



Ministry of the Attorney General
Ministry of Transportation
Legal Services Branch

Ministère du Procureur Général
Ministère des Transports
Direction des services juridiques

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Date: June 28, 2012
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Comments/Commentaires: HMQ v. Gene Michaud Court File No. 4560-999-00-1860175A-00

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June 28, 2012

Via Mail and Facsimile (416-365-7886)

David Crocker
1 First Canadian Place
Suite 6000
P.O. Box 367
Toronto, ON M5X 1E2

Dear Mr. Crocker:

**RE: Her Majesty the Queen In Right of Ontario and Gene Michaud
Court File No.: 4560-999-00-1860175A-00**

Enclosed please find the Appellant's Notice of Appeal served on you pursuant to section 135 of the *Provincial Offences Act*.

Yours very truly,

Patrick Moore
Counsel

PM/ag
Enclosure

4560-999-00-1860175A-00

ONTARIO COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Appellant

- and -


GENE MICHAUD

Respondent

**NOTICE OF APPEAL
UNDER SECTION 135 OF THE PROVINCIAL OFFENCES ACT**

1. **Ontario Court of Justice at:** 59 Church Street, St. Catharines, Ontario, L2R 7N8.
2. **Appellant is:** the Crown
3. **Name of Appellant:** Her Majesty the Queen in Right of Ontario
Address for Service: Legal Services Branch
Ministry of Transportation
1201 Wilson Avenue
1st Floor, Building B
Toronto, ON M3M 1J8
Tel: 416.235.3772
Fax: 416.235.4924
4. **Counsel for Appellant:** PATRICK MOORE
Address for service: Same as Appellant's.
5. **Name of Respondent:** Gene Michaud
Address for service: 75 Lockview Crescent, St. Catharines, Ontario, L2M 2T6.
6. **Counsel for Respondent (if known):** David Crocker
Address for service: Davis LLP, 1 First Canadian Place, Suite 6000, P.O. Box 367, 100 King Street West, Toronto, Ontario, M5X 1E2.
7. **Decision of the Ontario Court of Justice:** Justice of the Peace Brett A. Kelly upheld the defendant's constitutional motion and struck down section 68.1 of the *Highway Traffic Act* in the defendant's case.

8. **Date of Decision:** June 6, 2012, 9:00 a.m. tier
9. **The Appellant appeals against:** the acquittal by the Ontario Court of Justice at 102 East Main Street, Welland, Ontario.
10. **If Appellant is in custody, place where held:** N/A.
11. (a) **Description of Offence:** Drive commercial motor vehicle not equipped with working speed-limiting system.
(b) **Certificate number (if known):** 4560-999-00-1860175A-00
12. (a) **Statute:** *Highway Traffic Act*
(b) **Section:** s. 68.1(1)
13. **Date of Offence:** July 19, 2009.
14. **Plea at Trial:** Not Guilty
15. **The Appellant would like the court to allow the appeal and enter a conviction**
16. **The Grounds of Appeal are:** PLEASE SEE SCHEDULE A ATTACHED
17. **The appellant intends to be:** represented by counsel and to present arguments orally.
18. **Date:** June 28, 2012
19. **Signature of Counsel for the appellant:**



PATRICK MOORE
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Counsel for the Appellant

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TO: **Davis LLP**
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David Crocker

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AND TO: Ontario Court of Justice
59 Church Street
St. Catharines, ON L2R 7N8

Attention: The Clerk of the Court

SCHEDULE A

Justice of the Peace Kelly incorrectly determined that s. 68.1 of the *Highway Traffic Act* infringed the accused's s. 7 *Charter* rights because His Worship:

- Gave undue weight to the evidence of witnesses who were not qualified as experts in speed limiters.
- Found that speed limiters set at 105 km/h require drivers to deviate from the mean speed of highways without any admissible evidence of what the mean speed on highways is.
- Found that the *Highway Traffic Act* requirement that drivers exercise due care and attention requires drivers to be able to exceed 105 km/h even though the maximum speed limit in Ontario is 100 km/h.
- Applied the incorrect test for finding that the accused's security of the person interest was engaged.
- Applied the incorrect test for determining whether s. 68.1 of the *Highway Traffic Act* was arbitrary.

4560-999-00-1860175A-00

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

- and -

GENE MICHAUD

Appellant

Respondent

ONTARIO COURT OF JUSTICE

NOTICE OF APPEAL

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