

# PORTFOLIO

**David L. Chatten, LL.B. (Hons)**  
**Prosecutor/Lawyer**  
**David Chatten Law**

**Phone:** [REDACTED]

**Email:** [REDACTED]

**Head Office:** David Chatten Law  
257 Pinnacle Street, Suite 203 Belleville,  
Ontario K8N 3B2

# Table of Contents

1. Resume	<i>Page 3-4</i>
2. Education Certificates	<i>Page 5-8</i>
2.1 Law Degree Certificate (United Kingdom)	<i>Page 6</i>
2.2 Paralegal Diploma Certificate	<i>Page 7</i>
2.3 High School Diploma Certificate	<i>Page 8</i>
3. Other Miscellaneous Certificates	<i>Page 9-13</i>
3.1 Notary Appointment Certificate	<i>Page 10</i>
3.2 NCA Qualification Certificate	<i>Page 11</i>
3.3 Qualified Arbitrator Certificate	<i>Page 12</i>
3.4 Arbitration Training Certificate	<i>Page 13</i>
4. Licence Certificates	<i>Page 14-18</i>
4.1 Licence Certificate of Standing	<i>Page 15-17</i>
4.2 Class P1 Licence	<i>Page 18</i>
5. Work Samples	<i>Page 19-79</i>
5.1 R.v. Reid Case	<i>Page 20-28</i>
5.2 R.v. Eldridge Case Transcript	<i>Page 29-79</i>
6. Reference Letters	<i>Page 80-85</i>
6.1 Justice Geoffrey J. Griffin	<i>Page 81</i>
6.2 Justice of the Peace - Sam Cureatz	<i>Page 82-83</i>
6.3 Justice of the Peace - Donna I. Doelman	<i>Page 84</i>
6.4 Justice of the Peace - Ernie Parsons	<i>Page 85</i>
7. Local Love Donation Gratitude	<i>Page 86</i>

# David Chatten, LL.B. (Hons)

## Prosecutor / Lawyer

Trenton, ON ■ [REDACTED]

Enthusiastic attorney and Crown Prosecutor backed by 17 years of progressive experience helping meet client goals through legal expertise in civil, employment, and government administrative law. Dedicated to efficient operations, prioritizing heavy caseloads while developing new policies and procedures to maximize efficiency, reduce stress, and shorten trial wait times. Strong interpersonal communicator, establishing rapport to open communication while providing complex legal explanations in layman terms, remaining courteous and diplomatic with all levels of staff and the public. Additional expertise in computer programming and web development.

## Professional Experience

---

**David Chatten Law | Hastings County | Ontario Ministry of the Attorney General, Belleville, Canada**  
**2017 – Present**

### **Lawyer | Provincial Offences Act Prosecutor**

Advise clients in easy-to-understand language on legal matters including advisability of lawsuits and legal rights and obligations, utilizing knowledge of laws, regulations, and legal precedents. Cultivate relationships with clients, staff, and other legal professionals to establish transparent communications, better understanding client needs and goals. Prepare, draft, and review documents according to legal requirements, including Wills and Power of Attorney. Champion pre-trial resolution, managing early resolution meetings and crown pre-trials to attempt to unite sides and negotiate resolutions outside of trial. Lead legal cases end-to-end, gathering evidence, interviewing parties, developing arguments, and representing the client in legal proceedings. Develop strong legal arguments by analysing case facts and performing comprehensive legal research on applicable precedent.

- ◆ Managed and prioritized upwards of 280 files weekly at business peak.
- ◆ Called to Ontario Bar as a Barrister and Solicitor and serves as a Crown Prosecutor for Provincial Offences.
- ◆ Implemented policies and procedures to improve efficiency, creating a filing and litigating system to handle large number of files, and developing a prosecutors' checklist to streamlining prosecution.

**Multiple Organizations, Belleville, Canada**  
**Licensed Paralegal** **2003 – 2017**

Supported legal cases by preparing affidavits, briefs, pleadings, appeals, and other documents to aid legal processes. Consulted clients and professionals to discuss case details and identify legal research needs. Advised Tribunals, Municipal, and Provincial boards on legal interpretation and application. Ensured legal compliance while overseeing Process Serving tasks. Prepared cases for trial, organizing exhibits and preparing all legal documents and correspondence.

- ◆ Fostered business growth for DC Paralegal Services while serving public needs, managing 25 paralegals across Ontario.

Additional Experience as **Loss Prevention Officer and Private Investigator** for Loblaw's Companies Limited.

## Education

---

**Bachelor of Laws (LLB) (HONS)** [view certificate](#)

The University of Law, Birmingham, UK, 2016

**Law and Security – Paralegal Diploma** [view certificate](#)

Loyalist College, Belleville, Canada

## Licenses & Certifications

---

**Qualified Arbitrator** – ADR Institute of Ontario – 2016 [view certificate](#)

**Paralegal Licence** – Law Society of Ontario – 2008-2019 [view certificate](#)

**NCA Qualification** – Canada Federation of Law Societies – 2018 [view certificate](#)

**Lawyer Licence L1** – Law Society of Ontario – 2019 [view certificate](#)

## Volunteer Experience

---

**First Adventure Child Development Centre, Belleville, Canada**  
**Board Member**

Contribute to management of \$1.5M budget and staff of around 50 educators.

**United Way Wills Week, Belleville, Canada**  
**Legal Volunteer**

Volunteered legal expertise to write wills for the 2019 United Way's Will Week.

\*\*\*

## 2. Education Certificates

2.1 *Law Degree Certificate (United Kingdom)* Page 6

2.2 *Paralegal Diploma Certificate* Page 7

2.3 *High School Diploma Certificate* Page 8

[Go to index >>](#)

## 2.1 Law Degree Certificate (United Kingdom)



[Go to resume >>](#)

[Go to index >>](#)

## 2.2 Paralegal Diploma Certificate



[Go to resume >>](#)

[Go to index >>](#)

## 2.3 High School Diploma Certificate



### Ontario Secondary School Diploma Diplôme d'études secondaires de l'Ontario

This Diploma is granted to  
Ce diplôme est décerné à

*David Lewis Chatten*

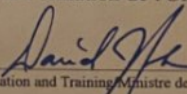
a student of  
élève de

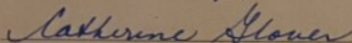
*Centennial Secondary School*

who has fulfilled the requirements for the Ontario Secondary School Diploma  
in accordance with the provisions of the Ministry of Education and Training, Ontario  
qui a rempli les exigences prescrites pour l'obtention du diplôme d'études secondaires de l'Ontario,  
en vertu des dispositions du ministère de l'Éducation et de la Formation de l'Ontario

Dated at  
Délivré à *Belleville, Ontario*

the *29th* day of *June* 19 *99*  
ce jour de

  
Minister of Education and Training / Ministre de l'Éducation et de la Formation

  
Principal of School / Directeur ou directrice de l'école

[Go to resume >>](#)

[Go to index >>](#)



## 3. Other Miscellaneous Certificates

3.1 *Notary Appointment Certificate* Page 10

3.2 *NCA Qualification Certificate* Page 11

3.3 *Qualified Arbitrator Certificate* Page 12

3.4 *Arbitration Training Certificate* Page 13

[Go to index >>](#)

### 3.1 Notary Appointment Certificate



**APPOINTMENT UNDER THE  
NOTARIES ACT**

**NOMINATION EN VERTU DE LA LOI  
SUR LES NOTAIRES**

*Pursuant to the Notaries Act, Revised  
Statutes of Ontario, 1990, chapter N.6, as  
amended,*

*Conformément à la Loi sur les notaires,  
Lois refondues de l'Ontario de 1990,  
chapitre N.6, tel qu'il est modifié,*

**DAVID LEWIS CHATTEN**

*is hereby appointed to be a*

*est nommé(e) par les présentes*

*Notary Public  
for the Province of Ontario*

*Notaire  
pour la province de l'Ontario*

*Dated in the City of Toronto, in the Province of  
Ontario, on the 22<sup>nd</sup> day of November, 2019.*

*Fait dans la cité de Toronto, dans la province de  
l'Ontario, le 22 novembre 2019.*

A handwritten signature in black ink that reads "Doug Downey".

*The Honourable Doug Downey  
Attorney General of the Province of Ontario*

*L'honorable Doug Downey  
Procureur général de la province de l'Ontario*



## 3.2 NCA Qualification Certificate



### 3.3 Qualified Arbitrator Certificate



[Go to resume >>](#)

[Go to index >>](#)

### 3.4 Arbitration Training Certificate



[Go to index >>](#)

## 4. Licence Certificates

4.1 *Licence Certificate of Standing* Page 15-17

4.2 *Class P1 Licence* Page 18

[Go to index >>](#)



## Certificate of Standing

I CERTIFY THAT our records indicate the following information concerning:

Name: David Lewis Chatten ("the applicant")

Address: [REDACTED]

### 1. Call and Admission

- a) The applicant was:  called to the Bar of Ontario and admitted as a solicitor;  
 relicensed to practice after having ceased to be a member;

on: June 17, 2019

The applicant was relicensed in the following circumstances: \_\_\_\_\_

\_\_\_\_\_

- b) The applicant was previously a member of the Law Society in the following Canadian jurisdictions:

*Province/Territory*

*Dates*

\_\_\_\_\_

\_\_\_\_\_

### 2. Present Status

- a) **The applicant:**

- (i)  is a member of this Law Society today; or  
(ii)  is not a member of this Law Society today, and has not been a member since: \_\_\_\_\_

The applicant ceased to be a member for the following reason(s): \_\_\_\_\_

\_\_\_\_\_

- b) **The applicant:**

- (i)  is not in arrears of any fees, assessments, premiums, insurance deductibles, Compensation Fund repayments, discipline costs or other charges owing to this Society; or

- (ii)  is in arrears as follows:

*Nature of Arrears*

*Owed Since*

*Amount Owing*

\_\_\_\_\_

\_\_\_\_\_

- c) **The applicant:**
- (i)  is entitled to practise law in Ontario; or
- (ii)  is not entitled to practise law in Ontario for the following reason(s): \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- d) The applicant is indemnified under this Society's liability insurance plan for errors and omissions within and without this jurisdiction which arise out of the practice of law in this jurisdiction: Yes  No

**3. Professional Conduct Record**

- a) **Complaints:** The following complaints are outstanding: none , or:
- \_\_\_\_\_
- \_\_\_\_\_

- b) **Competency:** the applicant has had the following conditions imposed as a result of a competency review: none , or:
- \_\_\_\_\_

- c) **Formal Disciplinary Proceedings:** the applicant has been the subject of the following formal disciplinary proceedings: none , or:

<i>Date</i>	<i>Nature of Case &amp; Finding of Tribunal</i>	<i>Disposition</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

- d) **Custodianship or Trusteeships**
- (i)  the applicant has not been the subject of a custodianship or
- (ii)  the applicant has been the subject of a custodianship, as follows: \_\_\_\_\_
- \_\_\_\_\_

- e) **Practice Restrictions:** except as described in (a) to (c) above, the applicant has had the following practice conditions or restrictions imposed: none , or:

<i>Date</i>	<i>Nature of Conditions or Restrictions</i>	<i>Reasons</i>	<i>Duration</i>
_____	_____	_____	_____
_____	_____	_____	_____



4. **Personal History**

a) **Offenses:** to the best of our knowledge, the following are criminal proceedings affecting the applicant: none  , or:

<i>Date</i>	<i>City</i>	<i>Charge</i>	<i>Disposition</i>
-------------	-------------	---------------	--------------------

Any current charges brought to the Society's attention would be reported in section 3(a).

Any convictions resulting in disciplinary proceedings would be reported in section 3(c).

b) **Financial Difficulty:** to the best of our knowledge, the applicant has been the subject of the following procedures under the *Bankruptcy and Insolvency Act*: none  , or:

(i)  an assignment under Section 49;

(ii)  a petition for a receiving order under Section 43;

(iii)  a proposal under Section 50; or

(iv)  an application for a consolidation order under Section 219 in the following circumstances:

\_\_\_\_\_  
\_\_\_\_\_

c) **Judgments:** we are aware of the following judgments against the member: none  ,

or: Any current judgments brought to the Society's attention would be reported in section 3(a).

Any judgments resulting in disciplinary proceedings would be reported in section 3(c).

5. **Other Relevant Information:** none  , or:

\_\_\_\_\_  
\_\_\_\_\_

August 27, 2020

Date

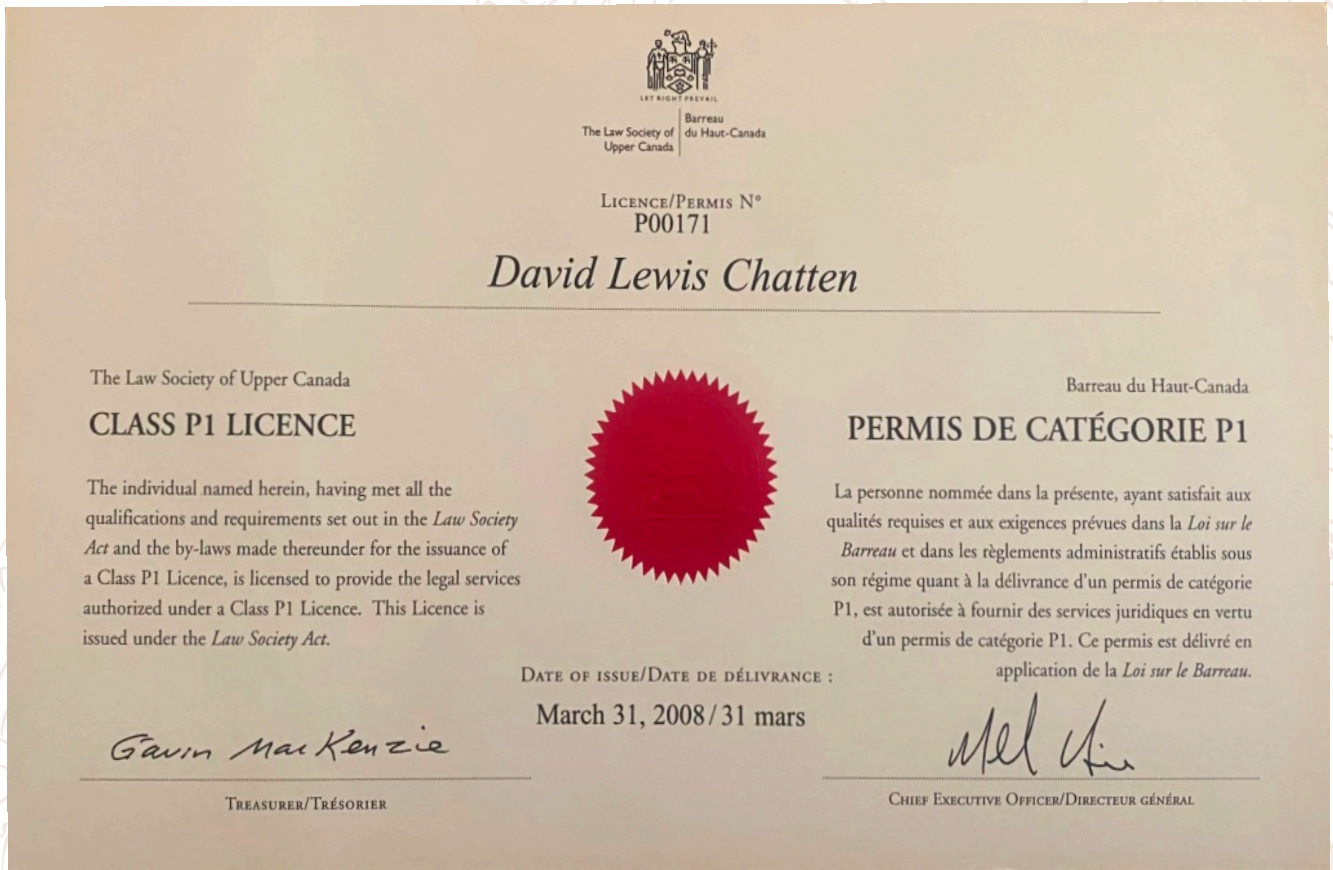
*Donald Kwon for*


Director, Client Service Centre

\_\_\_\_\_  
Law Society of Ontario

Osgoode Hall, Toronto, Ontario

## 4.2 Class P1 Licence



  
The Law Society of Upper Canada | Barreau du Haut-Canada

LICENCE/PERMIS N°  
P00171

*David Lewis Chatten*

---

The Law Society of Upper Canada  
**CLASS P1 LICENCE**

The individual named herein, having met all the qualifications and requirements set out in the *Law Society Act* and the by-laws made thereunder for the issuance of a Class P1 Licence, is licensed to provide the legal services authorized under a Class P1 Licence. This Licence is issued under the *Law Society Act*.

DATE OF ISSUE/DATE DE DÉLIVRANCE :  
March 31, 2008 / 31 mars

*Gavin MacKenzie*  
TREASURER/TRÉSORIER

Barreau du Haut-Canada  
**PERMIS DE CATÉGORIE P1**

La personne nommée dans la présente, ayant satisfait aux qualités requises et aux exigences prévues dans la *Loi sur le Barreau* et dans les règlements administratifs établis sous son régime quant à la délivrance d'un permis de catégorie P1, est autorisée à fournir des services juridiques en vertu d'un permis de catégorie P1. Ce permis est délivré en application de la *Loi sur le Barreau*.

*Mel Usher*  
CHIEF EXECUTIVE OFFICER/DIRECTEUR GÉNÉRAL

[Go to resume >>](#)

[Go to index >>](#)

## 5. Work Samples

5.1 *R.v. Reid Case* Page 20-28

5.2 *R.v. Eldridge Case Transcript* Page 29-79

[Go to index >>](#)

Case Name:  
**R. v. Reid**

**IN THE MATTER OF the Highway Traffic Act, R.S.O. 1990,  
c. H.8 and the Provincial Offences Act, R.S.O. 1990  
Between  
Her Majesty the Queen, Prosecutor/Respondent on  
Appeal, and  
Paul Francis Reid, Defendant/Applicant on Appeal**

[2012] O.J. No. 2540

2012 ONCJ 305

34 M.V.R. (6th) 307

101 W.C.B. (2d) 330

2012 CarswellOnt 6779

Belleville Registry No. 11 0391

Ontario Court of Justice  
Belleville, Ontario

**G.J. Griffin J.**

Heard: April 16, 2012.  
Oral judgment: April 16, 2012.

(42 paras.)

*Transportation law -- Motor vehicles and highway traffic -- Liability -- Provincial or regulatory offences -- Penalties -- Driving while licence suspended -- Appeal by defendant from sentence imposed for driving while suspended allowed -- Defendant pled guilty and Justice accepted Crown's recommendation of seven-day sentence -- Justice erred in failing to grant self-represented defendant opportunity to make submissions or address court -- Justice ignored individualized process of sentencing in stating he imposed custodial sentence as matter of course, as fines were inadequate deterrent -- Law did not provide for custodial sentence for first-time offender -- Justice breached defendant's s. 7 Charter rights -- Only appropriate remedy was stay of conviction -- Highway Traffic Act, s. 53(1) -- Provincial Offences Act, s. 57(1).*

Appeal by the defendant, Reid, from a seven-day jail sentence imposed for driving while suspended contrary to s. 53(1) of the Highway Traffic Act. The defendant's licence was suspended due to unpaid fines. By the time of trial, the defendant's licence was reinstated following payment in full of the outstanding fines. The offender pleaded guilty and the Crown indicated that it sought a seven-day custodial sentence. The defendant was not granted an opportunity to make submissions and was sentenced as per the Crown's recommendation. The

defendant appealed, seeking a stay of conviction. The defendant submitted that the Justice erred in imposing a custodial sentence for a first-time conviction for driving while suspended.

**HELD:** Appeal allowed. The Justice of the Peace erred in three fundamental respects. First, the Justice erred in failing to comply with s. 57(1) of the Provincial Offences Act, which required an opportunity for the defendant to make submissions as to sentence or address the court. Second, the Justice ignored the individualized process of sentencing by stating that incarceration was the penalty he imposed for driving while suspended as a matter of course due to ineffectiveness of fines as a deterrent. The law did not provide for a minimal period of incarceration for a first offence of driving while suspended. Third, the Justice breached the defendant's s. 7 Charter rights. This was an un-represented first offender deprived of his right to make submissions opposing a custodial sentence for an offence that he had entered a timely guilty plea, and made without regard to basic sentencing principles. The process employed by the Justice denied the defendant fundamental justice. A stay of conviction was the only appropriate remedy.

#### **Statutes, Regulations and Rules Cited:**

Canadian Charter of Rights and Freedoms, 1982, R.S.C. 1985, App. II, No. 44, Schedule B, s. 7, s. 24(1)

Criminal Code of Canada, R.S.C. 1985, c. C-46, s. 718.2(e)

Highway Traffic Act, R.S.O. 1990, c. H.8, s. 53(1), s. 53(1) (a), s. 53(1)(b)

Legislation Act, 2006, S.O. 2006, c. 21, Schedule F, s. 64(1)

Provincial Offences Act, R.S.O. 1990, c. P.33, s. 57(1)

#### **Counsel:**

M. Lunski, Counsel for the Prosecutor.

D. Chatten, Agent for Paul Francis Reid.

---

### REASONS FOR DECISION

**1 G.J. GRIFFIN J.:** (orally):-- Mr. Paul Francis Reid, with the assistance of his paralegal Mr. **David Chatten**, has appealed the seven-day jail sentence imposed by Justice of the Peace E. Parsons in Belleville Provincial Offences Court on October 14, 2011 for the offence of drive while suspended, contrary to Section 53 (1) of The Highway Traffic Act.

**2** The relief sought is a Stay of Conviction as the paralegal is of the view that the Justice of the Peace erred in his interpretation of Section 53(1) of The Highway Traffic Act as it is his respectful submission that it is only when a person is convicted of a subsequent drive suspended offence that a jail sentence can be imposed. This was the first drive suspended offence for the Appellant.

**3** Before I address the specific concern raised by the Appellant's paralegal, it is clear upon reading the transcript of what took place in Belleville Provincial Offences Court on October 14, 2011 that the Justice of the Peace made three fundamental errors.

**4** It should be pointed out that the Appellant, Mr. Reid, was unrepresented when he was in Provincial Offences Court and at his second appearance on the drive suspended charge on October 14, 2011 he entered a guilty plea. The plea was entered on the basis that on July 31, 2011 he was driving while suspended with the

suspension being for unpaid fines, which had all been paid in full prior to his guilty plea. Mr. Reid's driver's licence had been reinstated at the time he entered his guilty plea.

5 After the guilty plea the Prosecutor indicated to the Justice of the Peace that he was looking for a custodial period of seven days. The Appellant, Mr. Reid, was not provided with an opportunity to make submissions and he was sentenced to seven days in jail.

The complete Reasons on Sentence being as follows:

"THE COURT: Two years ago, actually I saw a count that showed there was 1,085 convictions in this courtroom for driving while suspended in one year, 1,085 convictions. Now, while I do not know, and I do not think anybody has a way of knowing is are the police charging ten percent of the folks who are driving while suspended or are they charging 90? I do not know. I do not think we can find out. But I do know that they are not finding everyone. People driving while suspended are in a disproportionate number of accidents. I used to give fines and I would fine someone for driving while suspended and, quite frankly, three months later they would be back in the courtroom.

We now impose incarceration and I have never had anyone I sentenced to incarceration reappear before me. So, the object is to stop folks from driving while suspended, so you are sentenced, sir, to seven days incarceration starting immediately. You will need to go with the officer."

6 The first error made by the Justice of the Peace, was his complete failure to comply with Section 57 (1) of the Provincial Offences Act which provides as follows:

57.1 Submissions as to Sentence: Where a defendant who appears is convicted of an offence, the court shall give the prosecutor and the defendant's representative an opportunity to make submissions as to sentence and, where the defendant has no representative, the court shall ask the defendant if he or she has anything to say before sentence is passed.

7 The second error can be found in the Reasons for Sentence where the Justice of the Peace stated:

"I used to give fines and I would fine someone for driving while suspended and, quite frankly, three months later they would be back in the courtroom. We now impose incarceration and I have never had anyone I sentenced to incarceration reappear before me."

8 The idea that, "I used to give fines. We now impose incarceration ..." ignores the fundamental principle that there is no uniform sentence or one size fits all sentence. The Supreme Court of Canada has repeatedly made it clear that sentencing is an individualized process. In the 1982 decision of *R. v. Gardiner* 68 C.C.C.(2d) 477 at page Justice Dickson wrote that a sentencing judge, "... must have the fullest possible information concerning the background of the accused if he is to fit the sentence to the offender rather than the crime. The point is that it is Mr. Reid who was the man being sentenced by the Justice of the Peace not the regulatory offence of drive while suspended.

As Chief Justice Lamer wrote in the Supreme Court of Canada case of *R. v. M (CA)*, (1996) 105 C.C.C. (3d) 327 at page 375:

"It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime: See *Mellstrum, Morrissette and Baldhead*. Sentencing is an inherently individualized process, and the search for a single appropriate sentence for a similar

offender and a similar crime will frequently be a fruitless exercise of academic obstruction."

In the 2000 Supreme Court of Canada decision of *R. v. Proulx*, 140 C.C.C. (3d) 449 at paragraph 88 Justice Cory wrote:

"The minimal benefits of uniformity in these circumstances are exceeded by the costs associated by the loss of individualization in sentencing. By creating offence-specific starting points there is a risk that these starting points will evolve into defacto minimum sentences of imprisonment."

One can readily note Justice Cory's prescience as it relates to the within case where the Justice or the Peace has created a defacto minimum sentence of incarceration as he clearly states, "We now impose incarceration."

9 It is trite to point out that it is the function of the Legislature to set minimum sentences and not the role of a Justice of the Peace sitting in a Provincial Offences Court. In fact, the Province of Ontario has set a minimum sentence for the offence of drive suspended and that minimum sentence is not incarceration. Section 53(1) of The Highway Traffic Act reads as follows:

"Every person who drives a motor vehicle or street car on a highway while his or her driver's licence is suspended under an Act of the Legislature or a regulation made thereunder is guilty of an offence and on conviction is liable,

- a) for a first offence, to a fine of not less than \$1,000 and not more than \$5,000; and
- b) for each subsequent offence to a fine of not less than \$2,000 and not more than \$5,000 or to imprisonment for a term of not more than six months, or to both. R.S.O. 1990 c. 11.8, s. 53(1); 1997, c. 12, s. 70.

10 It is clear that the law does not provide for a minimal period of incarceration for a subsequent offence let alone a first offence of drive suspended. In this case the Appellant had no prior record for the offence of drive suspended so this was his first offence.

11 The third error, in my view, is the most serious as it is clear that Mr. Reid's rights under Section 7 of the Charter of Rights and Freedoms were violated when he, as an unrepresented accused, at his first drive suspended offence and being deprived of his right to make submissions on sentence was incarcerated for seven days for a regulatory offence that he had entered a guilty plea to in a timely manner and the Justice of the Peace wholly ignored basic sentencing principles.

Section 7 of the Charter of Rights provides as follows:

"Life, liberty and security of the person.

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

As Justice Lamer wrote in the Supreme Court of Canada case of Reference re: s. 94(2) of the Motor Vehicle Act (1985) 23 C.C.C. (3d) 289 at p. 309:

"The term 'principles of fundamental justice' is not a right, but a qualifier of the right not to be deprived of life, liberty and security of the person; its function is to set the parameters of that right.

Sections 8 to 14 address specific deprivations of the 'right' to life, liberty and security of the person in breach of the principles of fundamental justice, and as such, violations of

section 7. They are therefore illustrative of the meaning in criminal or penal law, of 'principles of fundamental justice'; they represent principles which have been recognized by the common law, the international conventions and by the very fact of entrenchment in the Charter, as essential elements of a system for the administration of justice which is founded upon a belief in the dignity and worth of the human person and the rule of law."

**12** The dignity and worth of a human being is significantly impacted when he or she is taken into custody, stripped of their clothing, searched, issued prisoners clothing and then locked in a cage.

**13** The Parliament of Canada understands that imprisonment is the sentence of last resort and that is why they enacted Section 718.2 (e) of the Criminal Code of Canada, As Justice Cory wrote in the Supreme Court of Canada decision in *R. v. Gladue* (1999) 133 C.C.C. (3d) p. 385 at paragraph 36:

"As a general principle, section 718.2 (e) applies to all offenders, and states that imprisonment should be the penal sanction of last resort. Prison is to be used only where no other sanction or combination of sanctions is appropriate to the offence and the offender."

**14** The concept of restraint when it comes to imprisonment is not new, as Mr. Justice G. Arthur Martin in the 1974 Ontario Court of Appeal decision *R. v. Stein*, [1974] O.J. No. 93, at paragraph 4 wrote:

"In our view, before imposing a custodial sentence upon a first offender, the sentencing court should explore the other dispositions which are open to him and only impose a custodial sentence where the circumstances are such, or the offence is of such gravity that no other sentence is appropriate."

As Justice Rosenberg comments in the 1996 Ontario Court of Appeal case of *R. v. Priest* [1996] O.J. No. 3369 at paragraph 18:

"As the Stein case shows, it has been an important principle of sentencing in this province that the sentence should constitute the minimum necessary intervention that is adequate in the particular circumstances. This principle implies that trial judges consider community-based dispositions first and impose more serious forms of punishment only when necessary."

**15** It is also a fundamental principle in sentencing that any sentence imposed must be proportionate to the gravity of the offence committed as well as the degree of the responsibility of the offender. As Justice Waft of the Ontario Court of Appeal wrote at paragraph 53 of *R. v. Jacko* (2010), 256 C.C.C. (3d) 113:

"Some measure of the objective gravity of the crime is its maximum punishment as prescribed by Parliament. In some instances Parliament has also provided a minimum punishment for an offence."

**16** The Government of Ontario is determined that for the offence of drive suspended there is a minimum fine of \$1,000 and a maximum fine of \$5,000 and a subsequent offence a minimum fine of \$2,000 and a maximum fine of \$5,000, or to imprisonment for a term of not more than six months or to both. There is no suggestion in the legislation that the objective gravity of the offence of drive suspended is an automatic jail sentence. The point is that fundamental justice, the rule of law and respect for the dignity and worth of human beings requires a principled approach to both the sentence hearing and the sentence imposed. The person being sentenced has a right to make submissions as to the appropriate sentence when he is standing before the justice of the peace and the justice of the peace is not entitled to skip that step or ignore those submissions, but must consider them to determine what the appropriate sentence is for that offender.



17 A justice of the peace is required when sentencing someone who is standing before him, to allow that person an opportunity to make submissions. It is a basic tenant of the adversarial system of justice and a denial of that right to be heard strikes at the heart. of fairness and gives rise to the appearance that the fix is in, that the sentence is pre-determined.

18 It is troubling in this case where the Justice of the Peace switches from the singular 'I' to the plural 'we' in his reasons for sentence where he states, "I used to give fines and I would fine someone from driving while suspended and, quite frankly, three months later they would be back in the courtroom. We now impose incarceration and I have never had anyone I sentenced to incarceration reappear before me."

19 This is troubling because it is unclear as to who the 'we' is. Is it the justice of the peace and the prosecutor, or is it the justice of the peace along with other justices of the peace? One becomes troubled because there is a clear impression left that no matter what the circumstances are of the offender a jail sentence is going to be imposed. This is a fundamental misunderstanding of the role of a sentencing justice of the peace and an abdication of his responsibility to impose a fit sentence for (he specific offence on the specific offender.

20 Fundamental justice requires that the justice of the peace consider the principles of sentence such as restraint, incarceration is a last resort for first time offenders, proportionality, the individual circumstances of the offender and not create and rely on minimum uniform sentence of incarceration.

21 I am satisfied that the Justice of the Peace in approaching this matter is a one-size fits all, "I used to give fines. We now impose incarceration." On top of his failing to allow for submissions as to the appropriate sentence from the person he was going to lock up and ignoring basic principles of sentencing denied the Appellant, Paul Francis Reid, his Section 7 Charter Right of "... liberty and security of person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

22 Mr. Reid was denied fundamental justice when he was incarcerated for seven days for the first offence of drive suspended in circumstances where the Justice of the Peace did not consider basic, long standing principles of sentencing, did not provide Mr. Reid an opportunity to make submissions as to the appropriate sentence and made it clear that despite the relevant section of the Highway Traffic Act providing for a minimum fine of \$1,000 for a first offence, proceeding on the basis of; "We now impose incarceration."

23 Mr. Reid, the Appellant, was immediately taken into custody after the sentence was imposed and so he has served the jail sentence. At the appeal hearing I asked Mr. Reid certain questions and he told me he was 28 years of age, the father of three children ages eight, five and two. He is fully employed as a tire technician. As already has been pointed out he was unrepresented when he appeared before the Justice of the Peace and when I asked him why he entered a guilty plea he told me he was provided with a form from the Prosecutor who said upon a guilty plea the Prosecutor would be seeking a seven day jail sentence whereas after a trial the Prosecutor would seek a 30 day jail sentence. Mr. Reid did not want to go to jail for 30 days and, as he had not paid the fine and then forgotten about it he was suspended from driving which came to his attention when he was stopped by the police. Upon being charged with the offence of drive suspended he immediately paid off the fine and had his driver's licence reinstated.

24 It is hard for me to imagine how a proper application of the sentencing principles on this particular offender, for this particular offence, would result in anything other than a fine as contemplated by Section 53 (1) (a) of the Highway Traffic Act.

25 In light of the breach of Mr. Reid's Section 7 Charter Rights, I must determine what the appropriate remedy should be bearing in mind that he has already served the jail sentence. Section 24(1) of the Charter allows for a remedy that, "the Court consider appropriate and just in the circumstances." The last thing that should occur in this situation is to aggravate the Section 7 Charter violation by imposing a fine which would have been the appropriate outcome if one considered the circumstances of the offender, along with the circumstances of the offence and applied the appropriate sentencing principles. To impose a fine at this juncture, however, would result in double punishment and a complete failure to address the Section 7 Charter violation.

**26** Justice Simmons in the June 16, 2006 Ontario Court of Appeal case of R. v. Mangat, [2006] O.J. No. 2418, at paragraph 12 wrote,

"... a stay of proceedings is a drastic remedy reserved for the clearest of cases R. v. O'Connor, [1995] 4 S.C.R. 411. Whether the wrongful conduct that is in issue causes prejudice to the accused because of an unfair trial, or is harmful to the integrity of the justice system, a stay of proceeding is appropriate only where the following two criteria are satisfied:

- i. the prejudice caused by the breach will be manifested, perpetuated or aggravated through the conduct of the trial or its outcome; and
- ii. no other remedy is reasonably capable of removing that prejudice R. v. Regan, [2002] 1 S.C.R. 297, see also R. v. O'Connor."

**27** I also reminded myself of the words of Justice O'Connor in the Superior Court decision in R. v. Latimer [2003] O.J. No. 3841 at paragraph 30 that Section 24(1), "is meant to grant the Court flexibility in the appropriate remedies available to it where the Charter Rights of a person have been breached."

**28** The point is that the Appellant, Mr. Reid, was incarcerated in a manner that resulted in his Section 7 right to life, liberty and security of a person being breached as he was not accorded fundamental justice which results in his being entitled to a remedy.

**29** I am satisfied that anything short of a Stay of Proceedings would not remove the prejudice caused by the Section 7 Charter violation, and further, I am satisfied that any form of further sentence would only perpetuate and enlarge on the Section 7 violation that has occurred only remedy that is appropriate and just, in the circumstances, is to order a Stay of Proceedings and am endorsing the Appeal Court Record for reasons provided the charge is stayed.

**30** The paralegal for the Appellant approached this appeal on an entirely different basis than what I have set out above as it is his respectful submission that a justice of the peace does not have the jurisdiction to impose a jail sentence for a person found guilty for the first time of an offence of drive suspended, contrary to Section 53(1) of The Highway Traffic Act.

**31** I will set out once again Section 53(1) of The Highway Traffic Act, R.S.O. 1990 Chapter H.8 as it is provided for on the e-Law website:

"53 (1) Every person who drives a motor vehicle or street car on a highway while his or her driver's licence is suspended under an Act of the Legislature or a regulation made thereunder is guilty of an offence and on conviction is liable,

- (a) for a first offence, to a fine or not less than \$1,000 and not more than \$5,000; and
- (b) for each subsequent offence, to a fine of not less than \$2,000 and not more than \$5,000, or to imprisonment for a term of not more than six months, or to both."

**32** It is Mr. Chatten's position that when one considers section 64 (1) of the Legislation Act, 2006 which reads as follows:

"An Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects."

Along with a plain reading of this section it is only on a subsequent offence that imprisonment can be imposed.

**33** Mr. Chatten also relies on a decision of R. v. Kong 2007 ONCJ 362 where Justice of the Peace Quon at paragraph 20 wrote:

"Section 53 (1)(b) demonstrates this offence's gravity and the provincial legislators' concern with individuals repeatedly driving motor vehicles while their licences are under suspension by specifically providing for imprisonment as a penal sanction, in contrast to the imposition of fines as the general sanction for traffic offences, and is also an indication that imprisonment would be a suitable penalty for committing the same offence more than once in the last five years."

**34** One of the difficulties that I have with Justice of the Peace Quon's approach to the question is he sets out Section 53(1) in the Quon decision as follows:

"Every person who drives a motor vehicle or street car on a highway while his or her driver's licence is suspended under an Act of the Legislature or a regulation made thereunder is guilty, of an offence and on conviction is liable,

- (a) for a first offence, to a fine of not less than \$1,000 and not more than \$5,000; and
- (b) for each subsequent offence, to a fine of not less than \$2,000 and not more than \$5,000, or to imprisonment for a term of not more than six months, or to both.

**35** Obviously there is a difference between the e-Law website version which by operation of the Legislation Act 2006 is presumed to be official and that of Justice of the Peace Quon adding the words ". . . or to imprisonment for a term of not more than six months, or to both," onto Section 53 (I) (b) rather than having these words separate as set out in the official version of the Section.

**36** While I understand and have a great deal of sympathy on the position taken by the Justice of the Peace Quon, which has been adopted and advanced by the Appellant, I am of the view that a proper construction of Section 53 of The Highway Traffic Act does not restrict the availability of imprisonment only as a situation involving a subsequent offence.

**37** A proper reading of Section 53(1) in its grammatical and ordinary sense, as well as the entire context causes me to conclude that the words "or to imprisonment for a term of not more than six months, or to both," applies to both Section 53(1) (a) and 53 (1) (b) of The Highway Traffic Act.

**38** While it would be very unusual and exceptional to impose a period of imprisonment for a first offence of drive suspended when I consider the purpose of the entire scheme of The Highway Traffic Act as a whole, the Legislature intended for the sentencing justice of the peace, on the rare occasion, that jail would be required to have the authority even on a first offence to impose incarceration.

**39** It is clear from reading Section 53(1) that it is intended that on a first offence a fine will be imposed 'and it is only on a subsequent offence that imprisonment would be considered.

**40** Nevertheless, there could be a situation where a person with a lengthy Highway Traffic Act record of convictions for speeding, seat belt violations, careless driving and other offences appears before a justice of the peace on a first drive suspended; the reason for the suspension being a conviction for stunt driving and at the time the suspension was imposed the person was advised of the seriousness of driving while suspended by the justice of the peace, only to be stopped two weeks later for speeding and drive while suspended. To suggest that a justice of the peace would not have the authority to impose a jail sentence for a first offence of drive suspended, in such circumstances, would undermine the intention of Section 53(1) (a) of The Highway Traffic Act which includes the words for a first offence to a fine of not less than \$1,000 and not more than \$5,000 and/or to imprisonment for a term of not more than six months, or both."

**41** I readily agree that it would be rare and an exception to the norm of a non-custodial sentence for the first offence of drive suspended, I do not agree with the paralegal for the Appellant that a justice of the peace does not have authority to impose a jail sentence for a first offence if the nature of the offence and the circumstances of the offender warrant such a sentence.

42 However, as I have already indicated, the Appellant's rights under Section 7 were violated and the only appropriate remedy is a stay of the charges and, accordingly, the charge is stayed.

G.J. GRIFFIN J.

cp/s/qljel/qlpmg/qlced/qlpmg/qlced

ONTARIO COURT OF JUSTICE  
PROVINCIAL OFFENCES COURT

HER MAJESTY THE QUEEN

v.

FRANK ELDRIDGE

\*\*\*\*\*

PROCEEDINGS AT TRIAL

BEFORE HER WORSHIP JUSTICE OF THE PEACE D. DOELMAN on March 22,  
2017, at NAPANEE, Ontario

\*\*\*\*\*

**OFFENCES:** s. 158(2) Highway Traffic Act

\*\*\*\*\*

APPEARANCES:

M. McCue, Esq.

Provincial Prosecutor

D. Chatten, Esq.

Counsel for the accused

\*\*\*\*\*

i  
Table of Contents

ONTARIO COURT OF JUSTICE

5  
T A B L E O F C O N T E N T S

WITNESSES	Exam. In-Ch.	Cr- Exam.	Re- Exam.
Joi Moller	2	11	
Christine Quenneville	26	31	
Frank Eldridge	37	39	

15  
\*\*\*\*\*

E X H I B I T S

EXHIBIT NO.		PAGE
One	Photo of back of defendant's truck	8

\*\*\*\*\*

25  
PUT IN ON PAGE

Reasons for Judgment	45
----------------------	----

30  
\*\*\*\*\*

Wednesday, March 22, 2017

U P O N R E S U M I N G :

2:28 p.m.

5  
10  
15  
20  
25  
30

MR. McCUE: The next matter is number nine from the morning, Eldridge.

MR. CHATTEN: Good morning, Your Worship.

THE COURT: Good afternoon, Mr. Chatten.

MR. CHATTEN: Oh sorry, good afternoon, I apologize.

THE COURT: Good to see you.

MR. CHATTEN: For the record, my name is Chatten, first initial D. for David. I'm representing Frank Eldridge who is present here beside me.

THE COURT: Thank you.

MR. CHATTEN: You can state your name.

MR. FRANK ELDRIDGE: Frank A. Eldridge.

THE COURT: And are you ready for trial, sir?

MR. CHATTEN: We are ready for trial.

THE COURT: Thank you.

CLERK OF THE COURT: Frank Eldridge, you are charged on the 20th of August 2016 at Bath Road between Bayview Road and Edgewood Drive, Loyalist Township, did commit the offence of did drive a commercial motor vehicle on a highway following too closely contrary to Section 158(2) of the *Highway Traffic Act*. How do you plead,

R. v. Frank Eldridge  
Joi Moller - Ex. In-Ch.

sir, guilty or not guilty?

MR. FRANK ELDRIDGE: Not guilty.

CLERK OF THE COURT: Thank you.

THE COURT: You may be seated, gentlemen.

MR. McCUE: There are two witnesses. The first witness is a civilian witness, Joi Moller. And there's also Constable Quenneville. Perhaps if the witnesses could be excluded from the courtroom, Your Worship?

THE COURT: Thank you. Ms. Moller, would you please wait in the hallway until we are ready to hear your evidence? And Constable Quenneville as well. Thank you.

MR. McCUE: Do you have any witnesses other than your client?

MR. CHATTEN: No. I just have my client as witness who may or may not be called.

THE COURT: Thank you.

MR. McCUE: Okay. So the first witness is Joi Moller.

JOI MOLLER: SWORN

EXAMINATION IN-CHIEF BY MR. McCUE:

Q. Now, Ms. Moller, I understand that you were operating a motor vehicle on, it looks like Bath Road on the 20th day of August last year at about 7:00 in the morning.

A. Absolutely.

Q. Is that correct?

A. Yes.



Q. And an incident took place while you were driving on that occasion. Is that correct?

A. Ah, yes.

5 Q. Okay. I'm going to stop you right now. I'm just going to say, can you tell us what happened as you're driving at about 7:00 that morning on Bath Road? Take your time and tell us what happened.

10 A. It would help if you led me through it a little bit.

Q. Well, I can't really --

A. Because I can go back as far as my --

Q. Ma'am, I can't lead you. I can't --

A. No, that's not what I mean.

15 Q. -- provide you with leading questions.

A. No. What I mean is I will --

Q. You're going to have to tell us what happened and then maybe I can assist you after that.

20 A. Just bear with me when I - if I'm a little bit more thorough. I was driving in the left lane heading - heading west on Bath Road. I looked behind me in the rear view mirror and as I - at that time, I was passing by the marina and I looked behind me and there was a large white  
25 truck just passing by the overpass on - just by Bayridge and he was travelling at a high rate of speed. My first inclination was to go into the right lane, because he was, again, a large truck going very quickly. About a maximum of  
30 five seconds later, realizing that I could not stay in the right lane, I indicated that I was going to turn to the left lane, which I did. I believe there was enough space between

R. v. Frank Eldridge  
Joi Moller - Ex. In-Ch.

5 myself and that vehicle to do so safely, presuming that he, like me, saw the 50 kilometre an hour zone approaching and I was still in the 60 kilometre zone at that time. I know the speed I was going. I could tell you what that was if you'd like to know.

Q. How fast were you going?

A. I was going 78 kilometres an hour. He was going faster.

10 Q. You were going 78?

A. Correct.

Q. And he was going faster than you?

A. Correct. It was a clear day. There was no other vehicles on the road and that was 7:00 in the morning, so it was a fair speed to be going there. Anyway, I entered into the left lane still in the 60 kilometre hour zone approaching the curve, which was going to be going left that is right around the area where it goes down to 50 kilometres an hour and that's an area with a gas station, a Tim Hortons, the - the Collins Bay crossing, so generally it's a busy intersection. And having done that intersection many, many times, I - of course I'm going to slow down going through there, because people have - are want to jump out at any time. So my assumption was and as a normal vehicle would slow down, like I would going through there, and looking behind me I realized that this gentleman wasn't slowing down. I still had to go straight, so I was basically trapped in that lane. I tapped on my brakes to indicate that I was, in fact, going to be slowing down for real, coming into the 50 zone. I slowed down to 60. He either couldn't or wouldn't slow down and

15  
20  
25  
30

R. v. Frank Eldridge  
Joi Moller - Ex. In-Ch.

5  
10  
15  
20  
25  
30

proceeded to swerve to the right, honking his horn as he did so, and swerved to the left and of course I was honking, too, because I mean - and at that point, I realized it was a septic truck and it was very, very large and he was continuing at a very high rate of speed, because I - again, I was going 60. It took me miles to catch up to him to be able to even get his licence plate at which point I took a picture or actually my husband did, he was beside me, took a picture of the licence plate. And at that point, that's when I called the police and I continued following him until we got a hold of the police and gave the story.

Q. Okay and how did you give the police your story? Did someone show up and talk to you at the side of the road?

A. No, no. I actually - I actually had to use my cell phone. My husband tried to explain the situation and we put it on speaker and just - yeah, so hopefully that's not so wrong, but yeah, we were pursuing him just to make sure that, you know, he didn't go anywhere.

Q. And do you recall the police constable you were talking to on the phone?

A. Yes. It was Christine - Christine - it starts with "Q".

Q. Quenneville?

A. That's the one, yes.

Q. Okay and she's here --

A. But anyway --

Q. -- too.

A. -- I was able to, I was able to, yes, I was

able to talk to her for quite a while. I subsequently made my statement. She subsequently caught up to the defendant, got his side of the story. Initially --

5 Q. Can I just ask you a couple of questions?

A. I was just going to --

Q. Go ahead.

A. -- can I just finish?

Q. Go ahead.

10 A. Initially, I thought that he was driving recklessly and that's what I told the officer.

Q. Were you there when she caught up to the defendant?

A. No.

15 Q. Okay and when you gave your statement to the police officer apart from the telephone conversation, did you do that in person?

A. No, I - I spoke - I just spoke with her and then after that we corresponded by e-mail.

20 Q. Okay and what sort of description did you provide to her with respect to the truck that had gone by?

A. I said white truck and I gave the licence plate and then I read on the back what the - what it was, it was a septic truck.

25 Q. Okay. Do you recall exactly what it said on the back of the vehicle or just --

A. I have a picture of it.

Q. Do you recall --

30 A. I took - like this was back in August, so I've taken photographs. I took Google photographs of the

R. v. Frank Eldridge  
Joi Moller - Ex. In-Ch.

area. I've - yeah, so I've got a - I also kept all the  
correspondence between myself and the officer, so any specific  
questions I could call --

5 Q. I didn't know who took these pictures, but  
I'm thinking now that it was --

A. There's one picture of the truck.

Q. Yes.

A. That I sent to the officer.

10 Q. I'm going to show you this.

A. Oh yeah those are my pictures, yes, yes.

Q. And tell the court, are these the pictures  
that you took?

A. Yes.

15 Q. Okay --

A. Well, my husband took it, but yeah, we were  
in the same vehicle --

20 MR. CHATTEN: Objection, Your Worship. If this  
lady didn't actually take the picture, I would  
take offence to her being able to refer to it  
not being the author of it.

A. Well, I was in the car and it was my camera  
and I handed it, you know, off to my husband and --

25 MR. CHATTEN: I've leave it to Her Worship to  
decide.

THE COURT: What is your reply to the objection,  
Mr. McCue?

30 MR. McCUE: Well, she said herself, she's in the  
vehicle. I'm about to ask her if she recognizes  
the truck and she can say that she --

R. v. Frank Eldridge  
Joi Moller - Ex. In-Ch.

A. I have the photograph on my phone which I handed to my husband, so it's my photograph and I sent that photograph to the officer.

5 THE COURT: I am satisfied that the exhibit is a true picture of a - is a true likeness of a picture that was taken in your presence.

A. Yes, yes.

MR. McCUE: So that's the truck picture.

10 A. Correct.

MR. McCUE: Okay. You have those pictures --

MR. CHATTEN: Yes, I do. Thank you.

MR. McCUE: I can file it as an exhibit?

MR. CHATTEN: That's good.

15 THE COURT: Exhibit Number One is filed.

EXHIBIT NUMBER ONE: Photo of back of defendant's truck - Produced and marked.

20 MR. McCUE: Q. Now, as you were driving on this section of Bath Road westbound with that truck behind you, how close behind you would that truck have been?

A. When I first saw the truck it was - can I -  
25 do you have the picture of the - of that section of Bath Road? Because I can show you exactly where I was. I have a picture of it.

Q. I don't have a picture and I think if we didn't give a picture or a copy of the photo to Mr. Chatten,  
30 it wouldn't be appropriate.

A. That's okay. It's a Google photograph.

5  
10  
It's just more or less to give benchmarks, but when I was at the marina, which is approximately halfway between Bayridge and Collins Bay, when I was at that point, I looked behind me in my rear view mirror. And what appeared was that the truck was just passing the overpass. So based on that five seconds later and coming back, I would say that the truck was half that distance, so I would say between 100 and 200 meters between myself. So if he had been driving a car, it wouldn't have been an issue, because it would have been safe to go in front. The issue was that he was going faster than me and could not slow down.

Q. How close behind you did he get?

15  
A. To the point where had I - had I not - had he not gotten out of the way - gotten - had he not swerved to the right, he would have hit me. I was prepared at that point if he hadn't swerved to the right to basically accelerate, because he was not slowing down.

20  
Q. Okay. So again I'm going to have to ask you in meters how close behind you would he have been?

A. Objects in the mirror are closer than they appear in the mirror and it was pretty darn close.

Q. But again --

25  
A. I - you know what, sir? I can only tell you from what I saw in the mirror and it was very, very close, too close that he would have hit me had he not swerved.

30  
Q. But you're not able to tell us what distance that would have been.

A. I'm driving a car --

Q. No, I'm just asking you a question.

A. -- and I'm going fast, so he got fast.

Q. I'm not trying to get in an argument with you.

A. No, no, no, I'm just --

Q. I'm just trying to ask you if you can tell us how many meters behind you his vehicle would have been at some point in time when he was following behind you when --

A. I did not see him swerve.

Q. -- you're driving down the road.

A. I saw him beside me. But when I looked in the mirror and was slowing down, he was under 50 meters - no, okay. I have a statement that it was between 50 and 100 meters. So when I looked in the mirror, I could see his whole vehicle. I wasn't like I was seeing only part of it. I could see his whole vehicle, so you know, I'm not accustomed to determining distance. But in the time it took me to turn back around and - and continue going straight, it was at that point that he ended up swerving to miss me. My impression was the man was still going faster than me.

Q. Okay and this section of Bath Road, it's in the city of Kingston, is it? Or which municipality?

A. It's called Collins Bay.

Q. Collins --

A. It's called - it's literally Collins Bay, because it's at Collins Bay Road. I think it is outside of Kingston, but I - that's - it's in Greater Kingston.

Q. Would you recognize the person that was driving that vehicle if you saw them again?

A. I believe so.



Q. You think you would?

A. I - yeah, because he gave me - actually gave my husband the finger.

Q. Okay.

A. But again --

Q. Do you see that person in court today?

A. I believe it was - I believe it was the gentleman with the beard that was over there. This gentleman here.

Q. Indicating the defendant, Your Worship.

A. Yeah.

Q. Okay. Thank you. Those are the questions that I have. Mr. Chatten may have some questions for you.

THE COURT: Go ahead, sir.

CROSS-EXAMINATION BY MR. CHATTEN:

Q. Ms. Moller --

A. Actually it's Mrs., but that's okay.

Q. Mrs. Moller, I apologize. Mrs. Moller, I understand that these events may have been very stressful for you if, in fact, they did take place. At one point you mentioned that you saw the vehicle coming up at a high rate of speed in going along those --

A. This was when I first saw him, yes, yes, which caused me to react, to move to the right, yes.

Q. Okay and you moved to the right and you said because you feared for your safety according to --

A. No, I - I didn't fear for my safety at that point. I was just aware the vehicle was there.

Q. So why did you move to the right then? Just to be a hundred percent clear for the court.

5 A. Because I've taken defensive driving before and I believe that it's best to be aware of the vehicles on the road and I was assessing that vehicle.

Q. Okay.

10 A. But if - if I was turning right or if I could have stayed in that lane, I - I certainly would have. I did not have that option. I was going straight.

Q. Was there something keeping you from turning right when you entered the right turn lane? Was there like another --

15 A. I wasn't in the right turn lane at that time.

Q. Oh.

20 A. I - by the time that I went into the left, back into the left lane, it was not in the predetermined right turn lane.

Q. Okay and just to be clear --

25 A. Do you understand that if you're in that lane, you have to turn right? I was still in - in the area with the dotted line.

30 Q. In the area of the dotted, thank you, okay. Now, you've told the court today you were breaking the law that day. You were exceeding the speed limit significantly; is that correct?

A. I was going faster than the posted speed limit, but I believed it was at a - at a reasonable rate of speed, because I was in control of my vehicle

Q. I see and were you in a hurry? Were you going somewhere that day?

A. No, actually I wasn't in a hurry at all. I was just - it was just - I'm used to that stretch of road. There was virtually no one else on the road. And again, I was in control of my vehicle. It was - it was not in a - in a residential area. It was an open area. I was not - I was approaching an area that - that had more businesses, which is why I felt it was imperative to slow down to much closer to the speed --

Q. Now, when you say slow down, do you mean slow yourself down or slow the vehicle behind you down as well?

A. Slow myself down, because I'm entering into the - into the 50 kilometre hour zone, which I went down to 10 kilometres above the speed limit, which actually was 60 kilometres an hour in that zone --

Q. So still speeding during the whole --

A. I was, but - but I was aware that the vehicle behind me wasn't that - going faster and may or may not have been aware that he was, in fact, entering a 50 kilometre hour zone. So given the benefit of the doubt --

Q. Fair enough. I'm going to stop you there actually.

A. Given - just a minute - given the benefit of the doubt --

Q. Actually I'd like to stop you.

A. You asked me --

THE COURT: Okay. You stop when you are asked

to stop, please.

A. Yeah. He asked me a question. I didn't answer it.

5 MR. CHATTEN: Q. That's okay, too. Take me back to this actual incident. You stated at one point you did move to the right, because you saw the truck coming up quickly. Why on earth did you pull back in front of the truck?

10 A. Again, sir, as I was trying to explain to you, I had no choice but to be in the left lane.

Q. Could you have turned right? Could you gone around the corner in the right turn lane?

15 A. There was - there was no - there was no need to do that, sir, because I --

Q. But there was a --

A. -- I was not avoiding the truck. At that point I was not avoiding the truck.

20 Q. I'm aware of that. I hear you.

A. So I was not anywhere near the right turn lane. I was already in the left turn lane - beg your pardon - I was already in the straight lane before the curve, before the 50 kilometre an hour zone, I was already in that lane. Your - your defendant was coming up behind me.

25 Q. Yes.

A. At the time when I changed that lane, he had every opportunity to adjust to the fact that I was coming into the lane. I believe there was enough space between myself and the defendant to be able to slow down.

30 Q. Fair enough.

A. And had he been in a car, he would have been able to do so.

5 Q. Fair enough. I'm just going to move on past this point. Just to clarify, you were honking your horn while this was going on?

A. I honked my horn when he went by me on the right --

10 Q. Okay. Thank you. That's fine.

A. -- as he swerved by me.

15 Q. That's fine.

A. That's when I honked my horn.

20 Q. Fair enough. Can you tell me about the phone call you made before you called the police?

25 A. What?

30 Q. Did you make a telephone call to anyone before you called the O.P.P. that day?

A. No. I don't believe so.

35 Q. Did you call the number on the back of the truck?

A. My husband did.

40 Q. Thank you very much. Can you tell me, I know it's a bit of hearsay evidence here, but so far today we're allowing things like that in, since you were privy to that conversation, your husband's side of the conversation, what did your husband say to the person on the other end of the phone?

45 A. I'm not really sure.

THE COURT: Well, Mr. Chatten --

A. Actually, I don't actually - I don't

actually recall. I don't actually recall.

5 THE COURT: Stop, madam. We allowed a picture that was taken by her husband in her presence on her cell phone. You may consider that hearsay. I am not certain that we are going to allow a statement made by someone --

A. Yeah, I don't remember it, actually.

10 THE COURT: -- who is not present. And it is always good to only allow one person to speak at a time.

A. Sorry.

MR. CHATTEN: Fair enough.

15 MR. CHATTEN: Q. Just to be clear, there was a phone call made to my client before the police were called that day; is that correct? From the vehicle?

A. In - in - in hindsight, it's possible --

Q. Is it yes or no?

20 A. -- I don't - I didn't - when you asked the question, I was not sure that it had been made --

Q. I'm going to suggest --

25 A. -- but I would not be sure. I would not be surprised by the time that we caught up to that person we called to complain about that driver, yes.

Q. You called the police or you called the company?

30 A. I didn't call the police. I didn't call the company.

Q. How come you didn't call the police?

A. My husband - my husband called the number on

the back of the truck --

Q. Okay.

A. -- to complain about that particular driver's behaviour. I don't know whether we called before we called the police or after. I'm assuming --

Q. I'm going to suggest to you that it was beforehand, well beforehand. Would you agree with that?

A. I - I - I would not disagree with that, no.

Q. Okay and would you agree that you called this number before taking the picture? Or whoever took this picture called my client before taking the picture?

A. It would have been around the same length, around the same time, because first of all, it took us a while to catch up to that --

Q. That's another good --

A. -- it caught - just a minute - he was - he continued at a high rate of speed through Collins Bay. I did not catch up to him for quite some time.

Q. Okay.

A. And so at that point when we saw the vehicle

--

Q. Actually, I'm going to interrupt you there.

A. -- we got - we needed - just a minute - we needed --

Q. I'm going to stop you there, actually, ma'am.

A. -- to get the picture for the - for the licence --

Q. You used the term "pursued him." Is that

what you considered yourself to be doing at that time?

A. I was driving in the same place that I was going to go already.

Q. Admittedly --

A. And - just a moment. You asked me the question. I was going to go to Amherstview.

Q. Okay.

A. But at the same time in discussing with my husband this incident, we decided to call the police and --

Q. And that was after calling this person, correct?

A. I don't remember.

Q. Okay. It was upsetting that day.

Everything that took place --

A. Just - sir --

THE COURT: No. You stop, madam, and let this gentleman ask the next question.

A. He's - yes, yes.

MR. CHATTEN: Q. It was quite upsetting to go through that if, in fact, it did happen. Would you agree?

A. Yes.

Q. Okay. You said when you called the police, you were speaking to Officer Quennen - I apologize I'm not pronouncing the name properly.

A. Quenneville.

Q. I'm terribly sorry. Quenneville?

A. Yes.

Q. Okay. Is it possible that maybe you called a police dispatch number, like a 911 number or possibly a



toll-free number?

A. It was a dispatch number, but it - yeah.

Q. Is it - I'm just going to suggest to you and again I know it's difficult to say for sure. Is it possible that maybe you weren't speaking to that officer during the initial telephone call, but rather during subsequent phone calls?

A. No, no.

Q. So she answered the phone call when you called in initially?

A. I didn't - I actually didn't make the initial phone call. It was my husband. I - he passed the phone to me to explain why we were making the report and it wasn't that the same officer who then pursued him and got back to me.

Q. Fair enough. So I note here from the e-mail that you sent to this officer, the e-mail came directly from you and it's signed by you at the end there as well.

A. Correct.

Q. Are you summarizing your husband's evidence there or are you just putting forward your own version of the events?

A. I'm putting forward my version of the events, but I was believing that my husband could corroborate it --

Q. Okay.

A. -- if they needed to ask any questions. At this point, we were just making a report.

Q. And did you guys talk about this happening

afterwards? Like, I imagine there's probably some things that were - a conversation maybe took place afterwards.

A. We had to make a determination of whether we were going to call the police, yeah.

5 Q. Okay. What factors did you use to decide that? Was your speeding a factor in that?

A. My speeding or his speeding?

10 Q. I was referring to your speed, 78 in a 60, I believe it was that you said.

A. No, the thing is, is that - no, my - I believe I was driving safely.

Q. Okay and --

15 A. And so you're - you're talking about my speeding, but again, it's sort of irrelevant when it's a relative speed difference.

20 Q. I think we have two versions of events that may be putting in here today as well. Just to go back and clarify some other points, I want to move this along as well. You did state that it was up to 100 meters away in your statement, correct? The vehicle, when it was approaching?

A. The thing is, is that when I changed lanes, there was adequate - there was adequate room for me to do so.

25 Q. With the speeding vehicle behind you. You're saying there was adequate time with the speed closing in --

30 A. Yeah, I believed - I believed that any normal vehicle would - would be slowing down closer to the closest - posted speed limit of 50 kilometres an hour.

Q. So in essence, you're slowing traffic down

to comply with the laws in that jurisdiction.

A. I'm slowing down to comply with the laws. I don't know about him.

5 Q. But you were speeding - you were speeding at least 18 kilometres over the speed limit before this incident happened. Is that a fair statement?

A. Yes, that's a - that's a fair --

Q. Thank you very much. I think --

10 A. It's 60, but when I hit the 50, I went down significantly to a - to a 60.

15 Q. I'm going to take you back to the statement that you sent here to Christine Quenneville. It's quite detailed here. You've included a number of different items in this particular statement.

A. Yeah, I tried to be thorough.

20 Q. I'm not going to go through everything in this statement, but how come the telephone call to the accused was not listed in this statement? How come you never made any reference to telling the police about the version of events?

A. Because I don't --

25 MR. McCUE: If it's all right with you, Your Worship --

A. -- I don't remember that if you went into a

--

30 MR. McCUE: -- if Mr. Chatten's going to refer to a statement, perhaps the witness should be able to have a copy of the statement in front of her.

MR. CHATTEN: I understand she has the document.

R. v. Frank Eldridge  
Joi Moller - Cr-Ex.

A. I have - I have a copy of the statement.

MR. McCUE: Okay.

A. And any other subsequent statement I made,

so yes.

THE COURT: I'm going to pause. Madam, if you would like to look at your statement --

A. Yes.

THE COURT: -- you may do so.

A. Thank you.

THE COURT: And we want to make sure that Mr. Chatten is referring to the same statement

--

A. Sure.

THE COURT: -- that you are looking at.

A. Yes.

THE COURT: It would seem by the black rectangle that they might be the same.

MR. CHATTEN: Q. Can you tell me where in your statement it refers to the telephone call that you made prior to calling the police?

A. I didn't make the phone call.

Q. You were in the vehicle when a call was placed --

A. Yes.

Q. -- on behalf of --

A. Correct.

Q. -- either yourself or someone --

A. Why didn't I put - why didn't I call --

THE COURT: Madam, do not start talking until

this gentleman is finished.

A. Yes, yes.

THE COURT: And he will not start talking until you finish.

A. I apologize.

THE COURT: Okay, thank you.

MR. CHATTEN: I will do my best as well, I'm sorry.

MR. CHATTEN: Q. Why didn't - again, I know it's not in here, but why didn't you raise that as an issue with the O.P.P. officer when complaining about the behaviour?

A. It didn't seem relevant, because we - I don't - I didn't have any idea of anything that transpired on that telephone call except the fact that my husband complained to whomever was on that, at the end of that phone about the driver of that particular truck. So that - that was after --

Q. That's a little different than calling the police though. That's kind of taking it a bit personal calling somebody to confront them about their behaviour as opposed to calling the authorities who have the authority to deal with that behaviour. Would you agree?

A. I have no opinion on that. It wasn't really

--

Q. I'm just --

A. -- it wasn't, you know what? You know when you see a truck, you have problems with my driving? Call that number. That's what we assumed it was.

Q. Was that listed on the back of this truck?

A. I don't remember.

Q. I can have the picture shown to you, ma'am.

A. The point is that the telephone number was on the back of the truck and you seem to be - I don't really have any - see any significance in that particular telephone call.

Q. Fair enough, but let's move along. Can you tell me what gestures you made while being passed by the truck? Did you maybe give a hand sign --

A. I didn't --

Q. -- or do anything with --

A. I didn't make any gestures.

Q. -- your hands?

THE COURT: You are waiting until the question is asked.

MR. CHATTEN: Q. Did you do anything with your hands?

A. No.

Q. Maybe have fingers sticking up or anything like that?

A. No. My husband did.

Q. Okay. Why did he do that? I know it's difficult for you to say that, but you were --

A. Why did he do that? Because he nearly - that truck driver nearly killed us.

Q. Okay and just going back into things, just - I'm going to make this one of my last few questions here. When - you mentioned there was a period of time that he was approaching quickly and then went around and passed you. Did he pass you at 80 kilometres an hour or do you know how fast

he may have been travelling when he passed? I know it's difficult to say. Actually, I might --

A. I know the speed I was going.

5 Q. -- I'm going to stop. I'm going to reword my question. How fast do you think you were travelling when you were passed by the larger truck?

A. Sixty.

10 Q. Sixty. Thank you. I think those are my questions for the witness subject to my friend's.

THE COURT: Anything arising out of that, Mr. McCue?

MR. McCUE: No, thank you, Your Worship.

15 THE COURT: Well, madam, thank you very much for taking the time to come this afternoon to give evidence. You are welcome to stay until the trial is over or you may be excused. It is up to you. I know you have been very patient. It had been scheduled for earlier.

20 A. Thank you. You don't have any questions for me?

THE COURT: Oh, I listen, my role is to listen.

A. Okay, thank you.

25 THE COURT: I let everybody else ask questions.

A. Thank you.

THE COURT: Mr. McCue?

MR. McCUE: Yes, it's Constable Quenneville, the next witness.

30 THE COURT: Thank you.

R. v. Frank Eldridge  
Christine Quenneville - Ex. In-Ch.

CHRISTINE QUENNEVILLE: SWORN

EXAMINATION IN-CHIEF BY MR. McCUE:

5 Q. Constable, you're a member of the Ontario  
Provincial Police Force, correct?

A. I am.

Q. And a peace officer within the meaning of  
the *Highway Traffic Act*?

A. Correct.

10 Q. Were you on duty the 20th of August last  
year?

A. I was, sir.

15 Q. And on that date did you have occasion to  
investigate a complaint involving the defendant, Frank  
Eldridge?

A. I did, sir.

Q. Can you describe to the court how that  
investigation came to take place?

20 A. I can. I do have my notebook with me and I  
have it with me to refresh my memory only in the event that I  
need to recollect some details on times and events. I made no  
additions or deletions to the notes that I took shortly  
thereafter from the incident I investigated on the 20th of  
25 August.

THE COURT: Mr. Chatten, what is your position?

MR. CHATTEN: That is on consent, Your Worship.

THE COURT: Thank you. Go ahead, Officer.

30 A. Thank you. So approximately 7:30, I  
received a call that a complainant by the name of Joi Moller  
contacted the Provincial Communication Centre to report a



R. v. Frank Eldridge  
Christine Quenneville - Ex. In-Ch.

5 traffic complaint that had taken place give or take  
approximately 25 minutes prior to her calling the police. I  
returned her call shortly after I received mine, shortly after  
7:30. We engaged in a telephone conversation, myself and  
Mrs. Moller, and I received some details as to what her  
10 complaint was. She explained to me the incident that took  
place in the area of Bath Road leading in to the area of  
Loyalist Township where my zone was my assignment for that  
day. She explained the incident.

15 At the time she was very, I would say she was  
very upset about what had just taken place earlier on within  
the hour prior to that and that she wished that police  
investigate and I questioned her as to the details of the  
sequence of events and she explained to me the erratic driving  
that took place with a tanker. She had the licence plate that  
she provided to me and a description of the vehicle being a  
20 tanker and so on and so forth. So with that information I  
asked her if she would be willing to provide an actual  
statement following all the facts and the details that she had  
just disclosed over the phone and she said she would. And I  
asked her if she would be willing to, as well, giving her the  
heads-up that when we investigate traffic complaints, we do  
25 sometimes lay charges. If that be the case, would she be  
willing to come forward or have this be a court session of  
being a witness and she agreed that she would be willing to  
come that far and if charges were to be laid that she would be  
30 a witness for this incident.

So I proceeded to investigate further with the  
information she gave me. I made some checks using my police

R. v. Frank Eldridge  
Christine Quenneville - Ex. In-Ch.

computer records management system and our CPIC and our Ministry of Transportation website to further investigate the ownership of the licence plate holder. Do you want me to continue?

5

Q. Yes, please.

A. So the, you know, verifying the licence plate of the Ministry of Transportation which I deemed to be a actual vehicle under the *Highway Traffic Act*, a 6000 kilo, I believe I have to verify that, but it was a big tanker, commercial vehicle truck, which matched the description that she gave me at the time that we had our conversation. And further to that, it was registered to a company and also a company with the name of a woman and I checked my records management system as well to see if this company was in our records management system. And it was and it was attached to a phone number which matched a phone number that was to the company. So just Googling things up as anybody would, company, phone number, website. So I call that number a minute or two later after investigating that part of it and I called that number and a male voice picked up and the male voice, I asked who was speaking and the male voice identified himself as the accused before the court today. Therefore, verbally identifying himself to me by way of telephone saying that his name was Frank Eldridge and confirmed his date of birth being the 14th of November '56.

10

15

20

25

I identified myself being Officer Quenneville of the O.P.P. and told him that I was investigating a traffic complaint and that an incident had taken place within the hour previous to, so shortly after 7:00 and then I told him that

30

R. v. Frank Eldridge  
Christine Quenneville - Ex. In-Ch.

5 since I was engaged in investigation at this point, I verbally cautioned him that in the event this investigation would lead me to lay some charges that he'd have to know that charges could be laid depending on the results of this investigation and disclosure. And I asked him basically if he was willing to tell me what happened. I understand stories often have, in traffic complaints, two sides of the story.

10 And we had a casual conversation regarding what had took place and he advised that indeed there was an incident involving a vehicle which was described as a smaller vehicle, described to me as a Saturn, which I was made aware by Mrs. Moller that that's what she was driving at the time, was a vehicle, it was a Saturn. So he very briefly told me a  
15 little bit what had happened at the time involving this Saturn and that saying that the other vehicle had cut him off forcing him to make some evasive actions and that he felt that the other vehicle had caught him off. He had gone around this vehicle and that was pretty much the Coles notes of our  
20 conversation at the time. And I advised him that the disclosure I was receiving from the other, from my complainant was not the same, and the sequence events were not the same, and that I was going to further investigate this. I did let  
25 him know before we completed our conversation that charges could be laid in the event that I found it deemed that an offence had taken place under the *Highway Traffic Act* and he confirmed with me he still lived in Picton and that was  
30 overall the end of our conversation.

So I followed up with the investigation. I did receive further disclosure from the complainant who gave me a

5 full statement and details of what happened, concluded that statement that I received via e-mail, through the telephone, and she said yes, that was me, yes, I sent you this disclosure. And I said, okay, well, I am going to proceed with charges and that because the accused before the courts did live in Picton that I would follow-up with, by way of summons, and then we take it from there.

10 I did make an attempt to contact the actual owner of the company, but the voicemail was full. I tried several times and the voicemail was always full, so I wasn't able to make the registered owner and the owner of the actual company, which is a Pooper(ph) Service Company, made aware of what had happened and the involvement with it being any  
15 interaction with the driver considering it was her company and her truck. So I don't even know if the owner of the company knows that there was investigation or charges, but I made an attempt to contact the owner.

20 Q. Now, the defendant - not the defendant, excuse me - the civilian witness, Ms. Moller, indicated this event took place on Bath Road just east of Collins Bay Road. Which municipality would that be in?

25 A. That would be in the municipality of the City of Kingston.

Q. And that section of road, is that a highway within the meaning of the *Highway Traffic Act*?

A. It is, sir.

30 Q. Okay and you served a summons upon the defendant or did someone else serve it?

A. The jurisdiction of Prince Edward County I

R. v. Frank Eldridge  
Christine Quenneville - Cr-Ex.

believe would have been the Prince Edward County O.P.P.

Q. That's what I thought.

A. Okay.

Q. I don't think service is an issue. If I could have that photograph just for a second, please? I'm going to show you a photograph that the defendant - not the defendant, I keep saying that - the civilian --

A. The complainant, yes?

Q. -- witness, yes, complainant indicates is with respect to the truck that's referred to in the incident. Does that photograph appear to be the type of vehicle that was described to you?

A. Yes, it was.

Q. Okay and that vehicle that you see there, is that a commercial motor vehicle within the meaning of the *Highway Traffic Act*?

A. It is, sir.

Q. I'll give this back to the clerk. Okay. Those are all the questions I have. Mr. Chatten might have some questions for you.

A. Mr. Chatten.

MR. CHATTEN: Not too many.

A. Good afternoon.

CROSS-EXAMINATION BY MR. CHATTEN:

Q. Very little, but the only thing I want to clarify and you've stated it very clearly so far, you've stated 25 minutes elapsed between the alleged incident and the time that you took the telephone call?

R. v. Frank Eldridge  
Christine Quenneville - Cr-Ex.

A. Approximately.

Q. Of the report?

A. Correct, yeah - yes.

5 Q. Okay. Is it safe to say that things could have taken place during that time that you may not have been privy to? I know that's a difficult question to answer.

A. In between the time?

10 Q. Yes. I'll withdraw the question. It's too broad.

A. Okay.

Q. What's the posted speed limit on this particular highway?

15 A. The stretch of the highway where we - particularly the incident, the intersection itself is, it's a bit tricky. It goes from 60 to 50 and 50 to 60 and then back in the 50. So to my understanding of where that stretch is, which unfortunately there's a jurisdictional line right there, so it makes it a bit confusing for people. So the incident  
20 where, from my understanding from the complainant's observation of seeing this truck for the first time would have been in the 60 pass zone.

25 The intersection itself where the evasive action took place area, that would have been past Collins - well, in Collins Bay area and Bath, that is 50 to my understanding going into an extended of 50 through a school zone turning back to 60 into Loyalist Township.

30 Q. Very well put, Officer. I think it's excellent.

A. I'm not sure if you say distance, but I can

R. v. Frank Eldridge  
Christine Quenneville - Cr-Ex.

tell you that within --

Q. I think you've covered exactly - you covered exactly where it is.

A. Yeah, within three kilometre spans, it goes from 60, 50 to 60.

Q. But nowhere in that span is it 70 kilometres or 80 kilometres per hour?

A. No, it isn't.

Q. Okay. Now, I'm just going to - actually I'll ask. The civilian witness --

A. Yes.

Q. -- she obtained your e-mail address from you directly?

A. I did give her my e-mail address over the phone.

Q. And did you give my client your e-mail address to provide a statement?

A. I don't believe I did.

Q. Is that normal practice?

A. Well, he didn't really ask for it either, but we had the conversation over the phone and --

Q. Yes, I definitely appreciate you're the investigator and it's up to you to use what --

A. Yeah, yes. I don't recall if I gave him my e-mail address over the phone or not, to be honest with you.

Q. Did you ever pay him a visit to maybe take a statement from him in person?

A. No, I did not.

Q. Okay.

R. v. Frank Eldridge  
Christine Quenneville - Cr-Ex.

A. We had a conversation over the phone --

Q. So definitely it is appreciated you cautioned him about a statement. He spoke to you on the telephone about that and --

5

A. Correct. That's correct.

Q. -- based on that, you gather your information.

A. Yes.

10

Q. I think those are - those are my questions for the officer.

THE COURT: Anything arising, Mr. McCue?

MR. McCUE: No, thank you, Your Worship.

THE COURT: Officer, thank you for attending.

15

A. Thank you.

THE COURT: You may be excused.

A. Thank you.

MR. McCUE: No other evidence to call.

20

THE COURT: Thank you. That is the case for the Crown.

MR. McCUE: Yes.

THE COURT: Mr. Chatten, do you wish to call evidence?

25

MR. CHATTEN: Before calling any evidence, I'd like to make a motion for non-suit, if possible.

THE COURT: Based on what?

30

MR. CHATTEN: I haven't heard any evidence called here today that would establish that greater speed of the accused vehicle was travelling in excess of 60 kilometres per hour.



5  
10  
15  
20  
25  
30

Section 158(2) only applies in cases where the vehicle is travelling in excess of 60 kilometres per hour, which would be 61 kilometres or above. There's been no evidence here lead today that can prove beyond a reasonable doubt the speed of any of the vehicles. The only information we have relating to speed again is based on an opinion, which can't be considered by the court, because it's not an expert opinion and that opinion in itself was 78 kilometres in a 60 zone and again, that was coming from the civilian witness in this particular case. I would respectfully suggest that there's nothing here to show that this law was, in fact, in place at that point in time in that location based on the circumstances described in the court here today.

THE COURT: Mr. McCue, what is your response?

MR. McCUE: Well, Your Worship, I would disagree with my friend. The civilian witness indicated in her evidence that she was travelling 78 kilometres per hour and that the vehicle, the defendant's vehicle was travelling faster than that behind her, so there's evidence that, in fact, he was doing 60 plus kilometres per hour. One doesn't - I don't understand this requirement that's being suggested that she has to be some sort of expert to express an opinion on her rate of speed. Do you have to be an expert to express an opinion on how many feet

5  
10  
15  
20  
25  
30

are between me and that door? These are things that people do every day. It's not a radar charge. It's not a speeding charge where the officer is using a piece of equipment and has to be trained to use that equipment. We're just looking at things that happen every day and describing what you see. So the test at this stage is, is there any evidence, which if accepted, the court could come to the conclusion that the defendant was travelling 60 or more kilometres per hour. And I would suggest that there most definitely is.

THE COURT: Anything you would like to say in response to that?

MR. CHATTEN: No.

THE COURT: Okay. Give me a moment.

Mr. Chatten, I appreciate why you've chosen the rate of speed of 60 kilometres per hour as being a specific aspect of the evidence. I note that it is the rate that is mentioned specifically in the wording of the offence under Section 158(2).

I also note the response of Mr. McCue who has indicated that if speeds are given by one driver and there is evidence that another vehicle is going faster.

And so, it would be my ruling that although there is no specific reference to your client

R. v. Frank Eldridge  
Frank Eldridge - Ex. In-Ch.

5  
10  
15  
20  
25  
30

driving more than 60 kilometres per hour, there is an inference based on the evidence of what a witness has given that it would be logical that your client was. And so based on that, it would be my position that there is some evidence that there is an indication of travelling faster or faster than 60 kilometres per hour; some evidence. Mr. Chatten, do you wish to call evidence?

MR. CHATTEN: I do. I wish to call Frank Eldridge to the stand, please.

THE COURT: Thank you. Please come around to this table, sir.

FRANK ELDRIDGE: SWORN

EXAMINATION IN-CHIEF BY MR. CHATTEN:

Q. Good morning. Mr. Eldridge, can you tell us what you do for a living?

A. I drive a septic truck.

Q. And that's a commercial motor vehicle?

A. Yes, it is.

Q. How long have you been a commercial - sorry, how long have you been a driver other than a G-licensed driver. Sorry for the question.

A. About 40 years tractor-trailer, trains, heavy equipment.

Q. Forty years of driving heavy trucks and large equipment? Thank you very much.

In your own words, can you tell us what happened

R. v. Frank Eldridge  
Frank Eldridge - Ex. In-Ch.

that day to the best of your ability?

5 A. Well, I was travelling along, it was Bath Road. It was not near the intersection. We were almost by the dealership. I was in the outside lane. So was the car in front of me. They jammed on their brakes. I slowed down, I went to the right. You cannot swerve a 20,000 pound truck. That's like not real. So I pulled to the right lane and proceeded to do this. I just carried on my way. They slowed down, went behind me. This was way before the intersection. They followed me through the intersection. I didn't hear no horns blowing. I did not blow my horn. I received a phone call once we got through the intersection saying that - it was hollering and screaming. All's I said, "Sorry, sir. I wasn't doing anything wrong. I apologize for any inconvenience." 10 And he hung up and said - well, he called and said, "I'm calling the police." Then he hung up. I proceeded to travel along and all's I could see in the rear view mirror was the car about to cut off my bumper and I was doing the speed limit on both roads. And I was, as she says, 100 to 50 meters behind her. 15 20

Q. Mr. Eldridge, the police officer asked you to make a written statement?

25 A. Not at all.

Q. Were you ever given an e-mail address to provide a statement?

A. Never.

30 Q. Did anybody ever meet with you in person to discuss this?

A. No. Well, I was surprised one day when

5 somebody come with a summons. I never had an accident in the 40 years I drove tractor-trailer or in cars and I've been snowstorms in the 401 where they crashed and I was not involved. I got stopped. The car behind me ran into me.

Q. Just to be clear, just so I cover any ambiguity, there have been a few minor traffic offences - or sorry, a few offences in your background, but no collisions that you were at fault.

A. No collisions, sir.

Q. Those are my questions for Mr. Eldridge, subject.

THE COURT: Mr. McCue?

15 CROSS-EXAMINATION BY MR. McCUE:

Q. So you were heading west on Bath Road from --

A. Kingston Sewage Plant.

Q. And where is that?

A. Sir John A. MacDonald, down by Dunlop, the plant.

Q. So where did you enter Bath Road?

A. Days Road.

Q. Okay and you're going to go by Frontenac High School?

A. Yes.

Q. Okay and then you're going to come to what I'm going to describe as a rather open stretch of road. There's a marina on one side, railway tracks on the other.

A. Yes.

R. v. Frank Eldridge  
Frank Eldridge - Cr-Ex.

Q. You're familiar with that section of road?

A. There's still houses and buildings on either side.

5 Q. Yes, there are. Mostly on the south side and mostly it's just railway tracks on the other side, but I know, you're right.

A. I'm very familiar. I go out every day.

10 Q. Okay and that section of road, what's the posted maximum rate of speed on that section of --

A. Sixty, then it drops to fifty.

Q. Okay and as you were going through that section of road, how fast were you travelling?

A. Sixty kilometres an hour.

15 Q. Okay. Now, you heard the complainant say that she --

A. Yes, I did.

THE COURT: Just wait, sir.

20 MR. McCUE: Q. Maybe you can wait until I ask you the question?

A. Sorry.

Q. You heard the complainant say that she was travelling 78 kilometres per hour. You heard her say that.

25 A. Correct and also she said that I was behind her.

Q. Yes and going faster than that.

30 A. And how could I be behind her going faster than her?

Q. Well, I can - we can go outside and you can get ahead of me and I'll be behind you, give you a head start,

R. v. Frank Eldridge  
Frank Eldridge - Cr-Ex.

you can drive 60 --

A. A head start. She was never that far away from me.

5 Q. -- and then I'll drive 80 behind you for a while --

THE COURT: Just wait.

10 MR. McCUE: Q. -- and that's how it happened, right? You think it's impossible to be behind a vehicle and going faster than it's going?

A. Well, unless I catch up to her very quickly.

Q. And you did catch up to her.

A. No, I didn't. She slammed on the brakes.

Q. But you went past her.

15 A. I veered to the right lane, put my signal on, went beside her as she had her brake lights on still and her husband was doing this out the window (demonstrating raised finger).

20 Q. So you were behind her and then you caught up to her and then you passed her.

A. I passed her when she applied her brakes.

Q. So you must have been going faster than she was going.

25 A. She doesn't know how fast she was going. I know I was doing 60. I have a GPS in my truck.

Q. But you must have been going faster than she was going in order to pass her.

30 A. I'm afraid she's wrong with her speed calculations.

Q. How can you go past something if --

R. v. Frank Eldridge  
Frank Eldridge - Cr-Ex.

A. She can't even remember if she called me.

THE COURT: Wait, wait, sir.

MR. McCUE: Q. How can you go past a vehicle if  
5 you're not going faster than it is?

A. When their brake light is on, sir?

Q. So you must have been going faster than she  
was.

A. When she applied her brakes.

10 Q. So there was a point in time when you were  
behind her and then you went by her.

A. When she --

Q. So there was a point in time when you were  
going faster than she was.

15 A. With her brake lights on, yes.

Q. Okay. So you were going faster than she  
was.

A. That's right, but not over 60 kilometres an  
hour, sir.

20 Q. And I think she said that when you went by  
her, she honked her horn at her and you honked your horn at  
her?

A. I never honked at nobody --

25 Q. Did they --

A. -- and I never heard no horn.

Q. Did they honk at you?

A. No, just...

30 Q. So nobody honked their horn.

A. No.

Q. Okay and she says that when they went by you



R. v. Frank Eldridge  
Frank Eldridge - Cr-Ex.

or at some point in time, her husband gave you the finger.

A. Yes.

Q. And did he?

A. Yes.

5 Q. And she said that you gave them the finger, too.

A. She said as she was in the right lane and I was in the left lane that her husband gave me the finger. Now if you see how my truck is, her car could be here. I would be on the driver's side. It would be impossible for me - for them to even see me in the truck.

Q. Okay. Did you give her the finger?

A. No, I did not.

15 Q. Okay. So she said that you were going more than 78 kilometres per hour and she was wrong in that.

A. Yes, she's wrong.

Q. And she said that you honked your horn at her as you went by and she was wrong in that. And she said that you gave them the finger and she was wrong in that. But were you upset about the whole incident?

A. Not at all. I wasn't doing anything wrong.

25 Q. You seem pretty upset here today, which is months --

A. Well, I am, because I'm being charged with an offence that I didn't do, which is, I'm a professional driver.

30 Q. But you weren't upset at all that she --

A. Not at all.

Q. -- according to you, slammed on her brakes

R. v. Frank Eldridge  
Frank Eldridge - Cr-Ex.

and caused you to go --

5 A. I just - go away, go around. If you look at cars in the back of trucks and people stopping and trucks hitting them, it's all over the Internet, it happens all the time, because of people that drive cars don't understand.

Q. Okay. So even though these people did these things to you and flipped you "the bird," you just treated it as another day at the office --

10 A. That's correct. It was a lovely Sunday morning.

THE COURT: Did you say a lovely Sunday morning or a lonely Sunday morning?

A. Lovely.

15 THE COURT: Lovely, okay.

MR. McCUE: Okay. Thank you. Those are all the questions that I have.

THE COURT: Mr. Chatten, anything arising?

20 MR. CHATTEN: I have no further questions for Mr. Eldridge. Thank you very much.

THE COURT: Okay. Mr. Eldridge, if you would like to come back here and sit down again, is that the case for defence?

25 MR. CHATTEN: That is, Your Worship.

THE COURT: And Mr. Chatten, I believe we are ready for submissions, please.

30 SUBMISSIONS BY MR. CHATTEN...

SUBMISSIONS BY MR. McCUE...

**REASONS FOR JUDGMENT**

D. DOELMAN (ORALLY):

5  
10  
15  
20  
25  
30

Mr. Eldridge, would you stand, please? You stand charged before this court on a charge arising under the *Highway Traffic Act* and specifically the law says that the driver of a commercial motor vehicle when driving on a highway at a speed exceeding 60 kilometres per hour shall not follow within 60 meters of another motor vehicle, but this shall not be construed to prevent a commercial motor vehicle overtaking and passing another motor vehicle.

It has been an interesting trial. Three individuals have given testimony. The investigating officer who was relying on a verbal statement, you, the driver who has been charged and Mrs. Moller, the driver who registered a complaint.

It is agreed that both you and Mrs. Moller were sharing the highway on the 20th day of August of last year and the area was on Bath Road between Bayview Road and Edgewood Drive in Loyalist Township. It is agreed that the Moller vehicle was in front of you. It is agreed that - well, on the evidence of Mrs. Moller, she says that she was travelling at 78 kilometres per hour and

R. v. Frank Eldridge  
Reasons for Judgment

5  
10  
15  
20  
25  
30

exceeding the speed limit. I find it of interest that she is very adamant that she agrees that she was driving safely and she indicated that she observed you approach and she became concerned. Mrs. Moller swerved into the right lane and then returned to the left lane. She indicated that you were "pretty darn close," but no specific distance was given. She indicated that and I quote, "It was her impression that the truck was going faster than she was." She also indicated that she believes that when she changed the lane that there was adequate space that any normal driver behind her would be slowing down. At this point she indicates that she was travelling 60 kilometres in the 50 kilometre per hour zone.

It is your evidence, sir, that you were indeed travelling behind her and that you were operating a commercial motor vehicle. You indicated that you saw the driver in front, that the car switched from the through lane, two-lane highway, into the right-hand lane, but then switched back and braked. This caused you to take evasive action that you passed her on the right and then proceeded past her. You indicated that you did not honk. You indicated that you were not upset.

R. v. Frank Eldridge  
Reasons for Judgment

It is my belief that the essential elements have not been proven beyond a reasonable doubt and therefore the matter will be dismissed.

5  
10  
15  
This section requires that there be some specific and credible evidence that the driver of the commercial motor vehicle was, in fact, speeding in excess of 60 kilometres per hour. There was no credible evidence before the court that you were. It is your clear evidence that you believe you were travelling 60 kilometres per hour. The only indication of excessive speed was that by the complainant, Ms. Moller, who admits to travelling at 78 in a 60, and then travelling at 60 in a 50.

20  
25  
Another difficulty is that in order to be a finding of guilt regarding the charge of following too closely, then there must be some evidence of the distance and there is no evidence of the test that would involve a reasonable and prudent driver.

30  
So sir, continue with your driving. I wish you safe driving. It has been a very interesting case, but the doubt always goes to the defendant. I find that there is a lack of credibility, especially on the part of the complaining driver knowing that indeed her

R. v. Frank Eldridge  
Reasons for Judgment

answers are somewhat confusing I would say at the least, but when completely, I think I find goes to her lack of responsibility is that she believes that she was driving safely all the time while she is speeding through an area that she is familiar with. Have a good day.

5  
10  
15  
20  
25  
30

R. v. Frank Eldridge  
Certification

FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

*Evidence Act*

I, Jo Lynn Dickinson, Certified Court Reporter, certify that  
(Name of Authorized Person)

this document is a true and accurate transcript of the  
recording of R. v. Frank Eldridge in the Ontario Court of  
(Name of Case)

Justice Provincial Offences Court held at 97 Thomas Street  
East, Napanee, Ontario K7R 4B9 taken from Recording POA  
Court\_20170322\_090414.dcr, which has been certified in Form 1.

*J. Dickinson (electronically signed)*

April 21, 2017  
(Date)

\_\_\_\_\_  
J. Dickinson, Certified Court Reporter

## 6. Reference Letters

- 6.1 *Justice Geoffrey J. Griffin* Page 81
- 6.2 *Justice of the peace - Sam Cureatz* Page 82-83
- 6.3 *Justice of the peace - Donna I.* Page 84
- 6.4 *Doelman Justice of the peace - Ernie Parsons* Page 85

[Go to index >>](#)



Justice Geoffrey J. Griffin



June 30, 2107

Law Society of Yukon  
302 Steele Street  
Whitehorse, Yukon Territory  
Y1A 2C5

Dear Sir/Madam

Re: David Chatten  
Application for Membership

Mr. David Chatten has requested that I provide the following reference to assist with his Application to become a member of the Law Society of Yukon. I was appointed Judge of the Ontario Court of Justice in 2004 and have presided in eastern Ontario since that time. Prior to my appointment I practice law for twenty years primarily in the area of criminal litigation.

Mr. Chatten on a number of occasions appeared before acting as a paralegal for people who were appealing a decision made by a Justice of the Peace in relation to a Highway Traffic Act matter. I always found Mr. Chatten to be very well prepared, courteous and sensible.

Mr. Chatten has shown himself to be an earnest hard working gentleman and I have no hesitation in recommending him for membership to the Law Society of Yukon if he meets all the necessary criteria.

I would be pleased to answer any questions and can be reached by telephone at 613-354-4975 or email at [geoffrey.griffin@ocj-cjo.ca](mailto:geoffrey.griffin@ocj-cjo.ca) I thank you for your attention to this matter.

Yours Truly,

A handwritten signature in black ink, appearing to read 'G. Griffin', with a long horizontal flourish extending to the left.

Geoffrey J. Griffin

His Worship  
Justice of the Peace Sam L. Cureatz  
Q.C. LLB B.A.  
Ontario Court of Justice

Court House  
15 Bridge Street West  
Belleville, Ontario  
K8P 0C7  
Tel: (613) 962-9106-1



Monsieur le juge de paix  
Sam L. Cureatz  
Q.C. LLB B.A.  
Cour de justice de l'Ontario

Palaise de justice de Quinte  
15, rue Bridge West  
Belleville (Ontario)  
K8P 0C7  
Tel: (613) 962-9106-1

November 19, 2018

Law Society of Ontario  
Osgoode Hall  
130 Queen Street West  
Toronto, ON M5H 2N6

RE: Reference for David Chatten

To Whom it May Concern,

I was called to the bar in 1975. Sammy Lawrence Cureatz Law Society #14738A . During my previous career, prior to my appointment as a Justice of the Peace in October 2002, I practiced under the title of Lovekin and Cureatz and later Lycette and Cureatz and finally in my sole capacity. During my practicing times, I was also elected four times to the Ontario Legislature, where I held a number of positions including Deputy Speaker and Minister of the Crown, and during this time, I received my Queen's Council appointment. After my political career I was appointed Deputy Judge, I was a member of the Ontario Review Board and during my career I was a Guest Lecturer at the Law Society of Upper Canada to Articling Students.

I first met David L. Chatten, LL.B.(Hons), Q.Arb. when he was working as a Paralegal in 2007. David has appeared in front of me on many occasions while providing defence advocacy related to Provincial Offences charges in my Court. David now appears in front of me as a Provincial Offences Act Prosecutor. In August 2017, David was appointed to the position of Municipal Prosecutor for Hastings County, and as a per diem Crown Attorney for the Province of Ontario. David Prosecutes Provincial Offences Act matters in my court on a regular basis. David uses an approach that encourages the defendants to

accept responsibility for their actions without the necessity of a Trial taking place. This approach has led to many more resolutions being entered into by the Prosecution and Defence, and has saved a significant amount of Trial time being used in our local court. David has successfully implemented a communications system that allows the prosecutor to be engaged in meetings with defendants, while sending Early Resolution Outcomes to the court-room electronically for the resolutions to be entered onto the Court Record in the presence of the Defendant and the Justice.

David encourages ongoing communication with the Defence and their counsel. He is always willing to have a final discussion with the defendant or their counsel before commencing a trial. From what I have seen, he is ethical in his approach to the cases he manages and provides the Defendants with an opportunity to tell their side of the story. David takes a well-rounded approach to prosecutions rather than a one size fits all solution. For example, David will take into consideration the attempts and actions a person takes to prevent re-offending and works this into the resolution that is made. I understand that David has handled over 700 more cases during the same time frame as the previous prosecutor and without the assistance of an Assistant Prosecutor. I Further can personally attest to the fact that he has attended my own court to observe Criminal Court Case Management and Show Cause hearings.

I would support David's application for a full abridgement of the 10-month articling experiential training component. The experience David has gained during his career would be comparable to or beyond the experience gained during an articling placement, and I have no doubt that David would continue his success in his legal career as a licensed lawyer.

Yours,

A handwritten signature in black ink, appearing to read 'Sam L. Cureatz', written in a cursive style.

Justice Sam L. Cureatz

HER WORSHIP DONNA DOELMAN  
JUSTICE OF THE PEACE  
ONTARIO COURT OF JUSTICE  
EAST REGION

41 DUNDAS STREET WEST  
NAPANEE, ONTARIO K7R 1Z5



MADAME LE JUGE DE PAIX DONNA DOELMAN  
JUGE DE PAIX  
COUR DE JUSTICE DE L'ONTARIO  
RÉGION DE L'EST

41, RUE DUNDAS OUEST  
NAPANEE, (ONTARIO) K7R 1Z5

TELEPHONE/TÉLÉPHONE (613) 354-5450

21 June 2017

Law Society of Yukon,  
302 Steele St.,  
Whitehorse, YT Y1A 2C5

**Reference letter re: David Chatten**

It is my pleasure to support the application of David Chatten in his pursuit of a career as a Legal Officer with the Canadian Armed Forces.

As a presiding Justice of the Peace, David began attending my court in 2005. I have watched him mature as a paralegal and supported his choice to obtain a degree in law in England. While studying there, he was kind enough to encourage my own son who was working on a Masters of Law and Finance at Oxford. I very much appreciated this kindness.

I have always found David to be professional and well prepared for his cases. He routinely relies on current, relevant case law to support his position. Should his client be found guilty, he prepares applicable client information during the sentencing hearing. I have noticed that David is respected by both his colleagues, the prosecutors and my fellow judiciary.

David is a very intelligent person who is versatile and adaptable. I was amazed the first time he pulled some balloons out of his pocket and proceeded to create a number of "animals and objects." David is delightful.

Please contact me if I can be of any further assistance.

Best regards,

A handwritten signature in cursive script that reads "Donna I. Doelman".

Her Worship Donna I. Doelman  
Justice of the Peace  
Province of Ontario

[Donna.Doelman@ocj-cjo.ca](mailto:Donna.Doelman@ocj-cjo.ca)  
613-544-6659

19 June 2017

To Whom It May Concern:

**Re: David L. Chatten**

By way of introduction, I am Ernest (Ernie Parsons) Justice of the Peace In and For the Province of Ontario, with my base court being Picton, Ontario.

I am a number of responsibilities (Presiding in Bail Court, issuing Search Warrants, etc.) a great deal of my time is devoted to providing in various Provincial Offence Courts.

Mr. Chatten has appeared in front of me in hundreds if not thousands of times representing both individual and corporate clients.

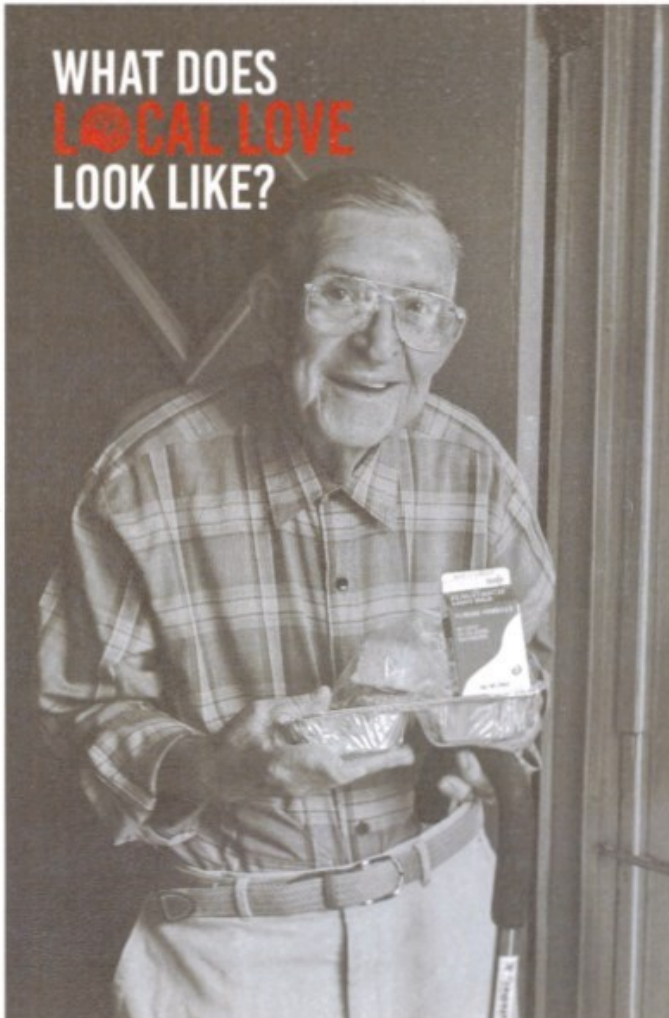
Without exception, Mr. Chatten has shown an extremely high level of professionalism to both the Bench and his clients. It is obvious that he has been upfront and honest with his clients regarding their options, and while leaving the final decision to the defendents, has always made effective recommendations to them regarding what he believes is the best approach to concluding the matter. I have always been impressed with his knowledge of the law and his research regarding precedents for his submissions.

Our area is a relatively small, rural community where an individual's reputation is his most important asset. Mr. Chatten is clearly well thought of by his colleagues (both paralegals and lawyers), and is highly respected by my colleagues on the Bench.

I have no hesitation whatsoever is recommending David Chatten for Admission to the Bar in any jurisdiction in Canada. He will be an asset to both the legal profession and the community they serve.

Ernie Parsons  
Justice of the Peace (Picton, Ontario)  
[Ernest.Parsons@ocj-cjo.ca](mailto:Ernest.Parsons@ocj-cjo.ca)  
(613) 848-5696

## 7. Local Love Donation Gratitude



**David Chatten**  
*Barrister, Solicitor, Arbitrator*

**THANK**  
*you*

for your donation to the **2019 Local Love Campaign** through this year's Will Week event. Because of your generosity and dedication, 1 in 4 people in our community currently have access to 65 social service programs. **THANK YOU!**



**United Way**  
Hastings &  
Prince Edward

*Brandt Hodge*  
Brandt Hodge, Executive Director

[Go to top >>](#)