

Driving Without Due Care or Regard For Others



The offence of careless driving involves vaguely stated legal elements and is therefore subject to broad interpretation and application to various circumstances.

A conviction for careless driving can have significant affects upon the driving record of the accused motorist including, as shown below, penalties ranging from a fine of \$400 to \$2,000 as well as the possibility of six months imprisonment and a license suspension lasting up to two years. Additionally, as a charge within the 'serious' category used by insurers, a careless driving conviction may also be quite significant including displacement of availability of insurance from the 'regular' marketplace and necessity to obtain insurance coverage through alternate 'high risk' insurers or the Facility Association.

The Law, statutory

Careless Driving

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

Penalty

(2) On conviction under subsection (1), a person is liable to a fine of not less than \$400 and not more than \$2,000 or to imprisonment for a term of not more than six months, or to both, and in addition his or her driver's licence or permit may be suspended for a period of not more than two years.

Careless Driving Causing Bodily Harm or Death

(3) Every person is guilty of the offence of driving carelessly who drives a vehicle or street car on a highway without due care and attention or without reasonable consideration for other persons using the highway and who thereby causes bodily harm or death to any person.

Penalty

(4) On conviction under subsection (3), a person is liable to a fine of not less than \$2,000 and not more than \$50,000 or to imprisonment for a term of not more than two years, or to both, and in addition his or her driver's licence or permit may be suspended for a period of not more than five years.

Deemed Lack of Reasonable Consideration

(5) For the purposes of subsections (1) and (3), a person is deemed to drive without reasonable consideration for other persons using the highway if he or she drives in a manner that may limit his or her ability to prudently adjust to changing circumstances on the highway.

Sentencing — Aggravating Factor

(6) A court that imposes a sentence for an offence under subsection (3) shall consider as an aggravating factor evidence that bodily harm or death was caused to a person who, in the circumstances of the offence, was vulnerable to a lack of due care and attention or reasonable consideration by a driver, including by virtue of the fact that the person was a pedestrian or cyclist.

Whereas the offence of careless driving is vaguely defined by referring to a failure of 'due care and attention', the common law cases are required to provide the defining substance to what is meant by 'due care and attention'. Does such mean that changing a radio station could constitute as a failure of due care and attention? Does such mean that two-handed eating of a burger while steering the vehicle with knees is 'without due care and attention'?

It is said that failure of due care and attention requires more than 'momentary inattentiveness'. This was said by Justice M.J. Epstein in hearing the Crown Appeal within the Ontario Court of Justice case of *R. v. Shergill*, [2016 ONCJ 163](#) wherein it was stated:

5. Is “momentary inattentiveness” a defence to careless driving?

[28] Again, the answer depends on the circumstances of each case. If, given all of the surrounding circumstances, momentary inattentiveness by a driver does not constitute a departure from the due care and attention or reasonable consideration demanded of an ordinarily prudent driver then it cannot constitute the offence of careless driving and is not punishable. If the court considers that given all of the circumstances the degree of inattentiveness displayed by the defendant goes beyond what one would expect of a reasonably prudent driver in such circumstances, then the offence has been made out.

[29] I emphasize that it is, in my view, incorrect to boldly state that momentary inattentiveness cannot constitute careless driving. The trier of fact must conduct an analysis of the evidence in each case and must measure the evidence of inattentiveness against the standard expected of a reasonably prudent driver.

Subsequently, the Court of Appeal agreed with Justice Epstein where the matter was brought higher when leave to appeal the Ontario Court of Justice decision was sought by Shergill; *R. v. Shergill*, [2016] O.J. No. 4294. Citing McFarlane J.A. as the Court of Appeal in *R. v. Shergill*, additional clarity comes forth in *York (Reg. Mun.) v. Lam*, [2017 ONCJ 290](#) where it is said:

[28] In determining the requisite standard of care and skill required of a motorist facing a charge of careless driving, I look to the often cited Ontario Court of Appeal judgment, *R. v. Beauchamp*, [1952 CanLII 60](#) (ON CA), [1953] O.R. 422, in which the standard is not one of perfection. Instead, Justice MacKay, writing for the Court, sets out the appropriate legal test as follows:

... It is whether it is proved beyond a reasonable doubt that this accused, in the light of existing circumstances of which he was aware or of which a driver exercising ordinary care should have been aware, failed to use the care and attention or to give to other persons using the highway the consideration that a driver of ordinary care would have used or given in the circumstances?

The use of the term “due care”, which means care owing in the circumstances, makes it quite clear that, while the legal standard of care remains the same in the sense that it is what the average careful man would have done in like circumstances, the factual standard is a constantly shifting one, depending on road, visibility, weather conditions, traffic conditions that exist or may reasonably be expected, and any other conditions that ordinary prudent drivers would take into consideration. It is a question of fact, depending on the circumstances in each case. [Emphasis added.]

[29] Recently, there has been some fine-tuning to the case law in *Beauchamp*, supra. In his endorsement in *R. v. Shergill*, [2016] O.J. No. 4294 (Ont. C.A.), MacFarland J.A. rejects the moving party's argument that the appeal judge's decision, wherein he set aside the acquittal of the moving party, represents a departure from the settled law in *Beauchamp*, supra, in relation to careless driving in Ontario, in that it does not have to be proved that the conduct be “deserving of punishment”. Starting at paragraph 3, he writes:

Here, the moving party argues that the appeal judge in effect by his ruling "overruled" the leading case on careless driving which is this court's decision in *R. v. Beauchamp*, 1952 CanLII 60 (ON CA), [1952] O.J. No. 495 (C.A.).

I do not accept this submission. The appeal judge in his reasons accepts *Beauchamp* as authoritative in all but one respect and that is the need for the Crown to prove the conduct giving rise to the charge be "deserving of punishment". In his reasons, the appeal judge carefully considers the jurisprudence that has followed *Beauchamp* including *R. v. Beatty*, [2008 SCC 5](#) (CanLII), [2008] 1 S.C.R. 49 and *R. v. Roy*, [2012 SCC 26](#) (CanLII), [2012] S.C.J. No. 26.

He concluded at paragraph 22:

In light of the jurisprudence since *Beauchamp* it would now appear to be settled law that careless driving is a strict liability offence and, since mens rea is not a relevant factor for consideration, that the court ought not to look at the conduct to determine whether it is "blameworthy and deserving of punishment". To the extent that *Beauchamp* added that consideration as an element of the charge it has, in my view, been effectively overruled.

It will be recalled that *Beauchamp* was decided in 1952, some years before the Supreme Court's seminal decision in *R. v. Sault Ste. Marie*, [1978 CanLII 11 \(SCC\)](#), [\[1978\] 2 S.C.R. 1299](#) which put it beyond dispute that careless driving was a strict liability defence.

In her factum at para. 22 Ms. Lai also notes that *Beauchamp* preceded the Supreme Court's decision in *R. v. Hundal*, [1993 CanLII 120 \(SCC\)](#), [\[1993\] 1 S.C.R. 867](#) by some forty years and where that court:

... clarified the degree of negligence required for criminal and quasi-criminal liability. The subsequent Supreme Court jurisprudence to which the appeal judge adverted, distils the essence of the inquiry as (i) whether the impugned driving constitutes a departure from the standard of a reasonably prudent driver in the circumstances and (ii) if so, whether the departure of significant degree to "deserve" the liability at issue -- from the marked and significant" departure that constitutes criminal negligence, to the "marked" departure that constitutes dangerous careless driving to the "mere" departure that constitutes careless driving or attract civil liability. The appeal judge's reasons do no more than to recognize that this continuum of driving negligence already incorporates the necessary degree of blameworthiness, rendering any stand-alone consideration of this factor inappropriate and redundant.

I accept this submission