R. v. Drake, 2016 BCPC 149, Provincial Court of British Columbia (Doherty P.C.J.)

May 19, 2016

The British Columbia Provincial Court dismissed charges under the provincial *Motor Vehicle Act* (*MVA*) on the basis that a street located on an Indian reserve was not a "highway" within the meaning of the statute.

The accused Drake was observed "doing donuts" in his vehicle in September 2014. This occurred on a street located within the Wei Wai Kum First Nation's reserve near Campbell River. Mr. Drake was charged under the *MVA* with driving while prohibited.

The Crown accepted that the street on the Reserve was maintained by the Wei Wai Kum First Nation, and not ordinarily used by the public as a through road (as it ends in a cul-de-sac). The Crown nevertheless argued that the road was a "highway" for the purposes of the *MVA*.

The Court held that there was insufficient evidence to prove beyond a reasonable doubt that the street fits within the definition of a "highway". Earlier caselaw provides that the *MVA* applies to Indian reserves, but that particular surfaces within the reserve may escape the definition of a "highway". In this case, there was no evidence of public money being spent on the road. A road sign stated: "You Are Now Entering Private Land — Please Drive Carefully". Doherty P.C.J. noted that this sign was an implicit invitation that the area was open to the public. However, the fact that the road was accessible to the general public does not automatically make it a "highway".

The Court noted that this judgment would give little comfort to Band members who call police to confront a reckless driver in their neighbourhood. Doherty P.C.J. advised counsel that "it might be useful to take this case up no matter the outcome".

By

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