

Case Name:

York (Regional Municipality) v. Billinger

Between

**The Regional Municipality of York, applicant, and
Wayne Billinger, Albert D'Agostino, Jonathan Maurice
Mowat, Mark Stallybrass, Farzad Sarafriz and Daniel
Scott Cacciotti, respondents**

[2005] O.J. No. 2627

Court File No. 75483/05

Ontario Superior Court of Justice
Newmarket, Ontario

R. Clark J.
May 26, 2005.
(1 para.)

*Administrative law -- Judicial review and statutory appeal -- Prerogative remedies --
Certiorari -- Transportation law -- Motor vehicles -- Offences.*

Application by the York Regional Municipality for judicial review of various decisions by Justices of the Peace which quashed the respondents' certificates of traffic offences. The municipality sought clarification as to the issue of what amounted to regularity in terms of the form of certificates of offence. It sought a writ of certiorari in respect of each of the certificates, but indicated that if granted, the respondents would not be re-prosecuted.

HELD: Application dismissed. All but one of the impugned certificates was quashed in error. The certificates were prima facie regular despite minor errors in form. The fact that the municipality indicated that the respondents would not be re-prosecuted warranted a dismissal of the application.

Statutes, Regulations and Rules Cited:

R.R.O. 1990, Regulation 950, s. 5

Counsel:

Hans J. Saamen, Counsel for the Applicant

Appearing for the Respondents: Wayne Billinger, Albert D'Agostino, Farzad Sarafriz and Daniel Cacciotti in person

ENDORSEMENT

[1] **R. CLARK J.** (endorsement):-- Respecting *R. v. Billinger*, in my view, the ticket issued was regular on its face. The defendant could not have been misled by the omission of "kmh" after the speed alleged and would surely have known the case he had to meet. Respecting *R. v. D'Agostino*, the sloppy letter "T" which appeared to the clerk of the court upon the defendants arraignment to be the number seven and who read out as such, is a matter that in my view was capable of amendment in light of the fact that the defendant appeared on the matter. It would have been obvious to the defendant from the Notice of Trial that the alleged offence was one which was contrary to the Highway Traffic Act. Respecting *R. v. Mowat*, the failure to set out the proper section number or in the alternative to set out the proper section in a fashion so sloppy as to cause the Justice of the Peace to conclude, as she did, that the wrong section number had been written on the ticket, was a shortcoming that invalidated the ticket. If the defendant had appeared on the matter the ticket would have been capable of amendment. However, on a fail to respond docket, the concept of the ticket being regular on its face is to be strictly construed and where it is not regular, the only power is to quash. Accordingly, in my view, the Justice of the Peace correctly concluded that the ticket had to be quashed. Respecting *R. v. Stallybrass*, the writing of the letter "H" is not so poor that one looking at the ticket would be likely to mistake it for anything else and therefore the ticket was regular on its face and ought not to have been quashed. Respecting *R. v. Sarafraz*, the failure to include the section number did not make the ticket irregular on the face such that it had to be quashed. In the absence of the section number but with the offence described in the appropriate words, the provisions of R.R.O. 1990, Regulation 950 s. 5 (as amended) apply to make the ticket regular on its face. To my mind, this is distinguishable from the situation in *R. v. Mowat*, supra, where a wrong or at least apparently wrong, section number was used. In the case of a wrong section number section 5 of the regulation does not cure the defect. Rather, all the regulation provides for is that the approved wording may be used in lieu of the section or as ancillary thereto. Respecting *R. v. Cacciotti*, for the foregoing reasons, (namely, the approved wording was used in lieu of the section number) the ticket was regular on its face. In summary, then, with the exception of the *Mowat* matter, I have concluded that the Justice of the Peace erred in quashing the other certificates of offence. The applicant seeks an order of certiorari respecting all these matters. With consummate fairness counsel for the applicant has indicated that he brought the application to seek clarification as to the issue of what amounts to regularity in terms of the form of certificates of offence and certain defects or omissions in such certificates. That said, he has indicated that he recognizes that the respondents have with the exception of *Mowat* who was not served (and respecting which matter I order on the basis of the affidavit of attempted service that service be dispensed with), been put to considerable inconvenience in responding to this application. Accordingly, he has undertaken that if successful in having the orders quashing the certificates set aside he would decline to prosecute the defendants. Given that position, which I consider to be most fair, and given further that the extraordinary remedy of certiorari is discretionary, I decline to grant the remedy sought and accordingly the application is hereby dismissed.