

**PRIOR INCONSISTENT STATEMENTS AND THE
PRINCIPLED APPROACH: CAN THE SUPREME
COURT OF CANADA HAVE *U.(F.J.)* CAKE AND EAT
IT TOO?**

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ABSTRACT

The principled approach to the admission of hearsay took a surprising turn in 2000 when the Supreme Court of Canada handed down R. v. Starr. The Starr decision severely restricted the type of evidence that could be examined at the threshold reliability stage, confining the analysis to the circumstances under which the statement was made and declaring that external evidence could no longer be considered in the analysis. Despite Starr's holding, courts have continued to consider external evidence when assessing threshold reliability. The Supreme Court's decision in U.(F.J.) may be responsible for this inconsistency. Although prior inconsistent statement hearsay was at issue in U.(F.J.), courts dealing with both prior inconsistent statement and declarant-unavailable hearsay have cited U.(F.J.)'s principles, which has led to great analytical confusion. However, R. v. Khelawon represents a step toward analytical consistency, as the Ontario Court of Appeal sheds some light on the issue and purports to make some sense out of the analytical confusion at the threshold reliability stage.
