

ONTARIO COURT OF JUSTICE

IN THE MATTER OF an appeal under 135(1) of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended;

B E T W E E N :

HER MAJESTY THE QUEEN
Respondent

— AND —

**RENATA HELMICH, ELLEN IRELAND, THOMAS KLOOS, JOHN KOHANIC,
KAREN PLUTHERO, PATRICIA MAIN, PHILLIP MCCLOY, RILEY NEWEL,
JOAO SILVA, PETER SMEDEMA, BRUNO TASSONE, CHRISTOPHER TURCO,
CHRISTOPHER UMBERTINESE, LARISSA VACHENKOVA, TROY VAN WE-
STROP**
Appellants

Before Justice R.J. LeDressay
Heard on December 7, 2012
Reasons for Judgment released on December 7, 2012

Audrey Senkus for the prosecution
Frank Alfano for the defendants

LeDressay J.:

[1] The issue in these cases is whether a Certificate of Offence that has the correct “set fine” but an incorrect “total payable” should be quashed as not being ‘complete and regular on its face.’

[2] In *R. v. Gandhi* [2011] O.J. No. 2642 Gorewich J. provided thorough and comprehensive reasons for judgment wherein he found that:

..... the certificate of offence, to be "regular on its face" must set out:
who is commencing the process - an informant;
who is charged under the process - name of the defendant;

what the process is - statute name and section number;
where and when the allegation arose; and
what the result will be from a conviction from the process ... that is ... - set fine amount.

[3] Justice Gorewich added the following at paragraph 27:

I agree with Austin, J. in *Klauke* that the other amounts, as in other amounts payable, are superfluous components of a certificate.

[4] Finally he concluded the following at paragraph 31:

I am of the view that the submissions on behalf of the appellant in the case at bar about the fairness of the process and the social consequences attaching to the inaccurate total amount payable as in this case is not what this discussion is all about. The discussion is about whether in law the justice of the peace erred in not quashing the certificate which was correct in every aspect except in indicating the total amount payable. I adopt the analysis of Livingstone, J. and Austin, J. (*supra*), and find the certificate is complete and regular on its face. The thrust of Tetley, J's decision in *Galeazza* (*supra*) is so long as the set fine is correct, the total payable is irrelevant. I agree with his position. The remedy, in my view, is not to appeal when this occurs, but rather resort to a clerk who can be asked to remedy the error.

[5] The *Gandhi* case was decided on February 10, 2011. The accused in the *Gandhi* case had filed a Notice of Appeal in the Ontario Court of Appeal. As of to-day however, the defence has not perfected the application for leave to appeal so there is no way of ascertaining when, if ever, the appeal of this case will be heard or when judgment will be delivered.

[6] While I am not bound by the decisions in *Gandhi*, *Galeazza* [2010] O.J. No. 6054, *R. V. Wilson* [2001] O.J. No 4907 Livingstone J. and *R. v. Klauke* August 18, 1998 Austin J. I am persuaded by the reasoning in those judgments. I do not see the reasoning in these cases as being in conflict with the decisions in *R. v. Khoshael* [2001] O.J. No. 2110 or with the Ontario Court of Appeal decision in *London(City) v. Young* [2008] O.J. No. 2118.

[7] Therefore, I adopt the *Gandhi* decision, which clearly follows the decision in *Galeazza*, *Klauke* and *Wilson*.

[8] The additional issue in the Silva appeal is whether the set fine is correct. While the penmanship is not the finest it is clear that the Justice of the Peace concluded that the set fine was correctly noted as \$400. After examining the Certificate of Offence there is no valid reason to conclude otherwise.

[9] As a result the appeals are dismissed.

Released: December 12, 2012


Signed: "Justice R.J. LeDressay" r

R.J. LeDressay
Judge of the OCJ
Halton Region