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Careless and Imprudent Driving? It depends.

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Failing to drive in a careful and prudent manner is one of the most serious driving offences in provincial legislation. In Nova Scotia, a conviction automatically results in six demerit points, and the judge has the discretion to order a suspension of the offender's license. However, careless and imprudent driving should not be understood as the regulatory equivalent of dangerous driving under the *Criminal Code*. Importantly, careless and imprudent driving is an offence of strict liability. Intentionally creating a dangerous situation or being reckless with respect to the creation of such a danger, which evidences a marked departure from the standard expected of the reasonably prudent motorist, is not required. On the other hand, the standard is not simply civil negligence; mere inadvertence or an error of judgment alone is not enough.

As a quasi-criminal offence, something more is required to establish that an accused person has failed to drive carefully and prudently. This is because penal negligence is concerned with conduct that is inherently morally blameworthy. As the Supreme Court of Canada put it in *Mann v The Queen* [1966] SCR 238, the manner of driving must be of sufficient gravity so as "lift the case out of the civil field" and into that of the criminal law. Otherwise, the net of criminal liability is too broadly cast.

The issue, then, is what type of driving is sufficiently blameworthy so as to attract criminal liability rather than mere civil liability? In *R v Burke* 2014 NSPC 16, Scovil J adopted seven factors to consider when determining whether an accused person failed to operate their vehicle in a careful and prudent manner:

1. The driving must be such as to bring it into inadvertent negligence.
2. The vehicle was operated without due care and attention, or
3. The vehicle was operated without reasonable consideration for other persons using the highway.
4. The manner of driving must go beyond mere error in judgment indicating a measure of indifference by the accused or a want of care.
5. The factual standard shifts depending on the road, visibility, weather conditions, traffic conditions existing or reasonably expected, together with any other conditions an ordinarily prudent driver would take into account.
6. The requisite elements of the offence must be proven by the Crown and beyond a reasonable doubt.
7. Was there any intentional risk taking such as to be deserving of punishment?

In *R v Urquhart* 2019 NSSC 230, Smith J held that the Crown is not required to prove the *Burke* factors beyond a reasonable doubt; the Crown must only prove the *actus reus* of the offence (at para 33). The *Burke* factors do, however, go directly to the determination of whether there has been a violation of the legislation. The Court in *Burke* made it clear that the factors must be considered before a Court makes a finding that the accused operated a motor vehicle in a manner that was not careful or prudent.

The analysis overall is highly contextual and fact-driven. In Nova Scotia, the *Motor Vehicle Act* requires the trial judge to determine whether the impugned driving is careless and imprudent "in all of the circumstances". In *R v Creaser* (1994), 131 NRS (2d) 302, the presence of an emergency was found to be a relevant consideration in determining whether the accused failed to drive in a careful and prudent manner. In that case, the accused drove away from a crowd of violent people while a person was hanging onto the vehicle. Despite the manner of driving, which is plainly suspect at first glance, the trial judge entered an acquittal. In light of the exigent circumstances existing at the time of driving, the trial judge concluded that the accused's conduct was not negligent and did not call for criminal sanction.

A conviction for failing to drive in a careful and prudent manner will follow where it can be proven beyond a reasonable doubt that, in light of the existing circumstances, the accused operated a vehicle without due care, attention, or reasonable consideration for other motorists. The conduct at issue must be inherently blameworthy. The principles adopted by the Supreme Court of Canada in *R v W(D)* [1991] 1 SCR 742 respecting credibility apply to the analysis (*Burke, supra,* at para 14).

Careless and imprudent driving is therefore a serious regulatory offence which is more analogous to dangerous driving under the *Criminal Code* than to civil negligence. A conviction will not follow inevitably from a breach of the civil standard or due to one or more violations of the provincial legislation, such as speeding combined with following and/or passing another vehicle too closely. Driving which may appear reckless will not necessarily constitute careless and imprudent driving, as such a finding necessarily depending on the circumstances existing at the time of driving. The intention to drive in a careless or reckless manner is not required, although intentional risk-taking may militate in favour of a conviction. Ultimately, each case will turn neatly on its facts. The answer as to whether careless and imprudent driving can be proven in a given case is simply: it depends.