

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* Ajise, 2018 SCC 51, [2018] 3 S.C.R. 301 | **Appeal heard:** November 16, 2018  **Judgment rendered:** November 16, 2018  **Docket:** 38149 |

Between:

**David Ajise**

Appellant

and

Her Majesty The Queen

Respondent

**Coram:** Abella, Karakatsanis, Côté, Brown and Rowe JJ.

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| **Reasons for Judgment:**  (paras. 1 to 2) | Rowe J. (Abella, Karakatsanis, Côté and Brown JJ. concurring) |

R. *v.* Ajise, 2018 SCC 51, [2018] 3 S.C.R. 301

David Ajise Appellant

v.

Her Majesty The Queen Respondent

**Indexed as: R. *v.* Ajise**

2018 SCC 51

File No.: 38149.

2018: November 16.

Present: Abella, Karakatsanis, Côté, Brown and Rowe JJ.

on appeal from the court of appeal for ontario

*Criminal law — Appeals — Powers of Court of Appeal — Application of curative proviso — Accused appealing fraud conviction on ground that trial judge erred in admitting non-expert opinion evidence — Crown failing to specifically reference curative proviso in appeal factum or oral argument — Court of Appeal holding that treatment of evidence did not amount to reversible error, and that, even if trial judge erred, Crown raised substance of curative proviso point — Court of Appeal correct in applying curative proviso — Conviction upheld — Criminal Code, R.S.C. 1985, c. C-46, s. 686(1)(b)(iii).*

APPEAL from a judgment of the Ontario Court of Appeal (Sharpe, Pardu and Fairburn JJ.A.), 2018 ONCA 494, 361 C.C.C. (3d) 384, 48 C.R. (7th) 263, [2018] 5 C.T.C. 123, 2018 D.T.C. 5065, [2018] O.J. No. 2896 (QL), 2018 CarswellOnt 8628 (WL Can.), affirming the conviction of the accused for fraud. Appeal dismissed.

R. Craig Bottomley and *Mayleah Quenneville*, for the appellant.

Kevin Wilson and Xenia Proestos, for the respondent.

The judgment of the Court was delivered orally by

1. Rowe J. — We are all of the view that the appeal should be dismissed. We would adopt what Justice Sharpe set out in para. 32 of the Court of Appeal decision:

. . . assuming that resort to the [curative] proviso is required in this case, it is my view that the substance of the proviso point was raised. In her submissions before this court, Crown counsel placed considerable reliance upon the argument that the defence effectively conceded at trial that the donation claims were fraudulent and instead relied entirely on the appellant’s claim that he lacked knowledge of the fraud. On this basis, the Crown argued that even if the impugned evidence amounted to opinion evidence, it did not go to the only live issue at trial. The Crown also noted that Maraj’s impugned statements comprised a small portion of the evidence advanced during a multi-day trial, and were admitted without objection by defence counsel. In my view, these lines of argument amounted in substance to a submission that even if there was an error in admitting the evidence or in failing to conduct a *voir dire*, no substantial wrong or miscarriage of justice had occurred and the appeal should be dismissed on that account.

1. Given that there was no miscarriage of justice, the curative proviso was properly relied on in this case.

Judgment accordingly.

Solicitors for the appellant: Bottomley, Toronto.

Solicitor for the respondent: Public Prosecution Service of Canada, Toronto.