

W A R N I N G

The President of the panel hearing this appeal directs that the following should be attached to the file:

An order restricting publication in this proceeding under ss. 539(1), (2), (3) or (4) of the *Criminal Code* shall continue. These sections of the *Criminal Code* provide:

539(1) Prior to the commencement of the taking of evidence at a preliminary inquiry, the justice holding the inquiry

- (a) may, if application therefor is made by the prosecutor, and
- (b) shall, if application therefor is made by any of the accused, make an order directing that the evidence taken at the inquiry shall not be published in any document or broadcast or transmitted in any way before such time as, in respect of each of the accused,
- (c) he or she is discharged; or
- (d) if he or she is ordered to stand trial, the trial is ended.

(2) Where an accused is not represented by counsel at a preliminary inquiry, the justice holding the inquiry shall, prior to the commencement of the taking of evidence at the inquiry, inform the accused of his right to make application under subsection (1).

(3) Everyone who fails to comply with an order made pursuant to subsection (1) is guilty of an offence punishable on summary conviction.

(4) [*Repealed*, 2005, c. 32, s. 18(2).] R.S., c. C-34, s. 467; R.S.C., 1985, c. 27 (1st Supp.), s. 97; 2005, c. 32, s. 18.

CITATION: R. v. P.E., 2008 ONCA 190
DATE: 20080317
DOCKET: C47229 and C47230

COURT OF APPEAL FOR ONTARIO

SHARPE, ARMSTRONG and WATT JJ.A.

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

and

PETER E. AND HALINA J.

Appellants

Peter E. and Halina J. in person

Moiz Rahman and Jeremy Streeter for the respondent

Heard & released orally: March 12, 2008

On appeal from the order of Justice J.W. Quinn of the Superior Court of Justice
September 26, 2006.

ENDORSEMENT

[1] The appellants appeal the dismissal of their applications for *certiorari* to quash their committals for trial on charges alleging that they made false and fraudulent claims for GST refunds. For the following reasons the appeals are dismissed.

[2] The role of the preliminary inquiry judge is not to determine guilt or innocence but simply to determine whether there is some evidence upon each essential element of the offence charged upon which a properly instructed trier could find guilt. The preliminary inquiry judge found that there was evidence to support a reasonable inference that the appellants were never involved in a commercial activity and that the paper work they generated was for the purpose of maintaining the appearance of commercial activity in order to defraud the government and public of GST refunds

[3] We agree with the application judge that there was evidence led by the Crown from which these inferences could be drawn and that the impugned transactions giving rise to the GST refunds claimed by the appellants had no other purpose than to attract GST credits. We also agree that there was some evidence from which an inference could be drawn that the appellant J. was sufficiently involved in the scheme to attract liability.

[4] The appellants' essential argument is that the preliminary inquiry judge erred in her interpretation of the *Excise Tax Act* when she required some valid business or commercial purpose other than claiming GST credits. As they put it in their factums, even if the impugned transactions were constructed to create an impression or appearance of valid commercial activity, the sole purpose of which was to obtain public money from the government, they say that on a strictly literal interpretation of the *Excise Tax Act*, they are entitled to claim GST credits.

[5] If accepted, the appellants' argument would have the astonishing result that GST credits could be properly claimed by businesses that neither charge nor collect GST for

which they claim credit and that have no purpose or activity apart from claiming GST credits. We do not agree that the preliminary inquiry judge's interpretation of the *Excise Tax Act* rejecting that interpretation amounted to jurisdictional error and accordingly, the application judge did not err in dismissing the application for *certiorari*.

[6] Accordingly, the appeals are dismissed.

“Robert J. Sharpe J.A.”

“R.P. Armstrong J.A.”

“David Watt J.A.”