

ONTARIO COURT (PROVINCIAL DIVISION)

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HER MAJESTY THE QUEEN

against

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HERMAN KOZA

M O T I O N P R O C E E D I N G S

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BEFORE THE HONOURABLE JUDGE J.D. SMITH
on February 10th, 1995, at BRAMPTON, Ontario

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CHARGE:

Speeding - Section 128 H.T.A.

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APPEARANCES:

P. John, Ms.

Prosecutor for the Crown

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G. Burd, Esq.

Agent for the defendant

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T A B L E O F C O N T E N T S

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Friday, February 10th, 1995

MS. JOHN: Number nine on the motions docket,
Herman Koza.

MR. BURD: Good morning, Your Honour.

THE COURT: Good morning.

MR. BURD: For the record, Greg Burd, B-U-R-D.

THE COURT: Mr. Burd.

MR. BURD: And I appear as agent on behalf of the
applicant. This is a motion to extend time to
appeal as well waive the fine, I believe, Your
Honour, and perhaps with Madam Crown's consent
this could even be treated as an appeal; I think
it's quite straight forward. There's -- there
should be an affidavit attached to the reasons for
paying the fine or not being able to pay the fine.
This defendant, Mr. Koza, appeared at the intake
office -- the justice of the peace at this
address, within the 15 days and the Certificate of
Offence has had the date changed -- the date of
offence has been changed on it as compared to, and
I can show Your Honour....

THE COURT: I can see this.

MR. BURD:the Provincial Offences Notice, the
23rd of October, 19....

THE COURT: Let me have a look at that.

MR. BURD: I'm sorry?

THE COURT: Let me have a look at that.

MR. BURD: Yes, sir.

THE COURT: That is interesting.

MR. BURD: This was taken before the intake
justice; I was present. He had marked it with a
yellow sticker that it was to be quashed under. I

think, the Regulation now is 200 Section 15
have a copy of it when it was Regulation 809,
Section 13, where any amendments can only be made
by a court, but in any case the justice of the
peace had marked it to be quashed when it came up
on the fail to respond. For some reason or
another it was not quashed on the fail to respond.
THE COURT: Just a moment, please. Crown
Attorney, can you just have a look at that and
satisfy yourself that that is the case. There is
the other one. You see, after the document is
given to the defendant, somebody does a little
penmanship there.

MS. JOHN: I guess....

THE COURT: Thank you. Did you want to say
anything?

MS. JOHN: No, Your Honour.

THE COURT: No? You do not need to say anything
Thank you.

R U L I N G O N M O T I O N

SMITH: Prov. J., (Orally)

The conviction is quashed, document changed after
delivery to defendant. Conviction quashed.

THE COURT: Has the fine been paid?

MR. BURD: No, sir.

THE COURT: Okay.

MR. BURD: This -- actually today is a motion.

THE COURT: All right.

MR. BURD: So, I think the motion will have to be allowed -- would have to be treated....

THE COURT: Well, I will just cut through all of the, choosing my words carefully, garbage.

MR. BURD: Thank you.

THE COURT: And quash the conviction. As far as I am concerned, the record should show if anybody wants to play with the documents after they have been generated, if that's what happened, they are not going to get the support of this judge. This judge is an independent judicial officer, member of the Committee, as a matter of fact, about judicial independence. For the public, judicial independence is about more than just the judges salary, it's about the fact in order to do the task, the judge must stand independently somewhere in between the citizen and the State; I have just done that by quashing this conviction. Thank you.

MR. BURD: Thank you very much.

THE COURT: If you do not understand the imagery of that, I haven't got time to explain it to you.

MR. BURD: I think I have a very good grasp.

THE COURT: I don't mean you, sir. I think you understand what I mean. You have been around a while.

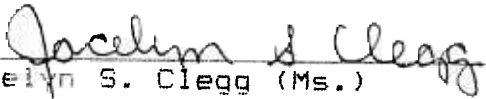
MR. BURD: Yes, I have, sir. Thank you.

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THIS IS TO CERTIFY THAT the
foregoing is a true and accurate
transcription of the record
made by sound recording apparatus,
to the best of my skill and ability.

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Jocelyn S. Clegg (Ms.)
Court Reporter

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