

2005 CarswellOnt 7377
Ontario Superior Court of Justice

York (Regional Municipality) v. Wilson

2005 CarswellOnt 7377, [2005] O.J. No. 5392, [2005] O.T.C. 1090, 27 M.V.R. (5th) 153, 68 W.C.B. (2d) 362

The Regional Municipality of York (Applicant) and Donald Wilson (Respondent)

Boyko J.

Heard: December 15, 2005
Judgment: December 16, 2005
Docket: CV-05-077765-00

Counsel: H. Saamen for Applicant
No one for D. Wilson

Subject: Criminal; Public

Headnote

Criminal law --- Provincial offences — Commencement of proceedings — Certificate offence — General
"Complete and regular on its face" — Defendant was charged with speeding under Highway Traffic Act — Matter proceeded under s. 9 of Provincial Offences Act (POA) as offence deemed to be undisputed — Justice of peace quashed certificate of offence because he found it was not "complete and regular on its face," "set fine" amount being incorrectly specified in one box on form — Municipality applied for certiorari to quash order quashing certificate of offence — Application granted — Justice of peace erred in finding that all of information on certificate of offence form had to be complete and regular on its face — Multipurpose form sets out information POA requires for certificate of offence (certificate) and notice of offence (notice) — POA does not require set fine to be specified on certificate — Section 9(1) is clear that justice must examine certificate to determine if it is complete and regular on its face — Section 3(2)(a) requires set fine amount to appear on notice, but does not explicitly state that it must be on certificate — Where defendant does not respond to notice, s. 9(1) provides that justice must enter conviction if certificate is "complete and regular on its face," or must quash proceeding where it is not — Justice does not have authority to quash certificate for failing to specify correct amount of set fine — It is justice's responsibility to impose correct set fine — While set fine amount shown in this case was excessive because it included costs, total amount specified was correct — Because POA does not require inclusion of set fine on certificate, and it is certificate that must be regular and complete on its face, amount of set fine is "surplusage" and irrelevant in determining whether certificate is complete and regular.
Motor vehicles --- Offences and penalties — Prosecutions — Miscellaneous
Certificate of offence — Defendant was charged with speeding under Highway Traffic Act — Matter proceeded under s. 9 of Provincial Offences Act (POA) as offence deemed to be undisputed — Justice of peace quashed certificate of offence because he found it was not "complete and regular on its face," "set fine" amount being incorrectly specified in one box on form — Municipality applied for certiorari to quash order quashing certificate of offence — Application granted — Justice of peace erred in finding that all of information on certificate of offence form had to be complete and regular on its face — Multipurpose form sets out information POA requires for certificate of offence (certificate) and notice of offence (notice) — POA does not require set fine to be specified on certificate — Section 9(1) is clear that justice must examine certificate to determine if it is complete and regular on its face — Section 3(2)(a) requires set fine amount to appear on notice, but does not explicitly state that it must be on certificate — Where defendant does not respond to notice, s. 9(1) provides that justice must enter conviction if certificate is "complete and regular on its face," or must quash proceeding where it is not — Justice does not have authority to quash certificate for failing to specify correct amount of set fine — It is justice's responsibility to impose correct set fine — While set fine amount shown in this case was excessive because it included costs, total amount specified was correct — Because POA does not require inclusion of set fine on certificate, and it is certificate that must be regular and complete on its face, amount of set fine is "surplusage" and irrelevant in determining whether certificate is complete and regular.

APPLICATION by municipality for certiorari to quash order quashing certificate of offence.

Boyko J.:

1 The Applicants bring this *certiorari* application seeking to quash the order made by the learned Justice of the Peace Clark on November 13, 2005 in which he quashed a Certificate of Offence number 4960-84001617. The respondent cannot be located and service on the respondent is dispensed with under Rule 16.04.

2 The certiorari is granted for the reasons set out below.

Background

3 The respondent was charged with speeding under the *Highway Traffic Act*. As the respondent did not enter a plea of guilty in writing or in person and did not request a hearing, it proceeded under section 9 of the *Provincial Offences Act* (hereafter the "POA") as an offence deemed to be undisputed. The Justice of the Peace examined the Certificate of Offence and quashed it because he determined that it was not "complete and regular on its face" because the "set fine" amount was incorrectly specified in one box on the form.

4 The learned Justice of the Peace in my view erred in finding that all of the information placed on the Certificate of Offence form had to be complete and regular on its face. The multipurpose form used sets out information the POA requires for the Certificate of Offence (hereafter the *certificate*) and the Notice of Offence (hereafter the *notice*), and in addition information prescribed under the Regulations and Schedules made under the authority delegated by the POA is also required on this same form. Evidently the offences officer completes the form that has multiple pages with the first page being the *certificate* and the second page being the *notice*, which is a carbon copy of the first page. The *notice* page is given to the individual charged and the *certificate* page is eventually filed with the court for enforcement purposes.

The certificate

5 Concerning the *certificate*, Section 3 of the POA only requires that the offence be certified. Section 3 (2) provides:

A provincial offences officer who believes that one or more persons have committed an offence may issue, by completing and signing, a certificate of offence *certifying that an offence has been committed* and,

(a) an offence notice indicating the set fine for the offence; or (b) a summons, in the form prescribed under section 13. (Emphasis added)

6 The statute clearly does not require that the "set fine" be specified on the *certificate*.

7 Section 13 (1) of the POA states:

The Lieutenant Governor in Council may make regulations, (a) prescribing the form of certificates of offence, offence notices and summonses and such other forms as are considered necessary under this Part...

8 Under the POA, regulations may be made to prescribe the form of the *certificate* and the *notice*.

Only the certificate must be examined

9 Section 9 (1) of the POA states that:

Where at least fifteen days have elapsed after the defendant was served with the offence notice and the offence notice has not been delivered in accordance with section 6 or 8 and a plea of guilty has not been accepted under section 7, *the defendant shall be deemed to not wish to dispute the charge* and a justice shall examine the *certificate of offence* and, (a) where the *certificate of offence is complete and regular on its face*, the justice shall enter a conviction in the defendant's

absence and without a hearing *and impose the set fine* for the offence; or (b) where the certificate of offence is not complete and regular on its face, the justice shall quash the proceeding.

10 The statute is clear that the justice must examine the *certificate* to determine if it is complete and regular on its face, not the *notice* that must specify the "set fine".

11 The POA (s. 3(2)(a)) requires the set fine amount to appear on the *notice*, but does not explicitly state that it must be on the *certificate*. It is the *certificate* that must be complete and regular on its face and where the defendant does not respond to the notice, the JP *must* enter a conviction if the *certificate* is "complete and regular on its face", or *must* quash the proceeding where the certificate is "not complete and regular on its face". If the POA does not require that the "set fine" amount be on the *certificate*, then the justice does not have the authority to quash the *certificate* of offence for failing to specify the correct amount of the "set fine".

The justice must impose the "set fine"

12 While the officer must specify the "set fine" on the *notice*, section 9(1)(a) makes it clear that it is the responsibility of the justice to finally "impose" the set fine. In my view even if the set fine amount entered on the form by the officer was in error, the justice must impose the correct "set fine" figure.

13 In my view the appeal judge erred in *R. v. Wilson*, [2001] O.J. No. 4907, 23 M.V.R. (4th) 296 (Ont. C.J.), in holding that he, "must accept that each justice of the peace involved must have concluded that each certificate of offence relevant to these appeals contained all of the essential information required for a conviction to be registered", as this suggests that it is the officer who actually imposes the fine by filling in the *notice*. In my view it was an error to quash the Certificate of Offence for failing to specify the correct set fine, not only because this was not information required in order to determine whether the Certificate of Offence was complete and regular on its face, but also because it is the justice's responsibility to impose the set fine.

14 The "set fine" is only one of the amounts for which the offender is liable. The total amount for which the offender is liable is comprised of three amounts: i) the "set fine"; ii) the costs prescribed by regulation, and iii) the victim fine surcharge prescribed by the POA.

15 The Regulation (950 s.1 (1)) states that the *certificate* shall be in Form 1. Form 1 has a box for "set fine including costs" and "total payable". Therefore, it is not immediately apparent on the face of the *certificate* what portion is the set fine, and what portion is the cost. Confusion arose because the form used only provides for two boxes to be filled in, one of them being the total amount. This leaves open to interpretation how the three figures are to be inserted onto the form. In the matter before this court the total amount shown correctly specified the total amount. Only the "set fine" amount was excessive because it included costs for \$5.00; this was ultimately misleading only as to the calculation in arriving at the correct total amount. And, in any case it is not information required on the *certificate* even if it was wrong.

How to interpret "complete and regular on its face"

16 Many of the cases interpreting the term "complete and regular on its face", in my view fell into error as the court was concerned about whether or not there were errors in fine amounts on the face of the *certificate*. This applies to cases such as *R. v. Wilson*, [2001] O.J. No. 4907, 23 M.V.R. (4th) 296 (Ont. C.J.), *R. v. Khoshael*, [2001] O.J. No. 2110 (Ont. C.J.), that fail to consider what the *Act* actually *requires* for the *certificate* to be complete and regular on its face. Rather these cases look to the form of the certificate as prescribed by regulation and are in my view therefore wrongly decided. Generally where the provision to be interpreted appears in regulation, it is read in the context of both the regulation and the enabling *Act* as a whole. See: *R. v. Cie immobilière BCN*, [1979] 1 S.C.R. 865 (S.C.C.). However, where conflict is unavoidable between the *Act* and the regulations provisions, normally the statutory provision prevails. See: *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3 (S.C.C.). There is in my view unavoidable conflict between the form used as prescribed under the regulations and the *Act* and the latter must prevail making the additional information "surplusage" for purposes of determining whether the *certificate* is regular and complete on its face.

Conclusion

17 The amount of the set fine is "surplusage" and irrelevant in determining whether the *certificate* is complete and regular. This is because the POA does not require the inclusion of the set fine on the *certificate* and it is the *certificate* that must be regular and complete on its face. For these reasons the *certiorari* application is granted. I am advised that the prosecution undertakes to withdraw the charge against the respondent.

Application granted.

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