice. The appeal judge dismissed the charge. He found that there would have to be some sort of sustained physical holding of the phone in order to meet this requirement and that the momentary handling that took place in this case was not sufficient.

The Crown appealed to the Court of Appeal. The Court of Appeal restored the conviction after considering the current law on statutory interpretation and the Oxford dictionary definition of “to hold”. The Court determined that the interpretation of “holding” best ensuring the attainment of the legislation’s objective, which is to protect people using Ontario’s roads, simply involves having a grip on a phone without any reference to the amount of time involved.

The Court also quoted the Minister of Transportation describing the purpose of the legislation this way in a speech in Parliament:

Our eyes-on-the-road, hands-on-the-wheel legislation aims to stop the use of hand-held wireless communication devices such as cellphones while driving. The goal is not to inconvenience people but to make our roads safer for them and for everyone else who shares our roads. For safety’s sake, drivers should focus on one thing and one thing only: driving.

So there you have it. If you are driving and you are seen by a policeman with a cell phone in your hand, regardless of the circumstances or the length of time that you hold it, you are guilty of an offence. This is because Parliament has determined that drivers must focus on one thing and one thing only, namely driving. Speaking for myself I will certainly keep this in mind the next time I pass a drive-thru window at a quick service restaurant and drive away, as the law allows me to do, with a sandwich in one hand and a cup of coffee in the other.

[author]

About the Author

Irvin is a senior partner and Chair in the Minden Gross Litigation Group. He also served in management on the firm's Executive Committee for over 10 years. Additionally, Irvin is chair of the Class Action Group and Vehiculaw – the Minden Gross motor vehicle dealers group.

Irvin has acted as counsel in a vast number of areas including: shareholders' rights and remedies, applications for injunctive relief and judicial review, wrongful dismissal, defamation, corporate and commercial disputes, international litigation, including jurisdictional disputes, negligence and tort claims, sexual abuse litigation, real property litigation including commercial development disputes and commercial leasing disputes, pension and employment benefits disputes, prosecution and defence of solicitors' negligence and professional malpractice claims, and environmental litigation.[/author]