

ONTARIO COURT OF JUSTICE

B E T W E E N :

Her Majesty The Queen

— AND —

Peter M. Hollyoake

Before Justice of the Peace Kenneth W. Dechert
Heard on June 3, 2010, June 25, 2010 and July 14, 2010

Reasons for Judgment released on November 9, 2010
Burlington Provincial Offences Court and Milton Provincial Offences Court

I. Lagden and J. Stewart for the prosecution
F. Alfano representative for the defendant Peter M. Hollyoake

Statutes, Regulations and Rules cited:

Highway Traffic Act, R.S.O. 1990, c. H.8, as amended, ss. 1(1), s. 130.

Cases cited:

Regina v. Beauchamp, [1953] O.R. 422; (1953), 16 C.R. 270 (Ont. C.A.);
Regina v. Erredia, 2006 ONCJ 303 (Ont. C.J.);
Regina v. Globocki, [1991] O.J. No. 214; (1991), 26 M.V.R. (2d) 179 (Ont. Prov. Div.);
Regina v. Kinch, [2004] O.J. No. 486 (Ont. Sup. Ct.);
Regina v. McIver, [1965] 2 O.R. 475; (1965), 45 C.R. 401 (Ont. C.A.);
Regina v. Namink, [1979] O.J. No. 317 (Ont. Co. Ct.);
Regina v. Pyszko, [1998] O.J. No. 1218 (Ont. C.J.);
Regina v. Sault Ste. Marie, (1978), 40 C.C.C. (3d) 353 (S.C.C.);
Regina v. Skorput, [1992] O.J. No. 832; (1992), 72 C.C.C. (3d) 294 (Ont. Prov. Div.);
Regina v. W.(D.), [1991] 1 S.C.R. 742 (S.C.C.);
Regina v. Wholesale Travel Group Inc., (1991), 8 C.R. (3d) 145 (S.C.C.);
Regina v. Wilson, (1971), 1 C.C.C. (2d) 466 (Ont. C.A.).

K.W. DECHERT, J.P. (orally):

INTRODUCTION

1. Under certificate of offence no. 1260-0904766A, the defendant, Mr. Peter M. Hollyoake stands charged that he on June 20th, 2009 at 2:01 a.m., at Plains Road East and King Road, in the City of Burlington, did commit the offence of careless driving contrary to section 130 of the Highway Traffic Act.
2. On June 3rd, 2010, the defendant entered a plea of not guilty to the said charge and the trial of the matter commenced before me. The trial continued on June 25th, 2010 and it was completed on July 14th, 2010. The proceeding was then adjourned to November 9th, 2010 for judgment.
3. The prosecution was represented by Mr. I. Lagden on June 3rd, 2010 and July 14th, 2010 and by Ms. J. Stewart on June 25th, 2010. The defendant was represented by his legal representative Mr. F. Alfano throughout the trial.

THE LAW

Relevant Statutory Provisions

4. The defendant is charged with the offence of careless driving, contrary to the provisions of section 130 of the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended, hereinafter referred to as the “Act”. The portion of that section which defines the subject offence reads as follows:

Every person is guilty of the offence of driving carelessly who drives a vehicle or street car on a highway without due care and attention or without reasonable consideration for other persons using the highway...

5. The terms “highway” and “vehicle”, are defined in subsection 1(1) of the Act as follows:

‘highway’ includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.

‘vehicle’ includes a motor vehicle, trailer, traction engine, farm tractor, road-building machine, bicycle and any vehicle drawn, propelled or driven by any kind of power, including muscular power, but does not include a motorized snow vehicle or street car.

Relevant Common Law

6. The offence of careless driving is a strict liability offence. This proposition of law was established by the Ontario Court of Appeal in *Regina v. McIver*, [1965] 2 O.R. 475; (1965), 45 C.R. 401 (Ont. C.A.). In establishing this principle, MacKay, J.A., writing on behalf of the majority of the Court, stated, in part, as

follows:

...Section 60 [now section 130] of the *Highway Traffic Act*, R.S.O. 1960, c. 172, prohibits a defined type of conduct; it is silent as to intent or *mens rea*. In such a case, the Crown need only prove that the accused committed the prohibited act and the accused will be convicted unless he can show that the forbidden act was done without negligence or fault on his part. If there were an explanation of this accident having occurred without fault on the part of the accused, it was wholly within his knowledge...

7. In his decision in *Regina v. Skorput*, [1992] O.J. No. 832; (1992) 72 C.C.C. (3d) 294 (Ont. Prov. Ct.), MacDonnell J. considered the remarks of MacKay J.A. in *McIver*, *supra*. in analyzing how the burden of proof is allocated relative to the offence of careless driving. In that regard he stated, in part, as follows:

Careless Driving is a regulatory offence as that term is understood in light of *Sault Ste. Marie* [*Regina v. Sault Ste. Marie* (1978), 40 C.C.C. (3d) 353 (S.C.C.)] and *Wholesale Travel* [*Regina v. Wholesale Travel Group Inc.* (1991), 8 C.R. (3d) 145 (S.C.C.)]. As was stated above, in the prosecution of a regulatory offence the Crown ordinarily establishes a *prima facie* case upon proving that the defendant committed the *actus reus* of the offence. At that point, the burden of showing that reasonable care was taken shifts to the defendant. However, careless driving is somewhat of an anomaly in that the failure to take reasonable care is part of the *actus reus* of the offence. ...

Those remarks [referring to the remarks of MacKay J.A. in *McIver*, *supra*. set out above] affirm that the ‘prohibited act’ which the Crown must prove in order to establish a *prima facie* case of careless driving is not the mere fact of an accident but rather the conduct defined in what is now s. 111 [now s. 130] of the *Highway Traffic Act*. In substance, the Crown must prove a departure from a standard of care. It is only when that is proved that an onus shifts to the defendant to show that he was not negligent. In *McIver*, MacKay J.A. accepted as correct the proposition that the defendant bears the burden of establishing his ‘defence’ of lack of negligence or fault on a balance of probabilities. However, he also adopted the submission that even if the defendant fails to establish lack of negligence there could not be a conviction unless the prosecution proved its case beyond a reasonable doubt. In many cases of careless driving, the effect of this will be to make the onus on the accused to establish due diligence academic. If the prosecution’s case is that the defendant’s driving demonstrated an absence of care and attention, and the defence is that the defendant was being reasonably careful – i.e. that he was not negligent – any defence evidence which raises a reasonable doubt as to that issue will produce an acquittal. In that event, it would be a moot question whether the defence of due diligence was proved on a balance of probabilities.

...

8. In his decision in *Regina v. Kinch*, [2004] O.J. No. 486 (S.C.J.), Durno J. noted that the test for careless driving has remained constant since the time of the decision of the Ontario Court of Appeal in *Regina v. Beauchamp* [1953] O.R. 422 (Ont. C.A.). In the decision Mr. Justice Durno summarized the “main criteria” for the establishment of a case of careless driving, as enunciated in *Beauchamp*, *supra*., as follows:

...

- The evidence must be such as to prove beyond a reasonable doubt that the accused drove without due care and attention or without reasonable consideration for others.
- The standard of care and skill is not one of perfection. Rather it is a reasonable degree of skill, and what an ordinary person would do.
- The use of the term ‘due’ means care owing in the circumstances. While the legal standard of care remains the same – what the average careful man would have done in the circumstances, the factual standard is constantly shifting, depending on road conditions and any other condition that ordinary prudent drivers would take into consideration.
- The law does not require of any driver that he should exhibit perfect nerve and presence of mind, enabling him to do the best thing possible. It does not expect him to be more than ordinary men. Drivers of vehicles cannot be required to regulate their driving as if in constant fear that other drivers, who are under observation, and apparently acting reasonably and properly, may possibly act at a critical moment in disregard of the safety of themselves and other users of the road.
- The standard was objective, impersonal and universal, in no way related to the degree of proficiency or experience of a particular driver.
- There was a further important element – that the conduct must be of such a nature that it could be considered a breach of duty to the public. This further step must be taken even if the accused’s conduct fell below the standard.
- The test where an accident has occurred, is not whether the accident would not have happened if the accused had used greater skill or care, but whether it was proved beyond a reasonable doubt that the accused, in light of existing circumstances of which he knew or should have known, failed to use the care and attention or to give to other users of the highway the consideration that a driver of ordinary care would have used, or given in the circumstances.

9. In the Ontario Court of Appeal decision in *Regina v. Wilson* (1971), 1 C.C.C. (2d) 466 (Ont. C.A.), Gale C.J.O., writing for the Court, made the following comments pertaining to the standard of proof related to the offence of careless driving:

... Each case of necessity must turn on its own facts. Mere inadvertent negligence, whether of the slightest type or not, will not necessarily sustain a conviction for careless driving. In each instance, the Crown must prove beyond a reasonable doubt that the accused either drove his vehicle on a highway without due care and attention, or that he operated it without reasonable consideration for other persons using the highway. One of these two ingredients must be proven to support a conviction under this section.

...

10. In his decision in *Regina v. Namink* [1979] O.J. No. 317 (Ont. Co. Ct.), Killeen J. made the following statement pertaining to the test to be applied in

determining whether the offence of careless driving has been made out:

...

It is trite to say that this is a quasi-criminal charge, and that to make out a charge under this section the evidence must bespeak conduct deserving of punishment in the way of a conviction under this section of our *Highway Traffic Act*. Mere momentary inattention, or a simple kind of error of judgment, does not bespeak the kind of conduct over which the net of this section is cast.

...

11. In his decision in *Regina v. Globocki* [1991] O.J. No. 214; (1991), 26 M.V.R. (2d) 179 (Ont. Prov. Ct.), MacDonnell J. followed the reasoning enunciated in *Regina v. Beauchamp, supra.*, noting that in adjudicating an allegation of careless driving, a court must measure a defendant's driving conduct "against the standard of care that an ordinarily prudent driver would have used in the circumstances faced by the defendant". He stated that the standard of care is not one of perfection.
12. Furthermore, in *Globocki, supra.*, Mr. Justice MacDonnell followed the propositions of law established in *Beauchamp, supra.* and *Wilson, supra.*, in stating that in order to sustain a conviction for careless driving, "the Crown must do more than point to a bare act of negligence, however slight". He went on to state that the Crown "must show a sufficient departure from the standard of a prudent and reasonable driver to make the driving 'deserving of punishment'". Furthermore, he concluded that in approaching the issue of whether the conduct of the driver was evidence of a blameworthy state of mind, and therefore "deserving of punishment", it was open to the trier of fact to consider whether the driver was indifferent to the manner in which his/her driving behaviour affected or might have affected other users of the highway.
13. In his decision in *Regina v. Pyszko* [1998] O.J. No. 1218 (Ont. C.J.), Fontana J. made the following comments with respect to the approach to be taken by the trier of fact in adjudicating a careless driving charge involving a motor vehicle accident:

...

The test of s. 130 is framed in very broad and general terms – "without due care and attention". Unlike other *Highway Traffic Act* offences it is the lack of specificity as to how the offence is committed, which causes the problem.

There is a rather strong inclination, understandable in these cases, to view the mishap itself and its unfortunate consequence, as constituting the act of carelessness. But that is not the case. The gravamen of the offence is the operating of the motor vehicle "without due care and attention", not the consequence of driving without due care and attention.

...
14. In *Regina v. Ereddia*, 2006 ONCJ 303 (Ont. C.J.), Fairgrieve J. summarized the law pertaining to the offence of careless driving, in paragraph 6 of the

decision, as follows:

The offence of “driving carelessly”, created by section 130 of the *Highway Traffic Act*, is defined as driving on a highway “without due care and attention or without reasonable consideration for other persons using the highway”. The law has been clear for decades that in order to make out the offence under s. 130, the driving must be of such a nature that it amounts to a breach of one’s duty to the public and is deserving of punishment: see *R. v. Beauchamp* (1953), 16 C.R. 270 at p. 278 (Ont. C.A.). A driver is not held to a standard of perfection, and a mere error of judgment is not necessarily sufficient to establish the offence: see *R. v. Wilson* (1971), 1 C.C.C. (2d) 466 (Ont. C.A.). Careless driving, generally speaking, requires proof of a departure from the standard of care that a reasonable prudent driver would have exercised in the circumstances, and normally involves, I would think, conduct that includes other less serious *Highway Traffic Act* infractions.

THE EVIDENCE

15. The Court received verbal evidence from Mr. Don Ireland, Mr. Robert Bailey and Police Officer Paul Shanly, tendered on behalf of the prosecution, as well as verbal evidence from the defendant, Mr. Peter Michael Hollyoake. The witnesses for the prosecution were excluded by the Court until such time as they were called to testify.
16. During the course of the trial the representative for the defendant advised the Court that his client was admitting to the issues of his identity, the jurisdiction where the relevant events took place as well as date, time and location of the relevant events.

The Testimony of Mr. Don Ireland

17. During examination in chief, Mr. Ireland testified that on the 20th day of June, 2009, sometime between 1:00 and 2:00 o’clock in the morning, he was involved in a motor vehicle collision on Plains Road just east of King Road, in the City of Burlington. Mr. Ireland stated that this collision took place in the left lane of two eastbound lanes on Plains Road.
18. In describing the collision, Mr. Ireland testified that on the night in question he was operating his Kawasaki motorcycle, travelling in an easterly direction on Plains Road from a location west of King Road. He advised that as he approached the intersection of Plains Road and King Road, he noticed a van in the parking lot of a McDonald’s restaurant located on the north-east corner of Plains Road and King Road. He stated that at this time the van was at a “standstill” facing the “entrance” of the restaurant onto Plains Road.
19. Mr. Ireland testified that as he crossed through the said intersection while travelling in the left, eastbound lane of Plains Road, the van in the McDonald’s restaurant parking lot exited the lot. He advised that he observed the van turn left out of the parking lot onto Plains Road. He stated that one was only able to

turn to the right out of the restaurant parking lot due to the existence of a median preventing traffic from turning left into the eastbound lanes of Plains Road.

20. Mr. Ireland testified that as he proceeded on the other side of King Road (being the east side of the intersection) he observed the van turn left onto Plains Road. He stated that he then “backed off” the accelerator on his motorcycle so as to reduce his speed as he continued to travel in an easterly direction on Plains Road. He advised that when he reached the mid-point of the concrete median separating the east and westbound lanes for traffic on Plains Road east of its intersection with King Road, he noticed the van make “an abrupt right-hand turn” around the end of the median, and enter his eastbound lane.
21. Mr. Ireland testified that at the time that the van made the right-hand turn and entered into his lane, he was located approximately 20 to 25 feet to its west. Mr. Ireland stated that at that point in time, the van was located about 85 to 90 per cent in his lane, the left eastbound lane, and that it had come to a complete stop in front of him. Mr. Ireland advised that he then attempted to stop his motorcycle by activating both his front and rear wheel braking systems. He stated that he was unable to stop his motorcycle and it the collided with the van, striking the van in the area of its front, right side wheel well.
22. Mr. Ireland described the van which his motorcycle struck as being a blue or green-coloured Ford Windstar van. He advised that at the moment of the collision, the van was stopped in the left, eastbound lane facing towards the 7-11 store located on the southeast corner of Plains Road and King Road. He identified the defendant before the Court as the driver of the subject Ford van stating that he recognized his face. He testified that after the collision occurred, he had a brief conversation with the defendant noting that the only words spoken by the defendant were “I didn’t see you at all”.
23. Mr. Ireland testified that as a result of the collision his motorcycle was “wedged between the front wheel and the front fender of the passenger side of the van”. He noted that following the collision, the police arrived at the scene. He advised that neither the motorcycle nor the van were moved prior to the arrival of the police.
24. In describing the road and weather conditions at the time of the motor vehicle collision, Mr. Ireland testified that it was a warm summer night, that the roads were dry and there “was absolutely no traffic” on the roads. He described the location of the collision as being a “well lit area”.
25. In describing the intersection of Plains Road and King Road at the time of the collision, Mr. Ireland testified that the flow of both east and westbound traffic on Plains Road and north and southbound traffic on King Road was regulated by traffic control signals. As stated above, Mr. Ireland advised that a McDonald’s restaurant was located on the north-east corner of the said intersection. He

stated that there was an entrance to and exit from the restaurant on the north side of Plains Road, which he estimated was located 75 to 100 feet east of the subject intersection.

26. In describing the median located between the east and westbound lanes of traffic on Plains Road, Mr. Ireland testified that it was a “divider” which ran in an easterly direction from the east side of the intersection of Plains Road and King Road past the location of the entrance/exit of the parking lot of the McDonald’s restaurant. He stated that this entrance/exit to the lot was the driveway from which the van pulled out, immediately prior to the collision. He stated that he believed that the median separated the east and westbound lanes for traffic on Plains Road, east of its intersection with King Road, so as to prevent traffic from crossing over five lanes of traffic in travelling from the McDonald’s restaurant on the northeast corner of the intersection to the 7-11 store located on the southeast corner or the reverse direction. Mr. Ireland advised that the median was located directly across the westbound lanes of Plains Road from the entrance/exit of the McDonald’s parking lot.
27. Mr. Ireland testified that at the material time, he was operating his motorcycle in the left eastbound lane of Plains Road, as he was approaching its intersection with King Road. He advised that he first noticed the subject Ford van in the parking lot of the McDonald’s restaurant as he was approaching King Road from its west side.
28. He stated that at that time he was facing a green traffic control light and that it remained green as he entered the intersection. He went on to state that at the time that he approached the intersection there was no traffic travelling ahead of him in the left lane or beside him in the curb lane. He advised that at this time both the front headlight and the “clearance lights” on either side of his motorcycle were turned on.
29. As indicated above, Mr. Ireland advised that he observed the van exit the parking lot onto Plains Road as he crossed through the intersection of Plains Road and King Road. He stated that he noticed that the van turned left and began to travel in an easterly direction in the westbound lanes of Plains Road. When he was asked to estimate the distance that the van travelled in the opposite direction of prescribed travel, he stated “about 15 to 20 feet”.
30. Mr. Ireland testified that once the van had travelled in the wrong direction for the said distance, it reached the end of the median and it then made an abrupt right-hand turn into his lane. He advised that at this moment the van stopped in the left eastbound lane about 20 to 25 feet in front of him, and his motorcycle then came into collision with the van.
31. During cross-examination, Mr. Ireland described the median dividing the east and westbound lanes of Plains Road at the relevant location as a “solid concrete

median, approximately 1 to 2 feet wide in the middle of a 4-lane road”. He went on to indicate that the median ran from the east side of the subject intersection in an easterly direction for an estimated distance of 75 to 100 feet. When he was asked as to whether there was anything located on the median, he testified that he believed there was some sort of “flower arrangement or plant life” on it.

32. Mr. Ireland testified that he first noticed the van driven by the defendant in the McDonald’s parking lot when he was approaching the subject intersection from its west side. He estimated the distance from the point when he first observed the van until the point where he collided with it east of the subject intersection, as being about 200 feet. He advised that at this time, he was driving his motorcycle at a rate of speed of 40 kilometres per hour.
33. During cross-examination, Mr. Ireland reiterated his testimony in chief that he first observed the van start to move out of the restaurant parking lot, when he had exited the subject intersection and was travelling in an easterly direction on the east side of the intersection. He advised that he made this observation when he was approximately 50 feet from the point where he collided with the van. He went on to state that when he observed the van turn to its left out of the parking lot, he “backed off on the throttle” of his motorcycle and reduced the rate of speed of the motorcycle by about 3 to 4 kilometres per hour.
34. When he was asked to estimate the amount of time which had elapsed between the time of his first observations of the van beginning to move until the moment of the collision, Mr. Ireland stated “anywhere between 5 and 15 seconds”. In answering this question, Mr. Ireland stated that following the collision, he was in and out of consciousness, due to the injuries which he suffered as a consequence of the collision. In this regard he went on to state that his loss of consciousness did not affect his recollection of the events prior to the moment of the collision, noting, however, that his injuries had affected his recollection of the events following the collision.
35. During cross-examination, Mr. Ireland testified that in making the left turn out of the parking lot onto Plains Road to the location of the end of the median, the van travelled about 15 to 20 feet. He agreed with the suggestion of the defendant’s representative that this distance would be equivalent to one car-length and that it took about 5 to 15 seconds for the van to travel this distance.
36. During re-examination Mr. Ireland clarified his 5 to 15 second time estimate by stating that it related to his observation of the time that it took the van to travel from the McDonald’s parking lot to when the van “came around the median” and into his lane. In this regard, Mr. Ireland stated that the defendant “proceeded out slowly, then accelerated abruptly and went around the median into my lane”.

The Testimony of Mr. Robert Bailey

37. At the outset of his testimony, Mr. Bailey was asked if he could “bring” his mind back to the events which brought him to Court in respect of the charge against the defendant, and advise as to whether he was involved in a motor vehicle collision on that date. In this regard, Mr. Bailey advised the prosecutor that while he was not involved in a motor vehicle collision, he did have occasion to observe a motor vehicle collision, which took place at the relevant time, involving a “blue Ford Windstar” and “a late 90’s motorcycle”.
38. Mr. Bailey indicated that at the time of his observations he was sitting in the driver’s seat of his vehicle, which was parked in the parking lot of the 7-11 convenience store and gas station located on the south-east corner of Plains Road and King Road, facing in an easterly direction towards the intersection of Plains Road and the Queen Elizabeth Way.
39. Mr. Bailey testified that at the relevant time, he “observed a van coming around out of the McDonald’s parking lot, and coming into what looked to be the 7-11 parking lot, and the motorcycle came and hit him on the front passenger side of the fender”. Mr. Bailey advised that the McDonald’s parking lot was located across Plains Road from his location in the parking lot of the 7-11- store. He indicated that at this location, there were four lanes on Plains Road, two in each direction.
40. In explaining what he meant when he stated that he observed a van “coming around”, Mr. Bailey advised that there was a median located on Plains Road that “runs separating each way of traffic”. In that regard, he testified that he observed the van having to go around the median “and then back around” as the driveways for the McDonald’s restaurant and the 7-11 store were “almost exactly across from each other” with the median separating them. Mr. Bailey advised that when the van moved out of the McDonald’s parking lot it had to “go back in towards oncoming traffic” in order to move around the end of the median.
41. Mr. Bailey testified that he first saw the motorcycle, which was involved in the accident, when it was travelling through the intersection of Plains Road and King Road in an easterly direction towards his location. He advised that when he first observed the motorcycle he estimated that it was travelling at a rate of speed of between 40 and 50 kilometres per hour. He noted that there were no other vehicles travelling with the motorcycle at the time. He observed that the motorcycle had its lights on at the material time and that its lights were still on after the accident.
42. Mr. Bailey testified that when he first observed the Ford van, it was located in the McDonald’s parking lot. He stated that he did not have any recollection of any vehicles travelling in the lanes which abut the said parking lot at the time of

his observations of the van. He advised that when he observed the van move out of the driveway to the parking lot, he estimated that it was travelling at a rate of speed of “under 20 kilometres per hour”.

43. Mr. Bailey testified that when the van moved out of the McDonald’s parking lot he estimated that it travelled about ten feet to the edge of the median. He went on to advise that as the van approached the median it manoeuvred around it and then travelled “across the other lanes of traffic to pull into the 7-11”.
44. Mr. Bailey testified that at the relevant time, he observed the motorcycle to be travelling in the eastbound curb lane of Plains Road. He stated that he observed the van stop at the last second just as the motorcycle was about to impact the van. He advised that the collision took place in the middle of the curb lane and that at the moment of impact the van was facing straight towards the 7-11.
45. Mr. Bailey advised that following the time of the collision, he picked up his cell phone and called the police. He completed his testimony in chief by advising that he made his observations of the relevant events from his location in the parking lot of the 7-11 store, approximately 15 feet away from the location of the collision. He stated that even though it was dark out at the time, there was a lot of artificial lighting in the area of the 7-11 store and gas station, which assisted him in his observations of the material events.
46. During cross-examination, Mr. Bailey agreed with the suggestion of the defendant’s representative that at the relevant time, the motorcycle and the van were the only two vehicles travelling on Plains Road. Mr. Bailey testified that he first noticed the motorcycle travelling in the intersection of Plains Road and King Road, behind his location, as it was the only vehicle on the road at that moment.
47. Mr. Bailey reiterated his testimony in chief that the collision between the van and the motorcycle took place in the eastbound curb lane of Plains Road. He advised that the point of impact in respect of the collision was located approximately 25 or 30 feet east of the easterly boundary of the intersection of Plains Road and King Road.
48. During cross-examination, Mr. Bailey testified that approximately ten seconds passed from the time that he first observed the motorcycle to the time of its collision with the van. He estimated that the motorcycle was travelling at a rate of speed of between 40 and 50 kilometres per hour at the time. Mr. Bailey then agreed with the suggestion of the representative for the defendant that given the estimated speed of the motorcycle, it was likely that the motorcycle travelled the 25 to 30 foot distance between the subject intersection and the location of the collision in approximately 3 to 4 seconds.
49. Mr. Bailey advised that during the 3 to 4 second span of time, in addition to

noticing the actions of the motorcycle, he had occasion to observe the movements of the Ford van. He stated that he first noticed the van when it was located approximately one-third of the way into the first westbound lane of Plains Road. He acknowledged that approximately 3 to 4 seconds had elapsed between the moment when he first noticed the van crossing the westbound lanes of Plains Road and the time of the subject collision in the eastbound curb lane of Plains Road. He went on to state that at the material time as the van was crossing the lanes of Plains Road, he “guessed” that the van was travelling at a rate of speed of 20 kilometres per hour.

50. Mr. Bailey testified that at the time he first observed the van, it was coming straight across the westbound lanes of Plains Road on the opposite side of the median to where he was located. He acknowledged the representative’s suggestion that he had the advantage of observing the van as it came all the way across the street.
51. During cross-examination, Mr. Bailey testified that while he was not able to advise as to the length of the median, he stated that it ends “roughly just past the 7-11 and the McDonald’s”. In initially describing the median, Mr. Bailey stated that it was “just a curb median” with nothing on it. However, when the defendant’s representative suggested to him that there was “a plant or some type of foliage” on the median, he stated that there were plants and foliage closer to the intersection but that no such plants were located on the part of the median where the van moved around to enter the eastbound lanes. He went on to state that there were no signs on the median.

The Testimony of Police Officer Paul Shanly

52. Police Officer Shanly testified that he was employed by the Halton Regional Police Service and that he had been so employed since 2006. He testified with the assistance of his notes pertaining to his investigation of the subject incident, for the purpose of refreshing his existing memory of the relevant events.
53. At the outset of his testimony, Officer Shanly described the intersection of Plains Road and King Road, in the City of Burlington. In that regard, he testified as follows:

... King Road runs north and south. Plains Road intersects with it east and west. The Plains Road is a four lane highway. There’s two lanes eastbound, two lanes westbound. On the east side of King Street (sic.) on Plains Road where the collision occurred there is a median approximately 20 metres long running from Kings Road – King Road 20 metres eastbound on Plains Road separating the north and southbound-or excuse me, separating the east and westbound lanes of the roadway. On the northeast corner of the intersection there’s a McDonald’s restaurant with two driveways. There’s an entrance off of Plains Road approximately 10 metres from the intersection. As well as an entrance off of King Road. At the entrance to the McDonald’s off of Plains Road. This is approximately half way down the median and there is a one-way street sign

opposite the entrance pointing eastbound – pointing westbound excuse me.

54. The officer went on to testify that at the time of the subject collision the road was dry and that the lane markings were visible. He stated that “there are cement planters located on the median separating the east and westbound lanes on Plains Road where there is a small amount of plants which do not offer any significant obstruction to the eastbound lanes when viewing from the north side of the street”.
55. In further describing the subject area, Officer Shanly testified that Plains Road at its intersection with King Road is comprised of two lanes eastbound and two lanes westbound with a left hand turning lane for vehicles turning left onto King Road from westbound Plains Road.
56. In making specific reference to the one-way sign pointing westbound on the subject median, the officer testified that the sign was located approximately half way down the median, opposite the driveway to McDonald’s off of Plains Road. The officer testified that when one comes out of the McDonald’s onto Plains Road, the motorist is required to turn to his/her right into the westbound lanes of Plains Road. In this regard, the officer went on to state as follows:
- The median is also physically obstructs turning left bound, making a left turn onto Plains Road as the eastbound lanes are inaccessible at that point. It would require a vehicle to drive east in the westbound lanes for a distance of approximately 10 metres for it to enter into the other side of the street past the median.
57. Officer Shanly testified that the area of the intersection of Plains Road and King Road is a well lit area, noting the existence of street lights throughout the area. He stated that the speed limit in the area was 60 kilometres per hour.
58. Officer Shanly testified that at approximately 2:07 a.m. he was dispatched to the area of the intersection of Plains Road and King Road, for purposes of investigating a motor vehicle accident. He testified that when he arrived at the scene, he determined that the collision was located on Plains Road, east of King Road. At that time, he observed a blue 1999 Ford Windstar van positioned in the eastbound passing lane, in a south-easterly direction across the lane and located a short distance from the end of the subject median. Furthermore, he located a second vehicle, a black-coloured 1977 Kawasaki motorcycle, which was facing in an easterly direction in the passing lane of eastbound Plains Road, “with the front of the motorcycle lodged in the front passenger side near the wheel well of the Ford Windstar”. Furthermore he noted that at the time of his arrival at the scene of the collision, the weather was overcast and the road appeared to be dry.
59. Officer Shanly testified that after he completed his investigation of the motor vehicle collision, he issued an offence notice to the defendant, charging him with the offence of careless driving.

60. During cross-examination, the officer stated that he was familiar with the area where the motor vehicle collision took place. In that regard, he agreed with the suggestion put to him by the defendant's representative that some of his evidence in chief was based on his knowledge of the subject area rather than what he had written down in his notes on the day in question.
61. When asked if he had measured the median separating the east and westbound lanes of Plains Road to determine that it extended for a distance of 20 metres east of King Road, the officer advised that he had not measured the length of the median. He acknowledged that his statement that the median was approximately 20 metres long was only an estimate.
62. Officer Shanly testified that the police call came in to the police service, respecting the motor vehicle collision, at 2:07 a.m. He advised that he was dispatched to respond to the call immediately, noting that shortly before receiving the dispatch advice, he was located a few blocks away from the scene of the collision.
63. During re-examination the officer testified that after receiving the police call at 2:07 a.m., he arrived at the scene of the collision at 2:09 a.m.

The Testimony of the Defendant

64. During examination-in-chief, the defendant testified that at the material time, shortly before the time of the subject collision, he was driving his "work van" in the westbound lanes of Plains Road, east of the collision site. He advised that at that time, he turned right off of Plains Road into the parking lot of the McDonald's restaurant so as to drop off a "bundle" at the doorway of the restaurant, relative to his employment as a delivery person. He noted that the McDonald's restaurant was closed at the subject time.
65. The defendant testified that he entered the McDonald's parking lot by means of a driveway off of the westbound lanes of Plains Road, which served as both an entrance and an exit driveway to the parking lot. He stated that he was in the parking lot for a period of approximately 10 to 15 seconds. In that regard, he advised that after he completed his delivery by throwing the "bundle" out of the driver's side door in the parking lot, he made a U-turn and proceeded back to the same driveway which he used to enter the lot.
66. The defendant testified that once he arrived at the exit driveway for the McDonald's parking lot, he planned to leave the lot by using the driveway and proceed across Plains Road in order to enter the parking lot for the 7-11 store and gas station located on the south-east corner of Plains Road and King Road. He advised that he manoeuvred his van towards the left side of the driveway (the east side of the driveway) as part of his plan to drive his vehicle across the west and eastbound lanes of Plains Road and into the 7-11 store parking lot. He

felt that it was acceptable to exit the McDonald's lot using the entrance portion of the driveway, as the restaurant was closed and there was no traffic entering the lot at that time. He stated that he decided to commence the process of driving across Plains Road at that time from the east side of the McDonald's driveway, because it made it "easier to go across the street" from that location.

67. The defendant testified that at the material time, he was aware of the existence of a median which separated the east and westbound lanes of Plains Road. He acknowledged that this median was located adjacent to the entrance/exit driveway to McDonald's restaurant and that it obstructed traffic from proceeding straight across Plains Road from the restaurant to the 7-11 store. The defendant stated, however, that when one is positioned in the east end of the driveway, the portion that he referred to as the "entrance" to the restaurant, the centre median of the highway extends past that location by a distance of two to three feet. In that regard the defendant testified that by exiting the parking lot from the entrance portion of the driveway, one would not need to turn very far to the left in order to manoeuvre around the end of the median. He went on to state that the 7-11 store driveway was located directly across the road from the entrance portion of the McDonald's driveway.
68. The defendant testified that once he was positioned in the entrance portion of the McDonald's driveway at the edge of the westbound curb lane of Plains Road, he looked for several things before entering the roadway. He advised that he initially looked to his left (to the east), to check for oncoming traffic, and he noted that there were no vehicles approaching his location. He stated that he then looked to his right (to the west), in order to check for traffic. At that point he noted the presence of a car that had stopped at a red light at the intersection of Plains Road and King Road and which subsequently turned to proceed in a southerly direction on King Road. Additionally at that time he noted the presence of a car coming out of the 7-11 store driveway which he was intending to enter on the opposite side of Plains Road.
69. The defendant stated that after he had conducted checks as to the flow of traffic in both directions, he was satisfied that "there was plenty of room" to proceed with his planned manoeuvre to drive his van across Plains Road and into the 7-11 store parking lot.
70. In describing his actions as he exited the McDonald's parking lot from the east portion of the driveway to the lot, the defendant stated as follows:
- "Well, I pulled out very slowly and very cautiously because of the vegetation in the median on both sides severely obstructs your vision of the roadway. So I was only going four or five miles an hour [6.436 km./hr. or 8.045 km./hr.] across the road and I was continuing to look to my right hand side. The light turned to green but I hadn't seen anything at the intersection so I wasn't overly concerned with that. So I just continued along and then I saw movement and I realized it was a motorcycle and...I didn't get my brakes on before he hit me. I think it was practically simultaneously. He hit the wheel-well on the passenger side and I hit

the brakes about the same time.”

71. The defendant testified that he saw the motorcycle coming out from behind the vegetation located in the median about one second before the moment of the collision. He advised that the motorcycle was about five or ten feet away from him when he came out from behind the vegetation that was behind the median.
72. The defendant testified that in proceeding across Plains Road at the material time, he made a “slight left turn, sort of a jog to go straight across the road”.
73. The defendant testified that he was aware of the existence of a “one-way arrow” sign located on the median adjacent to the McDonald’s parking lot. In describing the exact location of this sign at the material time, he stated that it was situated at a location immediately adjacent to the right edge of the entrance/exit driveway to and from the parking lot. He went on to state that this one-way arrow sign was located approximately 20 feet from the end of the median.
74. In completing his testimony in chief, the defendant provided a detailed description of the height and density of the vegetation located in the subject median at the time of the collision. In this regard, he specifically disagreed with the statement made by Officer Shanly during his testimony that the plant and vegetation material in the subject median did not constitute a significant obstruction to one’s view of traffic. In disagreeing with the officer’s opinion, the defendant noted that a substantial amount of the plants had, at the relevant time, grown to a height equivalent to the height of the windows of his van, which, he stated, were three and one-half feet high.
75. During cross-examination, the defendant denied the prosecutor’s suggestion that at the material time, after he had exited the McDonald’s parking lot, he travelled in an easterly direction in the westbound lanes of Plains Road for a short distance in order to “clear” the east end of the median. In that regard, the defendant stated that in making that manoeuvre he was travelling in a south-easterly direction for a distance of “two or three feet at the most”.
76. During questioning respecting to the issue of the one-way arrow sign located on the median opposite the parking lot driveway he was exiting from, the defendant acknowledged the existence of the sign and its direction permitting a right-hand turn only. He maintained that at the subject time he did not conduct a left turn, stating that he interprets such a turn as being a 90 degree movement. He then reiterated his testimony-in-chief that at the subject time he made a “slight jog” across the road, equivalent to a “15 or 20 degree jog” and that he did not, therefore perform a left-hand turn. The defendant did, however, eventually agree with the prosecutor’s contention that at the relevant time, when he turned in a south-easterly direction to move around the median, he was travelling in the opposite direction to the subject one-way arrow sign.

77. The defendant testified that at the material time, while in the course of moving out of the McDonald's parking lot, he noticed the traffic control light governing eastbound traffic on Plains Road change from red to green. He advised that at that time, he was located part way across the westbound curb lane. He went on to advise that prior to commencing his manoeuvre to cross Plains Road from the parking lot, he was stopped in the driveway of the lot and that he "sat there and looked all over the place for traffic". He acknowledged, however, that once he put his vehicle in motion and began his "jog" across the road driving in a south-easterly direction, he did not stop his vehicle prior to the moment of the collision.
78. The defendant testified that when he was travelling in a south-easterly direction across the westbound lanes of Plains Road, he was able to see parts of its eastbound lanes. In this regard he acknowledged that he was able to see the intersection of Plains Road and King Road, traffic located on the other side of the vegetation on the barrier near the side, including any traffic waiting at the traffic light and any traffic in the intersection itself.
79. Upon further questioning by the prosecutor, the defendant stated that at the material time, he would have been able to see cars travelling eastbound on Plains Road, if any, because cars are tall enough to be seen over vegetation planted in the median just east of King Road. He stated, however, that a motorcycle is much lower and that therefore its visibility would be obstructed by the said plants and vegetation.
80. The prosecutor then asked the defendant whether he could have seen the motorcycle which collided with him at the material time as he was crossing over the westbound lanes of Plains Road, to which the defendant replied: "if he had his light on I would have seen it [the motorcycle] probably, possibly". The prosecutor then queried as follows: "Did you see the motorcycle prior to the moment you said it was five to ten feet away?" to which the defendant replied: "No, I didn't".

THE ISSUES

81. The issues in this proceeding are as follows:
1. whether the prosecution has proven all of the elements of the *actus reus* of the subject offence, beyond a reasonable doubt;
 2. if the prosecution has proven the *actus reus*, whether the defendant has shown, on a balance of probabilities, that in committing the prohibited act he took all reasonable care, by either exercising due diligence or by acting on the basis of an honest and reasonable mistake of fact.
82. In analyzing the first issue, I must determine whether the prosecution has proven, beyond a reasonable doubt whether the defendant drove his vehicle on a

highway either without due care and attention or without reasonable consideration for other persons using the highway. In conducting such an analysis in this case, I must remind myself that in order to sustain a conviction against the defendant on the charge, the prosecution must establish, beyond a reasonable doubt, that the defendant's driving behaviour was indicative of a departure from the standard of care that an ordinarily prudent driver would have used in the circumstances faced by him and that the departure was of such a nature that it could be considered a breach of one's duty to the public and deserving of punishment.

83. Accordingly, in conducting such an analysis, I must examine the defendant's driving conduct in its totality during the short period of time when his vehicle entered Plains Road from the McDonald's parking lot until the moment it came into collision with the motorcycle. Furthermore, in conducting the analysis I must remind myself of the fact that my function in this proceeding is not to determine the issue of civil liability for the motor vehicle collision, but rather whether the prosecution has proven the necessary elements of the subject offence, to the standard of proof beyond a reasonable doubt, and if so whether the defendant has proven the defence of reasonable care so as to excuse him from liability for this quasi-criminal offence.
84. In my view, this is a case where an assessment of the credibility of the evidence is both important and determinative of my decision relative to the subject charge. In that regard, I must remind myself that the concept of reasonable doubt applies to the issue of the assessment of credibility by the trier of fact.

ANALYSIS

Has the prosecution proven all of the elements of the *actus reus* of the subject offence, beyond a reasonable doubt?

85. In my view, the undisputed evidence in this proceeding has established the following facts relative to the *actus reus* of the subject offence, beyond a reasonable doubt:
1. that on the 20th day of June 2009, at approximately 2:01 a.m., the defendant, Peter M. Hollyoake was driving his motor vehicle, a Ford Windstar van, on a highway, to wit: Plains Road East, in the City of Burlington;
 2. that Plains Road East, to the east of its intersection with King Road, in the City of Burlington is a four lane highway with two lanes running eastbound and two lanes running westbound, with an additional left hand turn lane located at the intersection for westbound traffic seeking to turn southbound on to King Road;

3. that King Road in the City of Burlington is a highway which runs north and south and which intersects with Plains Road East at right angles.
86. As stated above, I am of the view that the case at bar is one where credibility is important. There is conflicting evidence before me which goes to the issue of whether the prosecution has proven beyond a reasonable doubt that the defendant's driving conduct at the material time could be properly characterized as conduct which reflected a departure from the standard of care of a prudent and reasonable driver to such an extent that it could be considered a breach of duty to the public and deserving of punishment.
87. The defendant through his exculpatory evidence argues that at the relevant time he operated his motor vehicle in a cautious and prudent manner. He submits that the collision between the motorcycle operated by Mr. Ireland and his van was a result of an error in judgment on his part, in believing that there was no traffic approaching his location when he moved across the path of the motorcycle in entering the left, eastbound lane of Plains Road.
88. The resolution of the issue as to whether the prosecution has met its onus of proof pertaining to the *actus reus* of the subject offence is, in my view, dependent on an assessment of the credibility of the evidence in this proceeding. The concept of reasonable doubt applies to the issue of the assessment of the credibility of the evidence. Furthermore, I must instruct myself that the determination of the defendant's guilt is not a simple credibility contest between the prosecution and defence witnesses. The burden of proof rests with the prosecution beyond a reasonable doubt and it never shifts to the defendant.
89. The principles set out in *Regina v. W.(D.)*, [1991] 1 S.C.R. 742 (S.C.C.) are relevant to the issue of the assessment of credibility by the trier of fact. Those principles are set out in paragraphs 26, 27 and 28 of the decision, as follows:

...

It is clear that the trial judge erred in his recharge. It is incorrect to instruct a jury in a criminal case that, in order to render a verdict, they must decide whether they believe the defence evidence or the Crown evidence. Putting this either/or proposition to the jury excludes the third alternative; namely, that the jury, without believing the accused, after considering the accused's evidence in the context of the evidence as a whole, may still have a reasonable doubt as to his guilt.

In a case where credibility is important, the trial judge must instruct the jury that the rule of reasonable doubt applies to that issue. The trial judge should instruct the jury that they need not firmly believe or disbelieve any witness or set of witnesses. Specifically, the trial judge is required to instruct the jury that they must acquit the accused in two situations. First, if they believe the accused. Second, if they do not believe the accused's evidence but still have a reasonable doubt as to his guilt after considering the accused's evidence in the context of the evidence as a whole. ...

Ideally, appropriate instructions on the issue of credibility should be given, not only during the main charge but on any recharge. A trial judge might well instruct

the jury on the question of credibility along these lines:

First, if you believe the evidence of the accused obviously you must acquit.

Second, if you do not believe the testimony of the accused but you are left in reasonable doubt by it, you must acquit.

Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

If that formula were followed, the oft repeated error which appears in the recharge in this case would be avoided. The requirement that the Crown prove the guilt of the accused beyond a reasonable doubt is fundamental in our system of criminal law. Every effort should be made to avoid mistakes in charging the jury on this basic principle.

...

90. The defendant presented his testimony in a clear and detailed manner. He was responsive in the delivery of his testimony and he didn't appear to embellish or overstate the matters which he observed. Furthermore in my view, his verbal evidence was internally consistent and its strength was not significantly weakened through cross-examination. Overall, the defendant presented as a credible witness.
91. While I find that I am not able to firmly believe the defendant's testimony due, primarily, to its obvious lack of independence, I am of the view that his exculpatory evidence, considered in the context of the evidence as a whole, is sufficiently reliable to leave me in a state of reasonable doubt as to his guilt on the subject charge.
92. There are, in my view, two aspects of the defendant's driving behaviour, which establish the *prima facie* foundation for the subject charge of careless driving. The first aspect is the fact that by his own admission, the defendant disobeyed the one-way arrow sign facing him when he was about to turn out onto Plains Road from the entrance portion of the driveway to McDonald's parking lot. The second aspect is related to the defendant's alleged unsafe driving conduct in manoeuvring his vehicle around the end of a divider median and then entering a lane without first stopping and yielding the right of way to traffic approaching his location travelling in that lane.
93. In considering the first aspect, I accept the defendant's admission that at the material time he was aware of the one-way arrow sign but ignored it, choosing to turn his vehicle slightly to the left to proceed in a south-easterly direction, rather than to turn to the right. Based on his testimony in this regard, it is apparent that he intentionally disobeyed the authority of the sign in order to take a short-cut across Plains Road for purposes of entering the 7-11 store parking lot.

94. In my view the advertent violation of a rule of the road, by either disobeying the sign or driving the wrong way on a one-way highway is an act which is representative of a departure by the defendant from the standard of driving care exercised by an ordinary prudent driver. There was no justification for the defendant's actions in ignoring the rule communicated by the sign, at the material time. The hypothetical prudent and reasonable driver would, in my view, respect those rules established for the safety of the public and not purposely violate such rules for his/her own self-serving reasons.
95. The Court must, however, weigh the defendant's imprudent driving conduct in disobeying the one-way arrow sign, in the context of the circumstances surrounding the infraction, in order to determine whether this driving behaviour could be considered a breach of duty to the public and deserving of punishment.
96. In this regard, I take into consideration the evidence of the defendant that at the time of his turning manoeuvre out of the driveway, he exercised caution by moving slowly out of the driveway in a south-easterly direction only after ensuring that there was no traffic travelling in a westerly direction towards his location. Furthermore, after considering the defendant's testimony that the easterly end of the subject median was located a distance of approximately two to three feet east of the easterly edge of the parking lot driveway, I find that I am left in a state of reasonable doubt as to the theory of the prosecution, based on the evidence of Police Officer Shanly, that the defendant would have travelled the wrong way on Plains Road for a distance of approximately 10 metres at the relevant time.
97. In light of these factors, I am of the view that the defendant's conduct in driving the wrong way on Plains Road for a short lateral distance in contravention of the instructions of a one-way arrow sign, while being inconsistent with the actions of a prudent and reasonable driver, cannot, in all of the circumstances be considered a breach of duty to the public and, therefore, deserving of punishment.
98. The second aspect of the defendant's driving behaviour which must be examined relates to his conduct in manoeuvring his vehicle around the end of the median separating the east and westbound lanes and entering the left, eastbound lane without yielding the right of way to Mr. Don Ireland, who was lawfully operating his motorcycle in the said lane.
99. There does not appear to be significant conflict in the accounts provided by the various witnesses relative to the actions of the defendant immediately prior to the moment of the motor vehicle collision between the defendant's van and Mr. Ireland's motorcycle. The defendant does not seem to deny that his actions in moving his van around the median and into the path of the motorcycle, when it was approximately five to ten feet away from him, was the cause of the

collision.

100. The defendant submits that in changing lanes from the left westbound lane into the left eastbound lane after moving around the end of the subject median, he failed to yield to the motorcycle approaching his location because he simply did not see the motorcycle as he was slowly crossing the westbound lanes of Plains Road East. He testified that his actions in apparently conducting an unsafe lane change were simply due to an error in his judgment occasioned by his failure to move to a position where his vision of the approaching eastbound traffic would not have been obstructed. The defendant argues that while he was negligent in failing to keep a proper lookout, his driving conduct immediately prior to the moment of the collision should not, in the circumstances, be considered a sufficient departure from the standard of a prudent and reasonable driver to be considered a breach of duty to the public and deserving of punishment.
101. The defendant's evidence is that at the material time, he acted in a cautious and prudent manner in moving his van across the westbound lanes of Plains Road. That proposition is supported by his testimony that prior to moving out of the driveway he looked in both directions in an effort to see if there were any vehicles approaching his location, which might have been affected by his lane change and turning manoeuvres. That proposition is further supported by the defendant's testimony corroborated by the independent witness Mr. Robert Bailey that at the material time the defendant was travelling at a very low rate of speed in moving towards the end of the median after moving out of the driveway.
102. Furthermore, the defendant testified that while he was approaching the end of the median, his view of any traffic travelling in the left, eastbound lane east of the intersection of Plains Road and King Road, was, for the most part, obstructed by the abundant foliage and vegetation contained within the subject median.
103. As stated in *Skorput, supra.*, since the failure to take reasonable care is part of the *actus reus* of the offence of careless driving, any defence evidence which raises a reasonable doubt as to the issue of the defendant's alleged failure to take reasonable care "will produce an acquittal".
104. The defendant's actions in checking the status of traffic prior to leaving the driveway and the caution that he apparently exercised in proceeding towards the end of the median at a very low rate of speed (three to four miles per hour), serve to leave me in a state of reasonable doubt as to the alleged failure of the defendant to take reasonable care in the execution of his planned traversal of Plains Road East.
105. There is no evidence before me to suggest that in the course of attempting to cross the full width of Plains Road East at that location, the defendant acted in a

manner which showed an indifference to or lack of regard for the safety of other users of the highway. At all times leading up to the time of the motor vehicle collision he appeared to operate his vehicle with prudence and care. He certainly intended to move across the road cautiously, however, through an error in judgment he entered the left, eastbound lane without first taking reasonable steps to ensure that the movement could have been made in safety.

106. When I consider the testimony of the defendant, in the context of the totality of the evidence before me, I am of the view that the defendant has raised a reasonable doubt as to his failure to take reasonable care in the operation of his motor vehicle at the material time. Accordingly, the prosecution has failed to meet its onus of proving the fault element of the *actus reus* of the subject offence relative to the second aspect of his driving behaviour, at the material time, beyond a reasonable doubt.

THE DECISION

107. In summary, for the reasons stated above, the prosecution has failed to meet its onus of proving all of the elements of the *actus reus* of the subject offence of careless driving, beyond a reasonable doubt. Accordingly, it is not necessary for me to consider whether the defendant has established the defence of reasonable care, on a balance of probabilities.

108. The defendant is therefore found not guilty of the subject charge and the charge is dismissed.

Released: November 9th, 2010

Signed: “Justice of the Peace Kenneth W. Dechert”