

FIGHT YOUR TICKETS



A COMPREHENSIVE GUIDE TO TRAFFIC TICKETS

BY ERICK JEFFERY & MAX SMITH

About This Free Version

This copy of *“Fight Your Tickets: A Comprehensive Guide to Traffic Tickets”* has been freely distributed and contains the key sections of the fightyourtickets.ca website.

The complete eBook version has nine additional chapters that will help you win your [traffic ticket](#), even without fighting it!

The new chapters are:

- I Just Want to Pay the Fine
- Importance of Caselaw and Jurisprudence
- Absolute and Strict Liability Offences
- Defence of Necessity
- Mandatory Time Limits for Laying Charges
- Challenge a Speeding Ticket and Win
- Laser Radar
- How to Win a Ticket Without Fighting It
- Pleadings and Motions Before the Court

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Praise for FightYourTickets.ca

“After browsing through endless websites, I must say that your website has great step-by-step information to fight your own tickets. Thank you for all the work that you have put into this informational site!” – Julia N.

“Your site is fantastic. I’m a student-at-law and I’m used to reading legal websites and your site is far and away one of the best I’ve seen.” – Ari S.

“I am praising this site because I followed all the steps and was successful ...in having the charges stayed by using your Guide ...I asked a lawyer how much he would charge me and he told me it would cost \$2,100 – I saved a bundle on my charges and on my future insurance rates.” – Roy

“Your advice & other information on your site have given me the confidence to fight my speeding ticket.” – Davis

“I’m so pissed off about the insurance lobby and the parking ticket racket. Thank you for all this information. Great site.” – Shane T.

“Thank you for this very comprehensive website. I have been looking all over the Internet and this is by far the single most useful website in regards to this topic. Well done and keep it up!!” – Al

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Published by Goodworks Press

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Library and Archives Canada Cataloguing in Publication

Jeffery, Erick, 1960-

Fight your tickets [electronic resource] : a comprehensive guide to
traffic tickets / Erick Jeffery & Max Smith.

Includes bibliographical references.

Type of computer file: Electronic monograph in PDF format.

Issued also in print format.

ISBN 978-0-9865446-0-6

1. Traffic violations--Ontario--Popular works. 2. Traffic courts--Ontario--
Popular works. 3. Traffic violations--Canada-- Popular works. 4. Traf-
fic courts--Canada--Popular works. I. Smith, Max, 1968- II. Title.

KEO535.J44 2010a

345'.7130247

C2010-902135-5

KF2231.Z9J44 2010a

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Preface

The purpose of this book is to empower individuals, without any legal training, to successfully challenge speeding or parking tickets they may have received. This book is designed to empower you to FightYourTickets and to win as often as you take up the challenge. All the information you need is now at your fingertips.

In order to have the know-how, we must all learn about the system that was invented by different levels of Government (Federal, Provincial, Territorial, Municipal and Cities) to ticket and fine motorists and motor vehicles. Upon learning and understanding the system, it is then possible to challenge your speeding or parking tickets and to win them every time.

While this book is accurate at the time of publication, laws change or new judicial interpretations are rendered. For the most current information visit FightYourTickets.ca This site is updated as soon as possible when new relevant information becomes available or when established laws or by-laws are modified or deleted or when the Courts change the landscape. Any comments, suggestions, ideas or criticisms are appreciated and will be reviewed.

The authors of this book have over twenty-five years combined experience dealing with civil matters in front of the courts, arbitrators, tribunals etc. During that time, it has become painfully obvious that those people without knowledge of the system they were fighting, were being taken advantage of and didn't receive the justice they sought. After consulting this book, you will gain new insights into the workings of our legal system and have enough knowledge to turn a potential failure into a success story.

While the authors of this book would like to help everyone access justice within our court system, other commitments will not allow replies on specific charges hence this book and FightYourTickets.ca was created in the hope that it will help people help themselves and eventually others as well, who run into similar or identical predicaments.

Thank you for purchasing this book.

Erick Jeffery

Max Smith

October 2009

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Part I

Canada's Laws and Court System

Chapter 2

Canadian Judicial System

The Courts: A Description of the Judicial Structure That Currently Exists in Ontario and Canada

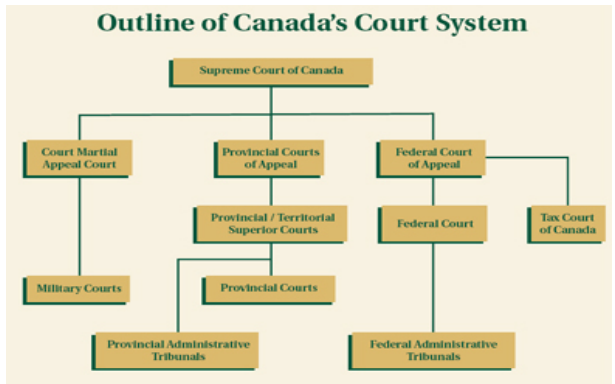


Figure 2.1: Canadian Judicial System

Supreme Court of Canada – The Highest Court in Canada

Canada's final court of appeal.

Court of Appeal of Ontario – The Highest Court in Ontario

The Court of Ontario has two(2) divisions:

Superior Court of Justice(the higher or general division) (eight regions in Ontario)

- deals with all Civil Matters
- deals with Divorces
- deals with family law where there is a dispute over division of assets
- deals with criminal matters (90% +)

Ontario Court of Justice (the lower or Provincial Division)

- deals with *Highway Traffic Act* cases
- deals with *Provincial Offences Act* cases
- shares jurisdiction with Superior Court
- over family law issues (Family Court)
- deals with summary convictions under the Criminal code
- bail/release applications
- deals with criminal trials by judge/jury

The Ontario Court of Justice is one of two (2) trial courts in Ontario (along with the Superior Court of Justice). The Ontario Court of Justice is made up of Provincially appointed Judges and Justices of the Peace and are paid by the Provincial Government. The Superior Court of Justice is made up of Federally appointed Judges and are paid by the Federal Government.

The Superior Court of Justice has within it, three (3) branches:

- Family Court
- Divisional Court
- Small Claims Court

In December 2008, the Auditor General of Ontario, Jim McCarter CA, released the [Auditor General's 2008 Annual Report](#). He made several findings, including the information contained below:

The Ontario Court of Justice (OCJ) handles approximately 97% of the 620,000 criminal and criminal youth charges tried annually, including bail hearings, preliminary hearings, and trials. It may also deal with certain family law matters, such as child welfare.

The Superior Court of Justice (SCJ) tries more serious criminal cases: family law matters dealing with divorce, division of property, and child welfare; and all civil matters, including small claims. This court may also hear appeals of cases originating in the Ontario Court of Justice.

The Court of Appeal for Ontario (CAO) hears appeals from decisions of the Ontario Court of Justice and the Superior Court of Justice.

The federal government appoints and remunerates judges in the Superior Court of Justice and the Court of Appeal for Ontario; the province appoints and remunerates judges and justices of the peace in the Ontario Court of Justice.

We refer to the judges and the justices of the peace collectively as the Judiciary. As of March 2008, there were about 285 judges and 345 justices of the peace in the OCJ, 300 judges in the SCJ, and 24 judges in the CAO.

Justices of the peace work primarily in criminal law matters, including presiding over bail hearings and issuing summonses or search warrants. In addition, collectively, they spend about 45% of their time presiding in municipal courts adjudicating provincial offences, such as those under the *Highway Traffic Act*, and municipal bylaw infractions, such as those under the Liquor Licence Act.

Judicial Appointments Advisory Committee

On 15 December 1988, the then Attorney General, the late Honourable Ian Scott, announced in the Ontario Legislature the establishment of the Judicial Appointments Advisory Committee as a pilot project, and set out its mandate:

- First, to develop and recommend comprehensive, sound and useful criteria for selection of appointments to the judiciary, ensuring that the best candidates are considered; and
- Second, to interview applicants selected by it or referred to it by the Attorney General and make recommendations. On February 28, 1995, the *Courts of Justice Act* established the Committee by legislation, pursuant to section 43 of the *Courts of Justice Act*. All appointments to the Ontario Court of Justice must be made by the Attorney General from amongst a list of applicants recommended to him by the Committee, and chosen in accordance with its own process of criteria, policies and procedures.

Here are some of the Annual Reports generated by this Committee:

The 1999 [Annual Report](#):

In 1999, the Committee met 31 times to select candidates, carry out interviews, and to determine Committee policies and procedures. This included 8 selection/business meeting days and 23 interview days. Over 180 applicants have been interviewed and 67 have been recommended, from which the Attorney General has selected and appointed 18 judges. The total number of applicants to date is 1,926 of whom 549 (29%) are women.

The 2000 [Annual Report](#):

In 2000, the Committee met 26 times to select candidates and conduct interviews. Over 140 applicants have been interviewed and 47 have been recommended, from which the Attorney General has selected and appointed 13 judges. The total number of applicants from the inception of the Committee to December 31, 2000 is 2,052, of whom 585 (29%) are women.

The 2001 [Annual Report](#):

In 2001, the Committee met 16 times to select candidates and conduct interviews. Over 80 applicants have been interviewed and 45 have been recommended, from which the Attorney General has selected and appointed 4 judges. As of the end of December, 2001, recommendations had also been made for five other judicial vacancies from which the Attorney General had not yet made his selection. The total number of applicants from the inception of the Committee to December 31, 2001 is 2,152, of whom 618 (29%) are women.

The 2002 [Annual Report](#):

In 2002, the Committee met 14 times to select candidates and conduct interviews. Over 65 applicants have been interviewed and 43 have been recommended, from which the Attorney General has selected and appointed 13 judges. The total number of applicants from the inception of the Committee to December 31, 2002 is 2,181, of whom 628 (29%) are women.

The 2003 [Annual Report](#):

In 2003, the Committee met 27 times to select candidates and conduct interviews. Over 143 applicants have been interviewed and 98 have been recommended, from which the Attorney General has selected and appointed 14 judges. The total number of applicants from the inception of the Committee to December 31, 2003 is 2,356, of whom 701 (30%) are women.

The 2004 [Annual Report](#):

In 2004, the Committee met 26 times to select candidates, conduct interviews and attend to Committee businesses. Over 104 applicants have been interviewed and 35 have been recommended, from which the Attorney General has selected and appointed 15 judges. The total number of applicants from the inception of the Committee to December 31, 2004 is 2,431, of whom 729 (30%) are women.

The 2005 [Annual Report](#):

In 2005, the Committee met 25 times to select candidates, conduct interviews and attend to Committee businesses. 161 applicants have been interviewed and 49 have been recommended, from which the Attorney General has selected and appointed 16 judges. The total number of applicants from the inception of the Committee to December 31, 2005 is 2,580, of whom 778 (30%) are women.

The 2006 [Annual Report](#):

In 2006, the Committee met 26 times to select candidates, conduct interviews and attend to Committee business. 138 applicants were interviewed during the period and 63 have been recommended, from which the Attorney General has selected and appointed 20 judges. The total number of applicants from the inception of the Committee to December 31, 2006 is 2,700, of whom 833 (31%) are women.

The 2007 [Annual Report](#):

In 2007, the Committee met 20 times to select candidates, conduct interviews and attend to Committee business. 97 applicants were interviewed during the period and 31 have been recommended, from which the Attorney General has selected and appointed 6 judges. The total number of applicants from the inception of the Committee to December 31, 2007 is 2,787, of whom 868 (31%) are women.

Here is the link for the [SiteMap](#) with regard to the Ontario Courts.

Chapter 3

Canadian Charter of Rights and Freedoms

It is Important to Know the Canadian Charter of Rights and Freedoms

The Supreme Court of Canada and all other Courts in Canada are very mindful of the *Canadian Charter of Rights and Freedoms* (commonly referred to as the *Charter*). The Charter, which came into force on April 17, 1982 flows from the *Constitution Act* and it guarantees our fundamental rights and freedoms (subject to interpretation from the Supreme Court). There are thirty four (34) sections within the *Charter*.

For our purposes, the most important sections of the *Charter* are under Legal Rights:

Section 7: 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

Section 8: Everyone has the right to be secure against unreasonable search or seizure

Section 9: Everyone has the right not to be arbitrarily detained or imprisoned

Section 10: Everyone has the right on arrest or detention:

- a) to be informed promptly of the reasons therefore;
- b) to retain and instruct counsel without delay and to be informed of that right; and
- c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

Section 11: Any person charged with an offence has the right:

- a) to be informed without unreasonable delay of the specific offence;
- b) to be tried within a reasonable time;
- c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
- d) to be presumed innocent until proven guilty according to the law in a fair and public hearing by an independent and impartial tribunal;
- h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again;

Section 13: A witness who testifies in any proceeding has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

Section 14: A party or witness in any other proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

Section 24: (1) Anyone whose rights or freedoms, as guaranteed by this *Charter*, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy

as the court considers appropriate and just in the circumstances.

- (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in such a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

All of these sections of the *Charter*, either individually or combined may be relied upon by you, in front of the Justice of the Peace when your trial takes place.

If you want go to the entire Charter, follow it through this link [Canadian Charter of Rights and Freedoms](#).

If you are interested in the Courts interpretation of the *Charter* and the caselaw that has evolved with respect to the *Charter* see [The Canadian Charter of Rights Decisions Digest](#).

Chapter 4

Reciprocal Agreements Entered Into By The Province of Ontario

There was a time when you could travel on vacation or on business to another Province (other than your own) or to a State in the U.S. and if you received a ticket, for the most part it could be ignored, as there were no consequences of not paying the ticket or not showing up to court to fight it. Those days are over, as most governments now share information about drivers and impose the fines or suspensions received elsewhere, as long as they have a reciprocal agreement with that other Province, Territory or State.

We have followed the examples of our cousins to the south, as they were the first in North America to develop the Driver Licence Compact (the idea is that you only have one (1) drivers licence record) and in addition developed the “[Interstate Driver’s Licence Compact](#)” in which 45 States participate. Eventually, Canada and the US will strive towards one driver’s licence, one driver’s licence record, in North America, a North America driver’s licence.

The Province of Ontario has signed Reciprocal Agreements with the following jurisdictions:

1. Ontario and Quebec (referred to as the “[Ontario-Quebec Agreement](#)”) This is an agreement, separate and aside from the Canadian Driver Licence Compact and was agreed upon and implemented on April 1, 1989.
2. Ontario and other Provinces/Territories (referred to as the “[Canadian Driver Licence Compact](#)”)
3. [Reciprocal Agreement between Ontario and the State of New York, U.S.A.](#)
4. [Reciprocal Agreement between Ontario and the State of Michigan, U.S.A.](#)

All these agreements have an impact on the drivers who live and are licensed in all of the Provinces and Territories in Canada and many of the States in the U.S.A.

Information relating to driving offences, fines, convictions and criminal convictions is shared among the participants.

On January 25, 2010, a new agreement between Ontario and Australia was [signed](#) that will allow new residents to exchange their valid driver’s licence upon relocation, without having to take a knowledge or road test.

The Canadian Driver Licence Compact

This agreement amongst the Provinces and Territories was implemented in 1990, all those participating in the agreement agreed to exchange traffic offence information. Under the terms of the compact, each participating Province and Territory agreed that infractions committed by the driver, would result in the application of demerit points in the driver’s home Province’s driving record. As well, each participating Province and Territory agreed to transfer the driver’s licence information if that driver was moving to another Province or Territory.

In 2001 the Canadian Council of Motor Transport Administration approved changes to the Compact, which had the effect of mandating that each participating Province/Territory to the Compact where the offence had occurred would have to notify the home jurisdiction of the driver's offence, expecting the home Province/Territory to take action with respect to unpaid fines, suspensions, etc. This may include the home Province/Territory having to withhold/suspend the driver's driving privileges or the denial of vehicle registration. In 2003, the Criminal Code was included, including section 249.1 – this information was to be shared in the event of a conviction.

There are several articles in the Canadian Driver Licence Compact:

Article 1: Definitions

Article 2: Application for Driver's Licence

Article 3: Driver's Licence Exchange

Article 4: Reports and Effects of Conviction

Article 5: Non-Payment of Fines

Article 6: Administration of the Agreement

Article 7: Amendments and Exceptions

Article 8: General Provisions

Appendix 1: Administration, Rules and Procedures of the Agreement

Article 1: Committee

Article 2: Secretariat

Appendix 2: Exceptions by Province

If a driver of a motor vehicle is convicted, pursuant to Section 249(1) of the Canadian Criminal Code, that information is shared with the

other Provinces, Territories and specific U.S. States. That particular language of the [Criminal Code](#) states the following:

Dangerous operation of Motor Vehicles, Vessels and Aircraft

249.(1) Every one commits an offence who operates

- (a) a motor vehicle in a manner that is dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that at the time is or might reasonably be expected to be at that place;
- (b) a vessel or any water skis, surf-board, water sled or other towed object on or over any of the internal waters of Canada or the territorial sea of Canada, in a manner that is dangerous to the public, having regard to all the circumstances, including the nature and condition of those waters or sea and the use that at the time is or might reasonably be expected to be made of those waters or sea;
- (c) an aircraft in a manner that is dangerous to the public, having regard to all the circumstances, including the nature and condition of that aircraft or the place or air space in or through which the aircraft is operated; or
- (d) railway equipment in a manner that is dangerous to the public, having regard to all the circumstances, including the nature and condition of the equipment or the place in or through which the equipment is operated.

Punishment

(2) Every one who commits an offence under subsection (1)

- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or
- (b) is guilty of an offence punishable on summary conviction.

Dangerous operation causing bodily harm

- (3) Every one who commits an offence under subsection (1) and thereby causes bodily harm to any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Dangerous operation causing death

- (4) Every one who commits an offence under subsection (1) and thereby causes the death of any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

R.S., 1985, c. C-46, s. 249; R.S., 1985, c. 27 (1st Supp.), s. 36, c. 32 (4th Supp.), s. 57; 1994, c. 44, s. 11.

Flight

- 249.1(1)** Every one commits an offence who, operating a motor vehicle while being pursued by a peace officer operating a motor vehicle, fails, without reasonable excuse and in order to evade the peace officer, to stop the vehicle as soon as is reasonable in the circumstances.

Punishment

- (2) Every one who commits an offence under subsection (1)
- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or
 - (b) is guilty of an offence punishable on summary conviction.

Flight causing bodily harm or death

- (3) Every one commits an offence who causes bodily harm to or the death of another person by operating a motor vehicle in a manner described in paragraph 249(1)(a), if the person operating the motor vehicle was being pursued by a peace officer operating a motor vehicle and failed, without reasonable excuse and in order to evade the police officer, to stop the vehicle as soon as is reasonable in the circumstances.

Punishment

- (4) Every person who commits an offence under subsection (3)
- (a) if bodily harm was caused, is guilty of an indictable offence and liable to imprisonment for a term not exceeding 14 years; and
 - (b) if death was caused, is guilty of an indictable offence and liable to imprisonment for life.
- 2000, c. 2, s. 1.

Causing death by criminal negligence (street racing)

- 249.2 Everyone who by criminal negligence causes death to another person while street racing is guilty of an indictable offence and liable to imprisonment for life.
- 2006, c. 14, s. 2.

Causing bodily harm by criminal negligence (street racing)

- 249.3 Everyone who by criminal negligence causes bodily harm to another person while street racing is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.
- 2006, c. 14, s. 2.

Dangerous operation of motor vehicle while street racing

- 249.4(1) Everyone commits an offence who, while street racing, operates a motor vehicle in a manner described in paragraph 249(1)(a).

Punishment

- (2) Everyone who commits an offence under subsection (1)

- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or
- (b) is guilty of an offence punishable on summary conviction.

Dangerous operation causing bodily harm

- (3) Everyone who commits an offence under subsection (1) and thereby causes bodily harm to another person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Dangerous operation causing death

- (4) Everyone who commits an offence under subsection (1) and thereby causes the death of another person is guilty of an indictable offence and liable to imprisonment for life.

2006, c. 14, s. 2.

Court Order Enforcement Act (of British Columbia): Jurisdictions declared to be Reciprocating States for the Purposes of this Act (under [Part 2](#) – section 37 of this Act); see [Part 1](#) of the Act.

Suspensions of Licences in Canada and the United States – Agreement with Ontario

There is an [agreement](#) of Reciprocal Suspensions of Licences between Ontario and nine (9) Provinces and forty one (41) States and this Ontario Regulation reads as follows (it applies equally to the Provinces and the different States):

[Subsection 198\(1\)](#) of the Ontario *Highway Traffic Act* extends to and applies to judgments rendered and become final against residents by any court of competent jurisdiction in the following Provinces and States:

Canada

Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island, [Quebec](#) and Saskatchewan.

United States of America

Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming and District of Columbia.

See [Foreign Reciprocity Resource Guide](#) and Agreement between Quebec and the [State of Maine](#) (pages 45-51). Quebec has a reciprocal agreement with the States of New York and Maine. Quebec does not however, have a reciprocal agreement with the State of New Jersey.

Chapter 5

Caselaw and Jurisprudence

What is meant by Caselaw, Judgments or Jurisprudence?

This is a term meant to describe decisions that flow from the different courts in Ontario, Canada and Worldwide. These decisions are also referred to as “jurisprudence”(Body of Law) and “caselaw”. Naturally the most important decisions or caselaw or jurisprudence are court decisions that are written by the Chief Justices at the Supreme Court of Canada. The Supreme Court is the highest Court in Canada, the lower courts (all Provincial/Territorial Courts) must follow the decisions which have evolved from the Supreme Court of Canada (referred to as the doctrine of *stare decisis*). It is useful to read these decisions, especially those decisions which the Supreme Court has rendered regarding the *Charter of Rights and Freedoms*. The Supreme Court has stated that it is that Court which has exclusive domain to deal with questions arising from the *Charter*.

If you can begin to read and collect these decisions, they will be very useful while you are challenging your ticket in Court, during the trial or preliminary motion or objection.

[Supreme Court of Canada decisions](#)

Ontario Court of Appeal decisions

Ontario Courts links

A few significant decisions which may ultimately effect the outcome of your case:

Questions of Time Limits to bring your charge to trial:

Sections 11(b) and 24(1) of the [Charter of Rights and Freedoms](#) *Askov et al. v. Regina* October 18, 1990 [see Askov Decision](#). *Regina v. Morin*, March 26, 1992 [see Morin Decision](#).

Discusses Mens Rea, Reasonable Mistake as a Defence, Scope of defence of due diligence, Offences not requiring proof of mens rea but not strict liability offences, Discusses Absolute Liability, Strict Liability: *Regina v. Sault Ste. Marie* – May 1, 1978 [see Sault Ste. Marie Decision](#).

Discusses the “Defence of Necessity”:

Perka v. the Queen - October 11, 1984 [see Perka Decision](#).

Recent Important Supreme Court Decisions on the Canadian Charter of Rights and Freedoms

[Section 8 of the Charter](#): Everyone has the right to be secure against unreasonable search or seizure. See the April 9, 2009 Unanimous Supreme Court decision in [Regina v. Russell Stephen Patrick](#).

Manitoba Highway Traffic Act – section 95 (1.2) – The Provincial Court – Winnipeg Centre – January 27, 2009 (*Regina v. Boyko, et al.*) – Photo Radar in a Construction Zone – Judicial Justice of the Peace, N. Sundstrom’s decision – here is an excerpt:

...In my opinion, the rule set out in [95\(1.2\)](#) will apply to any prosecution for speeding that occurs in construction zones and that any reduced speed sign that was placed

there essentially to make the zone safer for workers – is enforceable only when workers are present. For all the above reasons given, the charges against the accused are dismissed.

This decision could be utilized by Ontario drivers in similar or identical circumstances. Here is an [article](#) associated with this decision.

Speeding and the necessity of the Prosecutor to establish that regulatory signs (posted speed limit) were erected/posted and were unobstructed – See [Regina v. Etherington](#) – B.C. Provincial Court – Traffic Division in Richmond B.C. on March 6, 1997 decided by sitting Justice of the Peace, Zahid Makhdoom.

About This Free Version

This copy of *“Fight Your Tickets: A Comprehensive Guide to Traffic Tickets”* has been freely distributed and contains the key sections of the fightyourtickets.ca website.

The complete eBook version has nine additional chapters that will help you win your [traffic ticket](#), even without fighting it!

The new chapters are:

- I Just Want to Pay the Fine
- Importance of Caselaw and Jurisprudence
- Absolute and Strict Liability Offences
- Defence of Necessity
- Mandatory Time Limits for Laying Charges
- Challenge a Speeding Ticket and Win
- Laser Radar
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Chapter 9

Ontario Provincial Offences Act

There are three types of infractions under the *Provincial Offences Act* (known as *P.O.A.*) (Part I, II & III under the *P.O.A.*):

Part I – Alleged Infraction (normally moving violation) results in a ticket and a set fine is associated with alleged infraction (i.e. speeding, etc).

Part II – Parking Tickets (alleged parking infractions).

Part III – Alleged Infraction results in a summons to court. These infractions may involve jail and are serious infractions, without a fixed fine.

If you are interested in reviewing the entire *P.O.A.*, it is a lengthy piece of legislation but it will become a cornerstone of any arguments in the Ontario Courts – see: *Provincial Offences Act*.

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Chapter 11

Right to Drive

Don't I Have the Right to Drive?

No. The *Highway Traffic Act* (Ontario) speaks to this under Part IV Licenses, under [Section 31](#) (Driver, Driving Instructor) of the Act.

Section 31. Driving a privilege:

The purpose of this Part is to protect the public by ensuring that,

- (a) the privilege of driving on a highway is granted to, and retained by, only those persons, who demonstrate that they are likely to drive safely; and
- (b) full driving privileges are granted to novice and probationary drivers only after they acquire experience and develop or improve safe driving skills in controlled conditions.

Chapter 12

Right to Issue Tickets

What Law or Legislation Provides a City in Ontario With the Right to Ticket Vehicles and to Administer and Process Parking Tickets and the Fines Imposed?

The Legislation governing the administration and processing of parking tickets is governed by the Province of Ontario and is set out in the *Provincial Offences Act P.O.A.*, R.S.O 1990, c. P.33, as amended *P.O.A.*

Fines that are developed and approved by your City, either under your city's *Municipal Code* or *City Bylaws*, must be approved by order, under the *Ontario Provincial Offences Act*.

Fines that are developed and approved by The City of Toronto, either under the *Toronto Municipal Code* or The City of Toronto, *Bylaws*, must be approved by order, under the *Ontario Provincial Offences Act*.

By-Laws Inconsistent With the Highway Traffic Act Deemed Repealed

Section 195(1) If a provision of a municipal by-law passed by the council of a municipality or a police services board for,

- (a) regulating traffic on the highways;
- (b) regulating noise, fumes or smoke created by the operation of motor vehicles on the highways;
- or
- (c) prohibiting or regulating the operation of motor vehicles or any type or class thereof on the highways, is inconsistent with this Act or the regulations, the provision of the by-law shall be deemed to be repealed upon the inconsistency arising.

Approval of traffic by-laws for connecting links **Section 195(3)** If the council of a municipality passes a by-law for a purpose mentioned in clause (1) or (c) that affects traffic on a highway designated as a connecting link under subsection 21(1) of the [Public Transportation and Highway Improvement Act](#), the clerk of the municipality shall file a copy of the by-law with the Ministry within 30 days of its passing, and the by-law shall not become operative until it is approved by the Ministry.

Approval of Traffic By-Law in Whole or in Part

Section 195(4) Any by-law for regulating traffic on highways that is submitted to the Ministry for approval may be approved in whole or in part and, where part of the by-law is approved only, that part shall become operative.

Withdrawal of Approval by Ministry

Section 195(5) The Ministry may withdraw its approval to any by-law or any part thereof by notice sent by registered mail to the clerk of the municipality and the by-law or part thereof shall be deemed to be repealed twenty-one (21) days after the sending of the notice.

Different Legislation, Acts, Laws, By-laws, Codes & Rules that will affect you, with regard to tickets, requesting a trial and the act of challenging your tickets in Court, see the Links under each title:

1. [Constitution Acts 1867-1982](#) (The *Constitution Act*, 1867 & The *Constitution Act*, 1982)
2. [The Canadian Charter of Rights and Freedoms](#) (“the Charter”)
3. [Courts of Justice Act](#) (“C.J.A.”)
4. [Provincial Offences Act \(Ontario\)](#) (“P.O.A.”) Parts I, II & III
5. [Provincial Offences Procedure Act](#)
6. [Highway Traffic Act \(Ontario\)](#) (“H.T.A.”)
7. [Ontario Ministry of Transportation Demerit Point System](#)
8. [Ontario Municipal Act](#), 2001
9. [City of Toronto’s Municipal Code](#)
10. [Evidence Act](#)
11. [Rules of the Ontario Court](#) (Provincial Division) In Appeals under Section 135 of the P.O.A.
12. [Compulsory Automobile Insurance Act](#)
13. [Ontario Rules of Civil Procedure](#)
14. [Bill C-2](#) (allows Police to compel suspected drug impaired driver’s to provide a blood, urine or saliva sample for analysis). This Bill is an amendment to the Criminal Code of Canada.

15. *Justices of the Peace Act*
16. *Police Services Act*
17. *The Law Society of Upper Canada*
18. *Rules of Professional Conduct*(for lawyers).
19. *The Law Society Act*
20. *Paralegal Regulation* (pursuant to the Law Society of Upper Canada and the *Law Society Act*) This includes a link for the Paralegal Rules of Conduct & Paralegal Standing Committee.
21. *The Judges Act*
22. *Safer Roads to a Safer Ontario Act* – (Chapter 13 of the Statutes of Ontario 2007) Effective Oct.13/07
23. *Civil Remedies Act, 2001* – (Amended February 20, 2008)
24. *Bill 85 –The Photo Card Act, 2008* (November 27, 2008)

Chapter 13

Child Support Payments and the Highway Traffic Act

If I do Not Make my Child Support Payments, are There any Consequences Under the Highway Traffic Act?

Under Part XIII Suspension for Failure to Pay Judgment or Meet Support Obligations, the *H.T.A.* states the following under section 198.1 (1):

Section [198.1\(1\)](#) Licence suspension on direction of Director of Family Responsibility Office:

On receiving a direction under **section 37** of the *Family Responsibility and Support Arrears Enforcement Act*, 1996 to suspend the driver's licence of a person, the Registrar shall suspend the person's driver's licence, if it is not already under suspension.

Section [198.1\(2\)](#) Reinstatement:

On receiving a direction under [section 38](#) of the *Family Responsibility*

and Support Arrears Enforcement Act, 1996, to reinstate the driver's licence of a person, the Registrar shall reinstate the licence unless,

1. the licence is otherwise under suspension
2. interest charged or a penalty imposed under subsection 5(2) has not been paid; or
3. an applicable prescribed administrative fee for handling a dishonoured payment has not been paid.

Chapter 14

Samples of Bodily Fluids

Can a Police Officer Force Me to Provide a Blood, Urine or Saliva Sample, if that Officer Suspects that I am Under the Influence of Drugs, While Operating a Motor Vehicle?

Yes.

Under the provisions of this Legislation, [Bill C-2](#), Police Officer's who suspect you of driving while under the influence of drugs, can compel you to provide a blood, urine or saliva sample. These samples will then be sent to the Centre for Forensic Sciences for analysis. Presently, there are approximately 360 Officers trained in these procedures and only about 226 of whom are trained and certified to call themselves "Drug Recognition Experts".

In July, 2008 [Bill C-2](#) (an amendment to the [Criminal Code](#)) came into effect. If you are pulled over (i.e. – a R.I.D.E Roadblock set-up by Police) and a Police Officer suspects that you are driving, while impaired by drugs, you will be required to perform physical tests of impairment (the "Standardized Field Sobriety Test" or SFST) and if any evidence of impairment is noticed/observed, the driver will have to go to the police station, for further testing. The driver, after ar-

iving at the station, will be compelled to submit to a further examination by a specifically-trained “Drug Recognition Expert” using the systemic/standardized test procedures of the “Drug Evaluation and Classification program”. This is a comprehensive 12 step procedure (they examine your eyes, again they conduct tests of physical coordination, they take your pulse, your temperature, your blood pressure and you are interviewed) at the conclusion they demand a sample of your bodily fluid (urine, saliva or blood). If blood is to be extracted from your body, a medical practitioner must take it from your veins and this would most likely mean that you would be brought to a hospital for this procedure. This sample with then be sent to the Centre for Forensic Sciences for analysis.

The first woman in Toronto to be charged under this new amendment to the Criminal Code was Littoya Blackman. As a result of the alleged offence, she was released on a \$3,500.00 bail order at Toronto’s Old City Hall (60 Queen Street West) on or about October 9, 2008.

Chapter 15

Requirement to Wear Seatbelts

Do Children's Car Seats Really Keep Children Safe?

Yes

Are there any Recent Studies that Suggest the Safety Factor for Infants, Toddlers and Children in Child Car Seats?

Yes

Seat Belts – Do I Have to Wear One, While Driving a Motor Vehicle?

Normally, yes. But for those drivers who cannot wear a seat belt and do not want to receive tickets for not wearing one, see [Section 106, subsection \(6\)](#) “Exception” and for passengers who cannot wear seat belts for the same reasons see [Section 106, subsection \(7\)](#) “Same”.

Pursuant to the [Highway Traffic Act \(H.T.A.\)](#), R.S.O. 1990, Chapter H.8, Section 106 “Seat belts” states:

Section [106 \(2\)](#) – Use of seat belt assembly by driver :

(2) Every person who drives on a highway a motor vehicle in which a seat belt assembly is provided for the driver shall wear the complete seat belt assembly as required by subsection (5).

Section [106 \(3\)](#) – Use of seat belt assembly by passenger :

(3) Every person who is at least 16 years old and is a [passenger](#) in a motor vehicle on a highway shall,

- (a) occupy a seating position for which a seat belt assembly has been provided; and
- (b) wear the complete seat belt assembly as required by subsection (5)

Section [106 \(4\)](#) – Driver to ensure young passenger uses seat belt assembly:

(4) No person shall drive on a highway a motor vehicle in which there is a passenger who is under 16 years old unless,

- (a) that passenger,
 - (i) occupies a seating position for which a seat belt assembly has been provided, and

- (ii) is wearing the complete seat belt assembly as required by Subsection (5); or
- (b) that passenger is required by the regulations to be secured by a child restraint system, and is so secured.

Section 106 (5) – How to wear seat belt assembly:

- (5) A seat belt assembly shall be worn so that,
 - (a) the pelvic restraint is worn firmly against the body and across the hips;
 - (b) the torso restraint, if there is one, is worn closely against the body and over the shoulder and across the chest;
 - (c) the pelvic restraint, and the torso restraint, if there is one, are securely fastened; and
 - (d) no more than one person is wearing the seat belt assembly at any one time.

Section 106 (6) – Exception:

- (6) Subsections (2) and (3) do not apply to a person,
 - (a) who is driving a motor vehicle in reverse,
 - (b) who holds a certificate signed by a legally qualified medical practitioner certifying that the person is,
 - (i) for the period stated in the certificate, unable for medical reasons to wear a seat belt assembly, or
 - (ii) because of the person's size, build or other physical characteristic, unable to wear a seat belt assembly; or
 - (c) who is actually engaged in work which requires him or her to alight from and re-enter the motor vehicle at frequent intervals and the motor vehicle does not travel at a speed exceeding 40 kilometres per hour.

Section 106 (7) – Same:

(7) Clause (4) (a) does not apply in respect of a passenger if the passenger holds a certificate signed by a legally qualified medical practitioner certifying that the passenger is,

- (a) for the period stated in the certificate, unable for medical reasons to wear a seat belt assembly; or
- (b) because of the person's size, build or other physical characteristic, unable to wear a seat belt assembly.

If you cannot wear a seat belt for a number of reasons, you must go to your doctor and ask him/her to provide you with a medical certificate stating this. The certificate or letter, must provide a "period" which could be a year or five (5) years or whatever other period of time your doctor deems appropriate.

It is not uncommon for individuals to carry a medical certificate (doctor's letter) which states they cannot wear a seat belt, due to medical reasons. The "medical reasons" could be something as common as claustrophobia, which causes some people, who wear seat belts, extreme anxiety.

There are a number of medical reasons for not wearing a seat belt: you may have had surgery and your body is on the mend and the seat belt assembly may be irritating your body or is delaying the recuperation time of your injury or surgery.

If you are a large person, not all seat belt assemblies will fit your body and therefore the seat belt should not be worn (but you must have a medical certificate on your person, if you are about to receive a ticket for not wearing your seat belt).

If you drive passengers for a living, you will have to adhere to these laws, especially if your passenger is sixteen (16) years of age or less. If by chance you are pulled over, and your passenger is under the age of sixteen, you will be charged if your passenger is not wearing his/her seat belt assembly, unless you can establish that you exercised reasonable care or due diligence, with respect to ensuring

that your passenger was wearing his or her seat belt, before you embarked on your trip. If your passenger is sixteen (16) years or older and they are not wearing their seat belt while you are driving, they can be charged, not you.

On April 8, 2004 in the Province of Ontario, there was a provincial seat belt campaign taking place. Police Constable Isaac, a Peel Police Officer, was performing his duties on that day, which included participating in the Provincial blitz with respect to seat belt infractions, in the Region of Peel. Mr. Ashwani Kanda was driving his two sons, aged twelve (12) and eight (8) to school on April 8, 2004. Mr. Kanda testified he has ensured that both of his boys were wearing their seat belts (his older son in the front seat and younger one in the back seat) when he left his family home. Constable Isaac's noticed the younger son in the back seat of the car leaning forward, leading Constable to conclude that the youngster was not wearing his "seat belt" and as a result, he followed Mr. Kanda's car. Mr. Kanda stated that he was not aware that his younger son seated in the back seat, had unfastened his seat belt during the drive, until he was pulled over by Constable Isaac's and provided with a certificate of offence (a "ticket") under section 106 (6) of the *Highway Traffic Act* (now section 106 (4) of the *Highway Traffic Act*). Mr. Kanda decided to fight his ticket and went to trial on August 24, 2006. On August 24, 2006 his trial was heard by Justice of the Peace Darlene Florence. At the trial, J.P. Florence determined that section 106 (6) of the *Highway Traffic Act* was an "absolute liability" offence and with this in mind, she convicted Mr. Kanda. The penalty imposed by Justice of the Peace Florence was an \$85.00 fine and two (2) demerit points. In accordance with section 139, Mr. Kanda appealed this decision and the trial Judge decided that this was a "strict liability" offence and accepted Mr. Kanda's explanation as someone who exercised "due diligence" or reasonable care and put aside the original ruling by Justice of the Peace Florence and dismissed the charge against him. This was appealed to the Court of Appeal on December 3, 2007. The Court of Appeal agreed with the trial judge's ruling that an offence, pursuant to section 106 (6) of the *Highway Traffic Act* was a "strict liability offence" and dismissed the appeal, in a [decision](#) dated January 15, 2008. As long as you take all reasonable care or exercise

due diligence, you have a justifiable excuse in front of the Courts.

Part II

Parking Tickets

Chapter 16

You've Received a Ticket

What Do You Do When You Receive a Parking or Traffic Ticket?

First of all carefully look at and review your ticket. There are companies out there that generate what appear to be parking tickets that are a reasonable facsimile of the [legitimate](#) tickets. In the City of Toronto (it could be any city) a company, [Municipal Parking Corporation](#), operates in Toronto. The [tickets](#) that they generate are not legally enforceable, given that they are not generated on behalf the Municipality of Toronto, in accordance with the [Provincial Offences Act](#). These could be considered “private” tickets and need not be paid. If you don't pay them, the Ministry of Transportation will not attempt to collect the fines and fees, when you purchase your renewal sticker. These “private” companies, are not Green Hornets, Municipal Law Enforcement Officers or police officers and therefore cannot derive any enforcement ability under the [Provincial Offences Act](#). They claim that they are acting on behalf of property owners pursuant to the [“Trespass Act”](#).

The format of the ticket must comply with the [Provincial Offences Act](#) and must also be in accordance with the City of Toronto [Municipal Code](#), City of Toronto Bylaws (or your city's municipal codes

and bylaws). If the ticket that you have does not look like a ticket issued by the city which issued the ticket, then you should carefully examine it and search the company to find out if it can legitimately generate tickets that you are required to pay. If you aren't sure, call the city hall of your city and find out if the tickets are issued on behalf of the city or on behalf of a private business. If it is a private business, keep the ticket but do not pay it. If a dispute arises later, you will have the ticket as proof.

Look very carefully at the ticket and the logos that appear on it. In Toronto, a Municipal ticket will contain the "City of Toronto" logo (or your City logo), and a "Toronto Police" logo (or your City Police) and the Ontario Court of Justice, Toronto Region (your Region) and will call it a "Parking Infraction Notice - City of Toronto" and will contain a reference to the "Signature of Issuing Provincial Offences Officer". The back of the ticket must contain "trial options" to be a legitimate ticket. The only location in Toronto where parking tickets that are going to trial are heard is located on north of the Highway of Heroes (Highway 401) at [1530 Markham Road](#) (Ground Floor), Toronto, Ontario. There are nine (9) court rooms at this City of Toronto location.

These Additional Steps Apply Anywhere and Everywhere

Take a lot of notes. Write down everything that happened. Remember the 5 W's (Who, What, Where, When, Why).

If you received a parking ticket – write some notes: Was a sign posted? what did the sign say? What address is your vehicle parked in front of? What are weather conditions like? Is it night or day, is it dark out or is it a bright sunny day?

What is the date and time? When did you park there? If necessary, take some [pictures](#) or videos. Who issued the ticket (a description of the individual)? Were they on foot, in a car, on bike, on horse? Was the meter you were parked in front of in good operating shape (was

it working properly)? If you had paid for parking, where was the slip, was it on your dashboard?

When did it expire? What were the circumstances which led to your vehicle being ticketed? Next, you must read the ticket and see if it is accurate or not? Does it have the correct date and time? Does it have the correct charge? Does it state the car manufacturer's name and type of vehicle (sometimes it just states "Ford" but it neglects to say that it is a Blue Ford Bronco).

A careful review at the time the ticket is issued will greatly increase your chances winning, later on down the road.

If you are bring pulled over by a Police Officer then an entirely different approach is required. It is amazing how often people attempt to negotiate their way out of a ticket, when pulled over by a Police Officer, either on a road or highway.

It is so important to remember that the conversation that you have with an officer under these circumstances, can and will be used against you. If the Officer suggests you did something wrong, do not agree with him/her and don't attempt to defend yourself. Let him/her say whatever they want to say and provide the Police Officer with your license, ownership and your insurance documents.

Should I Contest My Parking Ticket, Upon Receiving One?

Yes. There is a good chance of winning your ticket, especially in Toronto.

Due to the enormous number of tickets issued every year, and the number of people who seek to challenge those tickets, the Courts cannot possibly provide enough timely trial dates in response to all the people seeking one. As a result, people who have chosen to challenge their parking tickets have been waiting years for their trial date. The Supreme Court of Canada has ruled that the guidelines for a trial in Canada is 8-10 months based on section 11 (b) of the

Charter. The longer you have to wait for a trial, the better your chances are of having the charges stayed (suspended or cancelled), due to the inordinate delay. If you have requested a trial and more than 8 months have passed then you should review the Application for Stay of Proceedings chapter earlier in this book. The Application for Stay of Proceedings reviews the law, the process and procedure about filing your Section 11(b) Constitutional motion and provides you with the [form](#) (in one of three formats to choose from) that you can fill out with information that is only specific to your case.

[Section 8](#) of the *Provincial Offences Act* provides that payment of an offence notice (ticket) constitutes a plea of guilty and results in a conviction being registered.

It should be noted that those issuing the tickets, don't as a rule, ever record anything else, other than the particulars contained on the ticket and therefore will have limited to no recall of the event and will not be able to establish, through their evidence, that your vehicle was parked in an area which prohibited parking.

Sometimes, the clerk who is receiving the ticket can initiate an investigation into your ticket or may even withdraw the ticket if it is improper on the face or quotes a bylaw or code that doesn't exist. It should be remembered that currently the City cannot keep up with the demand for trials. In the last two (2) years, out of the almost 3 million tickets issued a year (a majority by 304 parking enforcement officers) only two hundred and fifty thousand (250,000.00) motorists who have received tickets have requested trials. Out of the quarter of a million motorists who have requested trials over the last two (2) years, only 4,300 have received trial dates. By the time the trial is scheduled, your right to a trial within a reasonable time (under [section 11 \(b\)](#) of the *Charter of Rights and Freedoms*), has been infringed upon, given that it has taken over a year to get to trial (and the Supreme Court said in a decision called [Morin](#) that the guidelines for trials are 8 to 10 months).

What Does a Parking Ticket Look Like in the City of Toronto

The official name for a parking ticket is a "Parking Infraction Notice" issued by the City of Toronto. These tickets (thin waxy paper) are spit out from a hand held computer unit (once all of the information has been entered) and are canary yellow in colour. These tickets are approximately 20 centimetres long and are 7.5 centimetres in width and paper thin. Here is an example of what they look like:



Figure 16.1: Front of Ticket



Figure 16.2: Back of Ticket

This ticket (front & back) tells us a number of different things:

It is issued by the City of Toronto (under the authority of the *Provincial Offences Act* and in coordination with the Ontario Court of Justice, Toronto Region.

On the top portion of the front of the ticket, under the barcode on the left, a name appears and under the name D. Sirois. It is written "believes from personal knowledge and certifies that on" this is the name of the law enforcement Officer (either a Green Hornet, an MLEO or a Police Officer) who wrote the ticket. So D. Sirois believes

and certifies that on July 17, 2006 at 3:15 p.m., that a motor vehicle with a license plate Number (not provided), with a license that expires in September 2005, from the Province of Ontario, the vehicle make a "Toyota", in the "City of Toronto" which was parked (no location provided on the training ticket), did commit the parking infraction "PARK SIGNED HIGHWAY DURING PROHIBITED TIMES/DAYS" which violated (Code No.1). Code No.1 refers to the [City of Toronto's Municipal Code](#). The Ticket continues, stating it is "Contrary to (By-law or Code)" in this case Code No. 1

The next field states Set Fine Amount \$30.00 this fine cannot be set, without an order under the *Provincial Offences Act*. The next line states "Signature of Issuing Provincial Offences Officer" (Green Hornet, MLEO or Police Officer). Then there is a signature (D. Sirois) of the same officer that is named on the top left hand portion of the ticket (this signature is logged in the memory and spit out when the ticket is generated). The Officer is then identified by an "Officer No" (65523) and Unit (PXE)

At the very bottom there is a "Notice" : this notice informs you to pay your ticket, within 15 calendar days of the "infraction date" (in this case the so-called "infraction date was July 17, 2006" 15 days later – August 1, 2006) or to choose to another option by August 1, 2006 (deliver a [Notice of Intention to Appear](#); in court and seek a trial). The notice goes on to state that if you do not pay your fine or if you do not appear in court for trial that you will be deemed not to dispute this charge (violation of Code No. 29) and a conviction may be entered against you (they will have a trial in absentia and you will be convicted in absentia). It further states that "upon conviction, you will be required to pay the set fine (\$30.00) plus court costs." An administrative fee is payable if the fine goes into default (you don't pay it) and the information may be provided to a credit bureau. You must attend one of the addresses (Parking Tag Operations – 4 locations Downtown, East, West or North) on the reverse to request a trial or discuss this Notice (the ticket). Go Mon – Fri. during the hours between 8:30 am. to 4:30 p.m., they are not open on Saturday, Sunday, Statutory Holidays or Civic Holidays.

The four locations in Toronto in which you can bring your ticket, to

request a [trial](#) which will most likely never be scheduled and will never take place:

Parking Tag Operations - Central

[55 John Street](#) (John south of King)

3rd Floor, Metro Hall, Toronto, Ontario

Hours of operation: Monday to Friday: 8:30a.m. – 4:30p.m.

Parking Tag Operations - East

[1530 Markham Road](#)

Main Floor, Scarborough, Ontario

Hours of operation: Monday to Friday: 8:30a.m. – 4:30p.m.

Parking Tag Operations - West

York Civic Centre, [2700 Eglinton Avenue West](#)

Main Floor, York, Ontario

Hours of operation: Monday to Friday: 8:30a.m. – 4:30p.m.

Parking Tag Operations - North

North York Civic Centre, [5100 Yonge Street](#)

Ground Floor, North York, Ontario

Hours of operation: Monday to Friday: 8:30a.m. – 4:30pm

Note: All four sites are wheelchair accessible.

The Best Option: Attend one of the four locations (North, Central, East or West – the most convenient one for you) and indicate that you want to proceed to trial. Fill out the [Notice of Intention to Appear](#) indicating that you want a trial and will be challenging the Officer's evidence (we will talk about [disclosure](#) later and why it is very important that you always challenge the Officer's evidence in any trial). Also ensure that you indicate what language you want your trial to be held in, if it is other than English (this is your right under **section 14** of the [Charter](#). Upon filling this out and providing it to the clerk at one of the four Parking Tag Operation's offices, you will be told that you will be receiving a "Notice of Trial" in the mail.

The [City of Toronto](#) has stopped issuing trial dates for \$30.00 parking tickets. Anyone who gets one can still request a date for trial to contest the parking ticket “and will be told a trial date will be coming in the mail” but the letter never arrives and no conviction is registered. The city figured out it’s far less costly to give people who have received tickets the impression that they will eventually have their case heard in court and to offer the option of having a trial, then just forget about it and to have to actually administer justice. If you receive a parking ticket, you must request a trial in order to have the parking ticket thrown out; if you ignore it, you will be convicted in absentia and will receive an even bigger bill in the mail.

All trials for parking tickets issued in Toronto are heard at one of the nine (9) Court Rooms located [1530 Markham Road](#), Ground Floor (on Markham Road, north of Highway 401)(also known as the “Highway of Heroes”).

Chapter 17

Options When You Receive a Ticket

When You Receive a Parking Ticket or Traffic Ticket You Will Have Three Options

1. Plead “Guilty” and pay the fine;
2. Plead “Guilty with an explanation” and pay the fine (this is a guilty plea);
3. Request a trial date and upon having your case come up, plead “Not Guilty”.

Which Option Should I Pick?

As a general rule, it is best to pick option “3” and request a trial date. If you request a trial date, it is important to start a file. This means that any paperwork you receive or generate (i.e. – your statement or a statement of a witness who observed or has knowledge of the incident giving rise to your receiving the ticket, including the ticket that started it, should be photocopied and maintained in a file. Some

people consider a grocery bag as a file, it is probably a better idea to have a large strong envelope or a file folder, which an elastic can fit around to hold the contents in place. Every piece of paper, including the ticket, should be in the file or at the very least, have a photocopy of each piece of paper and document (front & back) and place these photocopies in the file. This preparatory work will prove invaluable later on.

What Advantage is There, After Receiving a Ticket, to Elect to go to Trial and Actually Show up for the Trial Date?

The advantages far outweigh the disadvantages, not only for your own case, but for the many others who are also in your shoes, or soon will be.

The [City of Toronto](#) has stopped issuing trial dates for \$30 parking tickets. Anyone who gets one can still request a date for trial to contest the parking ticket “and will be told a trial date will be coming in the mail” but the letter never arrives and no conviction is registered. The city figured out it’s far less costly to pretend to offer people a trial, then just forget about it, than it is to actually administer justice. The City of Toronto, as of July 2009 has added five (5) more court rooms to the twenty four (24) court rooms already being utilized and as a result, the new court rooms are having all of parking tickets scheduled for trial. This means that the City is now committed to hearing all \$30.00 parking tickets. [See Story](#)

The advantages:

You will learn about the system and add your name to the thousands of others who seek their day in court.

You are exercising your right under the [Canadian Charter of Rights and Freedoms](#) the “Charter” and under the applicable Provincial or Territorial Legislation.

You will have the opportunity to request disclosure of the officer's notes and if the disclosure is not made available to you by the trial date, you may have your charge(s) withdrawn (violation of Section 7 of the **Charter**).

Sometimes, the officer who issued you the ticket(s) was so busy issuing tickets, that he/she neglected to write any meaningful notes at the same time that he/she issued you the ticket and because the officer's notes are of no assistance to their memory and they can't recall the events leading up to the charge being laid, the Prosecutor will state that the officer has no "evidence" and will withdraw the charge(s).

You will have the opportunity to have the trial in your mother tongue, if you find it difficult to communicate or understand that English or French language. If the court does not provide you with an interpreter, after you have requested one, the charge(s) may be withdrawn (violation of **Section 14** of the **Charter**).

If the officer that issued the ticket is not present at the court on the day of your trial, your charge(s) will most likely be withdrawn (if it isn't withdrawn, when your name is called request that the charge(s) be dismissed as you showed up for the trial and the officer is not present to prove the city's case).

It is possible that the Prosecutor or the Justice of the Peace may not appear and this too is grounds for having the charge(s) against you withdrawn or dismissed (given that to put it over, may inadvertently infringe upon your **Charter** rights pursuant to **Section 11(b)**).

It may be pointed out to you that the ticket has an irregularity on it, that cannot be amended by the Justice of the Peace and will therefore be withdrawn (i.e.– no officer's signature, the wrong calendar year, no section of the *Highway Traffic Act* or a municipal bylaw, sometimes even if your surname is spelled inaccurately or misspelled).

If your trial is 11 to 14 months after the date of the alleged infraction your **Charter** rights under **Section 11(b)** have been violated and under **Section 24(1)** the Justice of the Peace can grant you a "Stay of Proceeding" and your charge(s) effectively go away. Note: you would have to make an application and serve it upon the Ministry of

the Attorney General Federally, the Ministry of the Attorney General Provincially and the Justice of the Peace and the Prosecutor at least 15 days in advance of the scheduled trial date.

The courtroom may be overflowing with defendant's demanding a trial and there is not enough time in the day to possibly accommodate everyone's right to a trial, at which point the Prosecutor will begin to look for ways to make the charges of individuals go away and the offer of plea bargains will be made to defendant's just prior to the trial time. This offer may include, reduction of the speed that you were charged with to 15 kilometres over the limit, versus the actual speed. It may involve lowering a serious careless driving charge to a much lesser offence under the *Highway Traffic Act*, etc.

For those who reject a plea bargain, the matter (the trial) will most probably be put over, which will most likely mean that your right to a trial within a reasonable time (in accordance with Section 11(b) of the *Charter*) will be breached. If the trial is 11 to 14 months later, you could apply for a "Stay of Proceedings" and request a stay under Section 24(1) of the *Charter*. Note: you would have to make an application for a "Stay of Proceeding" and serve it upon the Ministry of the Attorney General (both Provincially and Federally), the Justice of the Peace and the Prosecutor at least 15 days in advance of the scheduled trial date. When the Provincial Governments handed over authority to municipalities to ticket/fine motorists and to collect those fines, along with this responsibility came the additional burden of having to prosecute these matters in the Courts. Currently, the City of Toronto only has twenty-four (24) courtrooms in which matters concerning tickets are heard. There are nine (9) courtrooms located at [1530 Markham Road](#) (in which all the City of Toronto's "parking tickets" are dealt with, including other Highway Traffic tickets issued to motorists), eight (8) courtrooms at Old City Hall, [60 Queen Street West](#) and eight (8) courtrooms at [2700 Eglinton Avenue West](#). In October, 2008 the City of Toronto's "Government Management Committee" voted to spend 3.7 million to open up six (6) more, [new courtrooms](#) to deal with tickets (issued to motorists under the "*Highway Traffic Act*" / "*Provincial Offences Act*") located at [481 University Ave](#). This would mean the City of Toronto would have thirty one (31) courtrooms to deal with these matters.

The six (6) new courtrooms expected to open in 2009 at 481 University Avenue are expected to raise an additional 4.4 million dollars (in part, to cover the wages & benefits of the 304 parking enforcement officers who issue “parking tickets”) and to allow an additional 180,000 more cases a year to be heard.

If you do not challenge the ticket in court, you will lose and this loss may result in a stiff fine, demerit points and a huge increase in your insurance premiums in at least the next three (3) to six (6) years. You may lose your driver’s license or may lose a promotion at work, due to your poor driving record. Some people are unfortunate enough to actually lose their employment or even face incarceration. Your driving record, just like your reputation, should be preserved and protected at all times.

If you show up to fight your tickets, you will stand a very good chance of having them withdrawn, dismissed or reduced. In any event, it is a win – win situation for you and you should, if provided with the opportunity, take full advantage of all of the positive possibilities.

Part III

Speeding Tickets

About This Free Version

This copy of *“Fight Your Tickets: A Comprehensive Guide to Traffic Tickets”* has been freely distributed and contains the key sections of the fightyourtickets.ca website.

The complete eBook version has nine additional chapters that will help you win your [traffic ticket](#), even without fighting it!

The new chapters are:

- I Just Want to Pay the Fine
- Importance of Caselaw and Jurisprudence
- Absolute and Strict Liability Offences
- Defence of Necessity
- Mandatory Time Limits for Laying Charges
- Challenge a Speeding Ticket and Win
- Laser Radar
- How to Win a Ticket Without Fighting It
- Pleadings and Motions Before the Court

Thanks to our sponsors you can now get the complete eBook for FREE at:



The complete and most current version of the eBook is also available for **\$19.99**, from Smashwords.com, in the iBookstore for iPad, iPhone or iPod and as a [PDF](#) from the only website you'll need to fight your [traffic tickets!](#)

A paperback that contains the complete contents of the eBook is only **\$24.99** and can be purchased online at Amazon.com, Lulu.com or Federal Publications and in the [Toronto area](#) at select bookstores.

Preview at [Google Books](#).



Part IV

Going to Trial

Chapter 20

Requesting a Trial

How do I Request a Trial Date?

Most Municipalities require you to attend an Ontario Court of Justice office within [your city](#). The ticket normally contains the address of the office in which you must attend. In most offices now, when you attempt to schedule a trial date, you will be forcefully directed into a “First Attendance Meeting” first, to meet with the “Prosecutor” who will then attempt to reach a plea bargain with you (which generally means that the prosecutor will try to have you agree to plead guilty to a lesser charge). Never accept this, as in most cases, it is entirely at your detriment. Always demand a “trial date” and not a “first attendance meeting”. Attendance Meetings are a waste of your time and have been designed to discourage you from seeking a trial, where the onus is on the State to prove that you are guilty of the offence, not where you are obligated to prove your innocence (your right under section 11(d) of the [Charter](#).) You will have to bring the ticket that you received and it is always best to have obtained a photocopy of the front and back of your ticket for your records and to maintain this copy, before you hand it to the clerk (who will keep it).

If you request a trial date, you will have to fill out a [Notice of Intention to Appear](#) sheet [Form 7 – Provincial Offences Act – Regulation 950](#)).

See [section 17.1](#) of the *Provincial Offences Act*.

The [Notice of Intention to Appear](#) form will ask you the following questions: “Name, Address, Phone Number and the Offence Notice Number or Parking Infraction Notice Number”.

A question will be posed in the next section of the form:

At trial I intend to challenge the evidence of the provincial offences officer who completed The Certificate of Offence or Certificate of Parking Infraction _ No/Non Yes/Oui

(see *Provincial Offences Act* [Section 5.2\(1\)](#) “Challenge to officer’s evidence”)

Always check off YES. The reason you do this, is to ensure that the Officer (Green Hornet, Parking Infraction Officer, MLEO, Police Officer, Ontario Provincial Police Officer, RCMP etc.,) who issued the ticket is:

- Compelled to be present at the Trial.
- Compelled to have their log book or notepad in their possession at the trial.

If you do not check off yes, then you might as well have picked option 1 or 2 (both guilty). If you pick “NO” then the following will take place:

- The Officer will not have to show up.
- The Prosecutor will rely on the same Officer’s “certified statements” against you – and you will be in no position to disagree with the Officer’s statement, as you have already waived your rights to that.
- You WILL lose your case!

It is important that you indicate that you intend to challenge the evidence of the Officer, for several reasons:

- If the Officer does not show up for your trial, it will more than likely be dismissed.
- You need to check off “YES” in order to request “disclosure”, after you have received your Notice of Trial in the mail. See the chapter on disclosure later in this book.
- If the officer does show up and wants to rely on his notes, to him/her about his/her notes and recollection at the time of the event.
- You cannot cross examine notes, you can only cross examine the author of the notes.

The last portion of the [Notice of Intention to Appear Form 7](#) that you must fill out states that:

I intend to appear in court to enter a plea at the time and date set for trial and I wish that it be held in the English language.

You check this off, unless, due to your language needs (other than English) you require a language interpreter for the trial, in which case, you indicate the language that you feel most comfortable having a trial in, or if you are deaf and require a sign language interpreter. This right is entrenched in [Section 14](#) of the *Charter*. If the Court is unable to provide you with a [Court appointed Interpreter](#), then your rights under [Section 14](#) of the *Charter* have been violated, which constitutes grounds under [Section 24\(1\)](#) (remedy section for Charter violations) to have the charge(s) that you showed up to challenge, dismissed. You also have the right to make full answer and defence to your charge(s) and this right is entrenched in [Section 7](#) of the *Charter* and pursuant to section 46(2) of the *Provincial Offences Act*.

[Section 14](#) of the *Canadian Charter of Rights and Freedoms* (the *Charter*) states:

A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf, has the right to the assistance of an interpreter.

In addition to [section 14](#) of the *Charter*, sections 84(1) & [84\(2\)](#) of the *Provincial Offences Act* apply to this situation:

[Section 84\(1\)](#) Interpreters – A justice may authorize a person to act as an interpreter in a proceeding before the justice where the person swears the prescribed oath and, in the opinion of the justice, is competent.

[Section 84\(2\)](#) Idem – A judge may authorize a person to act as interpreter in proceedings under this Act where the person swears the prescribed oath and, in the opinion of the judge is competent and likely to be readily available.

Remember, if you request a language/sign interpreter and you show up and commence the trial in your preferred language, with the assistance of the [Court appointed Interpreter](#), you can't skip back and forth in English/French – it is either that you conduct the trial in English/French or the Court's Interpreter must be used throughout – you can't go back and forth when it suits you. The Court will not permit this.

The last step is that you sign the bottom portion of the Form 7 and date it. Once you have filled this out and have handed it to the clerk, ask for a copy for your records. The clerk will inform you that you will be receiving a trial date in the mail. Now you wait for your Notice of Trial in the mail. See Form 7 – [Notice of Intention to Appear](#)

What Happens if I Cannot Attend in Person, How Can I Challenge the Ticket if I do Not Show up in Person?

You can send a family member, friend or co-worker on your behalf. The clerk receiving your ticket would recognize the family member, friend or co-worker as an “agent” filing the Notice of Intention to Appear - Form 7, on your behalf. If someone else is going to show up and file on your behalf, ensure that they understand that when filing out the request for trial Form 7 – Notice of Intention to Appear), that they say “yes” to the question “At trial I intend to challenge the evidence of the Provincial Offences Officer who completed the Certificate of Offence or Certificate of Parking Infraction”. Also let them know if you have a language preference other than English and that language should be noted with a request for an interpreter (which is your right under Section 14 of the [Charter](#). When the “Notice of Trial” is mailed out, it will go to your address and not the address of the other person (the “agent”) who requested a trial date on your behalf. The Notice of Trail never goes to the agent, unless the agent is the owner of the car or vehicle which was ticketed.

Are There any Time Limits When Requesting a Trial to Challenge my Ticket(s)?

Yes. You will have fifteen (15) calendar days from the date of the alleged infraction (either a parking or traffic ticket) to bring your ticket to the appropriate office, if it is issued under Part I of the [Provincial Offences Act \(P.O.A.\)](#) to have it processed for a trial. If the ticket is issued under Part III of the *P.O.A.*, you will have thirty (30) calendar days to bring it to the appropriate office (normally the Ontario Court of Justice office), to indicate that you wish to challenge it at a trial. The back of the ticket generally provides you with the address of the appropriate office to bring it to, within the area in which you received your ticket.

The *Provincial Offences Act* (commonly referred to as *P.O.A.*) sets out the procedural requirements in [section 5.1](#) (filing a notice of the intention to appear).

A ticket, under the *Provincial Offences Act* is referred to as a “Certificate of Offence”, or a “Parking Infraction Notice”. Under the provisions of the *Provincial Offences Act*, when a Certificate of Offence (ticket) has been delivered (either hand delivered to you by a Police Officer or if the parking ticket was placed on your vehicle), you have fifteen (15) calendar days within which to indicate whether you want to plead guilty (pay the fine), guilty with an explanation (pay the fine and/or have the demerit points attributed to your driver’s license) or that you wanted to proceed with a trial. If you do not choose one of these options within fifteen (15) days, the Court will presume you agree with the information on the ticket(s) and a plea of guilty would be entered on your behalf and you will have to pay the original set fine shown on the ticket, the court’s administrative costs and a [Victim Fine Surcharge](#) (i.e. – a speeding ticket 59 km’s per hour in a 40 km zone = set fine of \$47.50 With the costs and Victim Fine Surcharge, now = \$67.50 (increase \$20.00)).

It is important to remember as well, that whatever amount of time it takes you to present your ticket and request a trial is considered a neutral intake time, with respect to any Charter argument regarding [s.11 \(b\)](#) of the Charter. Example, if you receive the ticket on the 1st of any month and you wait until the 15th to have it processed for a trial, the Courts will deduct 14 days (neutral intake time) off of the 8 – 10 month period referred to in the Supreme Court’s decision of [Morin](#).

What Happens if I Receive a “Notice of Trial” in the Mail, and I am On Vacation, Out of the Country, on that Date, What Do I Do?

There are a couple of options at your disposal. The first one is that you inform the court, at least ten (10) days prior to the scheduled

trial date, that you are not available on the scheduled trial date. You will be asked by the clerk in the Ontario Courts of Justice – *Provincial Offences Act (P.O.A.)* office in your area or in Toronto, for all tickets you can attend the Toronto South Ontario Courts of Justice (*P.O.A.*) office at [137 Edward Street](#), 2nd floor, in Toronto or for parking tickets, you can go to Edward St or the only other, at [1530 Markham Road](#), Ground Floor. These offices are normally open for business between 8:30 a.m. and 5:00 p.m. [137 Edward Street](#) is a street just north of Dundas St W (it is located one street north of Dundas St and intersects with University Ave) if you are going to Edward Street after 10:00 a.m. go to the Tim Horton's and get a large cup of coffee and something to munch on, because once you go to the second floor of 137 Edward Street and get a number, you'll be waiting a while before you are served. Once you are in one of these offices, inform the clerk that you have received a "[Notice of Trial](#)" (have it with you) and that you need to prepare and file a "Motion" for a new "Trial date". Once you have filled out the documentation, the clerk will provide you with a copy of your motion and will give you a date, time and room number of where you will have to appear, to present your motion, requesting a revised "Trial Date". This motion will be presented to a Justice of the Peace, who will determine whether or not you are entitled to change the date of trial. If the Justice of the Peace denies your request, then the original date of trial will be the date that your matter is heard. If the Justice of the Peace agrees that, under the circumstances, it is appropriate to change your date of trial (i.e. – your out of the country on vacation, which was planned before your received your "[Notice of Trial](#)" in the mail) then you will receive a new date for trial. You could also send someone else on your behalf (i.e. – an "agent") to make this motion on your behalf in front of the Justice of the Peace.

If you don't have time to do all of this, at least ten (10) days prior to the scheduled trial, you can go on vacation and have an agent come to the scheduled trial date and make the request to adjourn the matter to another trial date in the future, given that you are unable to show up for the trial date, given your particular or specific circumstances. In most cases, the Justice of the Peace will grant your request. If not, the agent can argue the case on your behalf in

your absence. Again, if the Justice of the Peace refuses to grant this request, this can be appealed, especially if your absence contributed to the conviction or being found guilty.

This can all be appealed under the *Provincial Offences Act*, beginning in [Section 135](#). To appeal a Conviction and/or sentence pursuant to the *Provincial Offences Act* see within this site [Appealing a Conviction or Sentence](#).

Chapter 21

Right to Trial in French

If I Speak French, Can I Insist on a Trial Being Held in the French Language?

Yes. In addition to the *Charter of Rights and Freedoms* [section 14](#) there are other laws which support this right to have a trial in the French language, if requested. The *Courts of Justice Act* (C.O.J.A.) provides the following sections which accommodates this situation.

Under the Language title of the C.O.J.A. [section 125](#) “Official languages of the Courts” states:

Section 125(1) The official languages of the courts of Ontario are English and French.

Section 126(1) A party to a proceeding who speaks French has the right to require that it be conducted as a bilingual hearing.

Section 126(2) The following rules apply to a proceeding that is conducted as a bilingual proceeding:

1. The hearings that the party specifies shall be presided over by a judge or officer who speaks English and French.

Section 46(2) of the *Provincial Offences Act* states “Right to Defend” – The defendant is entitled to make full answer and defence.

Section 14 of the “Charter” states: A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

This is just part of the [law](#) which makes reference to a [French](#) speaking person’s right to have a proceeding in the French language. There are other laws that also come into play, the [French Language Services Act](#), R.S.O. 1990 where the Government has a duty to ensure that services (i.e. – administration of justice) are provided for in the French language. In addition to the Courts of Ontario, there are twenty five (25) other designated areas where Government services in Ontario, must be offered in the [French language](#).

In 2006 the Government of Ontario celebrated the 20th Anniversary of the [French Language Services Act](#).

Chapter 22

Notice of Trial

Once You Receive Your “Notice of Trial” in the Mail, What is the Next Step?

Once you have received your [Notice of Trial](#) in the mail, it is important that you proceed to the appropriate location and fill out a [Disclosure Request Form](#). On the [Notice of Trial](#) you will be able to locate a phone number. Call this number and ask them where you can pick up a “Disclosure Request Form” in your particular city, as every city in Ontario is different. If you’re not sure, you will find *Provincial Offences Act* Court offices (Ontario Court of Justice) listed alphabetically from Barrie to Woodstock in the Appendix of this book.

In order to properly fill it out, you should bring your [Notice of Trial](#), as it will contain all the information that is required on the Disclosure Request Form. After filling out the disclosure request form, ask the clerk for a copy for your file. The request for disclosure normally takes anywhere from 4 to 8 weeks. What you will normally receive, is a copy of the investigating Officer’s log book, with his/her notations contained within it or if you were involved in a motor vehicle accident you will receive a “Motor Vehicle Accident Report” with the investigating officer’s notations. Disclosure is extremely important and it is your fundamental right pursuant to section 7 of the [Charter](#)

of [Rights and Freedoms](#). See the section on [Disclosure](#).

After you have taken all the necessary steps to receive disclosure, the next step is to prepare for your impending trial.

Chapter 23

Application for Stay of Proceedings

Once you've received your [Notice of Trial](#) you should then submit an Application for Stay of Proceedings. The background material to this process and sample forms for the Application are contained in the following files:

[Application for Stay of Proceedings.odt](#)

[Application for Stay of Proceedings.doc](#)

[Application for Stay of Proceedings.pdf](#)

The Office of the Auditor General of Ontario completed and released the [Auditor General's Report of December, 2008](#). The Auditor General, Jim McCarter, CA made a number of detailed audit observations. One dealt with Ontario's Court Services; See Chapter 3 - VFM Section 3.07, page 206 of the Auditor General's 2008 Annual Report, here is one excerpt:

Detailed Audit Observations Case Backlogs and the Court:

Efficiency:

The success of the judicial system is measured by its ability to resolve disputes in a fair and timely manner. In our previous audits of court services in 1993, 1997, and 2003, we reported that serious backlogs existed and were growing, particularly for criminal cases, and that more successful solutions were needed for eliminating backlogs. Despite several ongoing and new initiatives to reduce backlogs, the situation has largely remained unchanged: the measures put in place to reduce or eliminate backlogs have not been sufficient to reverse the trend. Not only have the backlogs not been reduced – they continue to grow. A major reason for this is that there has been a significant increase in charges laid, which the courts have not been able to keep up with. At the time of our audit, the backlogs were at their highest levels in 15 years.

There are serious ramifications when backlogs in courts are not adequately addressed: the public can develop a perception that the courts are not responsive to its needs; defendants can take advantage of delays to argue that their cases should be withdrawn; and witnesses memories can fade.

Also, long delays caused by backlogs are unfair to accused persons, who deserve to have criminal charges against them resolved within a reasonable time period. [Auditor General of Ontario - Jim McCarter](#).

Does the Federal Department of Justice approve of Stay of Proceedings?

According to [The Federal Prosecution Service DESKBOOK](#) – Part VII Policy in Certain Types of Litigation Chapter 35:

35.4.1 The Power to Stay Proceedings

An attorney general has the statutory power to stay existing crimi-

nal proceedings in individual cases involving appropriate fact [situations](#). Pursuant to section 579 of the Criminal Code the Crown must notify the clerk of the court of the recommencement of the stayed proceedings within a period of one year from the date of the entry of the stay. Crown counsel must be conscious of this limitation in drafting immunity agreements, particularly where the terms of the agreement require that the information provider do something or refrain from doing something during that period.

The authority of the Attorney General of Canada to stay proceedings does not include the power to stay prosecutions conducted by provincial attorneys general. Accordingly, the agreement must be carefully worded so as to make the extent of the immunity clear and unambiguous. Counsel for the information-provider should be referred to the provincial attorney general if his or her client desires immunity from offences prosecuted by the provincial attorney general. Crown counsel may respond to a request for consultation from the provincial representative, or initiate consultation with provincial authorities where appropriate.

Upon opening up one of the following file formats, you may find what appears to be a blank sheet. If you scroll down you will find the introduction to the Application for Stay of Proceeding, complete with a detailed explanation and a thorough discussion with respect to the law (Supreme Court Decisions) that support your [Section 11\(b\)](#) application or your Constitutional motion.

Chapter 24

Disclosure

What is Disclosure, with Regard to a Trial in the Courts?

The Courts now recognize that any individual who has been charged (i.e. – parking/traffic tickets) by the State (Province of Ontario/Canada) has a right to know the case against them. As result, that individual has a right to review any investigating Police Officer's notes, reports or records that concern them and the charge in question.

It is extremely important to have access to the investigating police officer's notes, written in the course of the investigation. These notes provide information and context and can assist in determining the strength or weakness of your chances of successfully challenging your ticket.

Typically, in a case where you have received a ticket, the investigating Police Officer made notations in his/her log book and when you request disclosure, you receive a copy of the Officer's log book that pertains to your charge(s). In most municipalities in Ontario, you will be told that you can only make the request for disclosure, after you have received a Notice of Trial in the mail. You will be told that it has to be that way to ensure that there is co-ordination of the trial date and the availability of the police officer who laid the charge and

whose notes you are requesting a photocopy of.

Disclosure is extremely important. In 1991 the Supreme Court of Canada agreed, in a case called [Stinchcombe](#) that prosecutors should make available to the defendant, all relevant and material information in its possession.

This was to ensure that the defendant could mount a full and complete defense (full answer and defense). This means that you, as the accused, have the opportunity to see what kind of case the State has against you and provides you with an opportunity to defend yourself.

Prior to 1991 no such obligation existed on the crown/prosecution and as a result, miscarriages of Justice have occurred. (In July, 2008 the Ontario Government announced they would compensate [Mr. Steven Truscott](#) (who was sentenced to “hang” at the age of 14 years and who then served 10 years in Prison) with [\\$6.5 million dollars](#) due to his conviction of murdering Lynne Harper in 1959, which was later overturned by the [Ontario Court of Appeal](#)(August 28, 2007), who quashed his conviction and acquitted him. During the 1959 trial, the Crown did not disclose all of the facts to Mr.Truscott’s Lawyer, who defended him at the trial. Disclosure, is now a right, entrenched in Section 7 of the [Charter](#). The crown/prosecutor must provide full disclosure to the defendant prior to a plea (guilty or not guilty) made before the courts.

So these are now the rules:

1. You have a right, under section 7 of the [Charter](#), to receive any/all evidence produced by the investigating Police Officer(s) related to your charge. In cases of traffic and parking tickets, this generally means that you receive a copy of the Officer’s notes. The notes should say what the circumstances were that led the Officer to lay a charge or charges against you. Sometimes the notes are accurate and sometimes they are not.
2. The Crown or Prosecution, now has an “obligation/duty” to provide you with complete disclosure, prior to your plea. This does not mean at the trial date – never accept this and complain to the Court if the Crown or Prosecution attempts to do

this. You have a right to have an adequate and sufficient amount of time to review the disclosure notes and to prepare for your trial. This can't happen on the same day.

3. You have a right to full answer and defense on your ticket(s) and never waive this right. You must make a request in writing to obtain disclosure, prior (give nine weeks) to your scheduled trial. You have a right to make full answer and defence and although section 7 of the [Charter](#) guarantees this, section 46(2) of the [Provincial Offences Act](#) contains the RIGHT TO DEFEND and reads "The defendant is entitled to make full answer and defence".

It is vital that you request and receive this information, as you will know the Crown's/Prosecutor's case against you and there will be no surprises from the investigating Officer's testimony. You will know, in advance, what the investigating Officer will say and ultimately, what the Crown/Prosecutor will rely upon to make his/her case against you. Typically the investigating Officer that issued the ticket will take the stand. The Officer will be sworn in (that he/she will tell the truth, the whole truth, and nothing but the truth so help them god) and say "I do" to the question. The Crown/Prosecutor will ask them if they have any "independent recollection" of the events on the day in question, which led to the officer writing the ticket in question? The Crown/Prosecutor will ask them if on the date and time whether they took notes or wrote anything down in relation to the ticket? The officer will say that he/she did and that it was done at the time and that there haven't been any changes, omissions or deletions to the notes. The Crown/Prosecutor will ask the officer if they have their notes with them and did he/she want to refer to them? The officer will say – "yes". The Crown/Prosecutor will then ask the officer for what purpose (does the officer want to review or look at his/her notes)? The officer will answer "to refresh my memory" The Justice of the Peace (referred to as "your worship") will state that the officer has an independent recollection of the events on the day in question and then ask you if you object to the officer using his/her notes to refresh his/her memory? In most cases, the accused (you) agree and the officer begins to answer questions posed to him/her by the

Crown/Prosecutor.

This is normally how a trial starts and its application is pretty mechanical (and most of the players – J.P., Crown & Officer consider this a formality), but it is possible that the Officer does not have an independent recollection of the events as they transpired on the day in question and therefore, they would have no memory to refresh and in fact, their entire memory may be contained within the notes – sometimes it pays to object in this situation. We will deal with evidence later on.

In most municipalities, you will be told that you are not able to request disclosure until you receive your “Notice of Trial” in the mail. Ask the clerk what the location is, in which you must make your [request](#) for disclosure.

How Long Does it Take to Receive Disclosure?

It normally takes four(4) to eight(8) weeks, after you have requested it (which takes place after you have received your Notice of Trial in the mail and you have filled out a [Disclosure Request Form](#) and handed it in to the appropriate office. You will receive it in the mail.

Can I Wait 9 Weeks Before My Scheduled Trial, to Submit the Disclosure Request Form?

Yes – but this should be the maximum amount of time you wait.

What Happens if I Have Made the Request for Disclosure and I Have Not Received It, Prior to the Scheduled Trial?

If you have made the request, at least 9 weeks before the trial and you have not received it, it is important that you call the office at which you submitted the disclosure request (there will be contact information on the actual request form) and ask them when you'll be receiving the disclosure in the mail. Don't allow a clerk at that office to instruct you to show up to the office in person to receive your disclosure, insist that it is mailed to you. You have already exerted considerable energy in preparing for your case, the least they can do is mail you out the requested disclosure. This should be done at least two(2) weeks before the trial. Whatever you are told, should be written down (the name and position of the person who told you, as well as what that person told you and your response). It is important to chronicle the events as they happen, as the Court may demand details about your attempts to obtain disclosure in your particular case and you will be in a position to accurately answer any question asked of you. Sometimes the rule in the office your visiting is that you must pick-up the disclosure. In this case, you have no choice, but to pick it up.

If by the Trial Date I Still Have Not Received the Disclosure, What Should I Do?

1. If you made a "Request for Disclosure" to the appropriate office, after you received your Notice of Trial.
2. If you made this request at minimum of nine (9) weeks, prior to the scheduled trial date.
3. If you called up the office (at which you submitted your request for Disclosure) at least two weeks prior to the scheduled trial

date, and requested (or insist if need be) that the Disclosure be sent to your residence.

If you have taken all of these steps above, and you show up for your trial date, you can request the following:

you can explain to the Court that you are not in any position to proceed, given that you have not received full disclosure (which is your right under section 7 of the [Charter](#)) and therefore can not make a full answer and defense to the charge which is scheduled for trial.

To proceed, without disclosure, would be very prejudicial to your case and as such you can request that the Justice of the Peace (your “Worship”) or the Judge (your “Honour”) provide a “Stay of Proceedings” with respect to the charge(s) that brought you to the Court to begin with. It is important to remember that it is the responsibility of the Justice of the Peace or the Judge to guard and protect the rights flowing from Section 7 of the [Charter](#) from any breach.

Typically, the Justice of the Peace/Judge will make inquiries about your attempts to obtain disclosure. He/She will ask what steps you took and on what dates, to achieve disclosure. You will have to explain that you received your Notice of Trial in the mail and then proceeded to the Court office to fill out and submit your “Request for Disclosure Form” (You should have a copy of the form, which has been received and stamped by the intake clerk) at this point you should hand the Prosecutor/Crown and the Justice of the Peace/Judge a copy of the stamped Request for Disclosure Form. You should then explain that you called the same office after the fact (at least two weeks prior to the scheduled trial) and reminded them that you had submitted a request for disclosure and were wondering how long it would take before you received it.

After you have provided an explanation, the Prosecutor/Crown will inform the Court how long it normally takes (to receive disclosure) to have a disclosure request acted upon and sent to the accused (you).

The same Prosecutor/Crown may suggest that since the Officer is present, that his/her notes can be photocopied and provided to you so you can review them for your trial, on the same day – always object to receiving disclosure and expecting to participate in the trial on the very same day! This is extremely inappropriate, and prejudicial, as you cannot be reasonably expected to have an adequate and sufficient amount of time to review the notes, prepare for your defense and argue the case, all within a span of an hour or two. Remember, the Attorney Generals, Federally and Provincially require a **minimum** of fifteen (15) days notice of anyone filing an [Application for Stay of Proceeding](#) pursuant to the [Charter](#), so why would you only be provided with an hour or a few minutes, this is wholly inadequate, insufficient and unrealistic, to prepare for your case, upon receiving your disclosure request.

The ultimate remedy for lack of disclosure (see [Stinchcombe](#), a Supreme Court Decision) in the spirit of the [Stinchcombe](#) decision, is a “Stay of Proceedings” (this means that the judicial matter comes to a stop, as the case will not proceed if the Court grants, what is commonly referred to as a “Stay”. If by your second appearance, the Crown/Prosecutor will have run out of excuses to adjourn the matter, yet again and if you request a “Stay” from the justice (Justice of the Peace) you will receive it. If you don’t request the stay, it will not be offered or given, you must insist upon it or demand it, before it is given to you.

It is more likely that the Prosecutor/Crown will request that the matter be adjourned (rescheduled) to the near future, giving his/her office and opportunity to have the disclosure you requested, to be delivered to you.

You can argue that time has already elapsed and that you have had to take time off of work and that you would prefer that the entire matter be “stayed” and that you did not have to return to the court room again.

The Justice of the Peace/Judge will make the decision. If too much time (i.e. – a year) has already elapsed (from the time that you were charged to the date of the trial) he/she may grant the “stay of proceedings” request, as the matter would have to be rescheduled again to a later date. Or, he/she may grant the Prosecutor’s/Judge’s

request and agree to adjourn the matter (put it over to a later date).

It is important to keep in mind that the Justice of the Peace that will be hearing your matter, has an obligation to ensure that your rights under section 7 of the [Charter](#) are guarded and protected.

Chapter 25

Prior to the Trial

Prior to the Trial, What if Anything, Should I Do?

The key to a successful trial is adequate and sufficient preparation in advance of the trial date. Hopefully, at the time that you received your ticket(s) you took lots of notes, either as it happened or shortly thereafter (this is always the best time to take notes as the ticket and the events leading up to it, are still fresh in your mind) You must prepare yourself by practicing for the actual trial. This means that you have to review your case, your evidence (what you would say on the witness stand if you were required to give evidence by your testimony), the evidence of your witnesses (if you have any), the anticipated evidence of the officer (police or provincial offences officer or green hornet) that generated the ticket which you are fighting and the *Highway Traffic Act*, the *Provincial Offences Act (P.O.A.)*, the *Municipal By-Laws* from the municipality in which you received your ticket and the jurisprudence (the case law related to the offence of which you have been charged).

Begin by reviewing the ticket. Are all the information fields filled in? Does the description of your motor vehicle on the ticket, allow someone else looking at the ticket to accurately describe your car, truck,

van, SUV, motorcycle or does the ticket merely state “Chrysler” or “GM” or “BMW” or “Kawasaki” or “Ford”? Does the ticket describe the colour of your vehicle? It may contain the manufacturer’s name, but that does not tell the person reading it, if it is a car, van, truck, SUV, motorcycle etc.

If the ticket does not adequately and accurately describe the vehicle which you were operating or in the possession of at the time of the ticket, then this means the individual who issued the ticket, will not have the best recall of the vehicle that he or she issued a ticket to and may not be able to recall other important details at the trial.

Does the ticket have the signature of the officer who issued it? If it does not, then the ticket will be quashed or rendered a nullity, given that a Provincial Offences Officer (police, parking enforcement officers “green hornets”) must sign the ticket to give the ticket life. If it is not signed, it is not a ticket which the court has authority to deal with in a trial and you would simply say, “Your Worship, I would like to bring to your attention that this alleged ticket (or infraction notice or parking infraction notice) does not contain the mandatory signature required from the officer who issued it and therefore I would respectfully request that this charge (of these charges) be dismissed” At this point the Justice of the Peace would review the ticket and the *Provincial Offences Act* (to see if he/she had the ability to amend the ticket or the information found within the ticket) and would ask the Prosecutor if he/she had any submissions on this point, in response to the defendant’s request. The Prosecutor may attempt to downplay the importance of this simple technical irregularity or oversight by the officer who issued the ticket(s) and suggest that the Justice of the Peace had the authority, under the *Provincial Offences Act*, to amend the certificate of offence (your ticket). The Justice of the Peace does not have the authority to amend a ticket by suggesting that a signature, which must accompany the charge, at the time the charge is made, now be placed on the ticket. If the Justice of the Peace suggests that he/she will simply amend the ticket to now include a signature which was not present at the time the ticket was issued, you must say “With all due respect your Worship, for the record, this court does not have the authority to place a signature on a ticket, which did not contain a signature at the time the alleged

ticket was issued, the *Provincial Offences Act* never anticipated this and does not provide you with the authority to do so and once again, I would ask that you dismiss this alleged ticket.” More likely than not, the charge(s) will be dismissed as this is not a ticket and it would be improper to have a hearing (a trial) with regard to information laid out in a certificate of offence (a ticket) which is not a certificate of offence at all, given that in order to make this a ticket, it had to have the signature (which could simply be a scribble or initials, it doesn’t require a full legible signature with first and last name or first initial, last name, it could even be a “dot” as long as there is something on that line) on it.

The ticket (also referred to as a “certificate of offence” or “parking infraction notice”) must also have the proper year on the ticket. You must look for any irregularities during your preparation for the trial.

If you can, go back to the place where you received the ticket and review your surroundings and take notes, lots of notes. Is there a posted speed limit sign, which you may have past and not seen, before you received your ticket. Take some notes about the area, it may prove invaluable when you cross-examine the officer who issued you the ticket. You may be able to point things out that he/she may not recall, which affects the weight or reliability of the officer’s evidence. If the officer had you in his/her radar and you were issued a ticket for speeding, where was the officer and the radar unit situated! Was the officer under an overpass, or under hydro-electric lines? It may well be that the radar he/she was using, cannot be accurately relied upon because the radar unit being utilized was under an overpass or under hydro electric lines (wires) which can produce unreliable readings. It is also good to know the name and manufacturer of the radar unit which the officer, who gave you a ticket, was using. If you are in possession of the information surrounding the radar unit used to ticket you, you may want to get a copy of the user’s guide/manual or manufacturer’s guide/manual as it will point out all the steps necessary to obtain accurate radar results and what you should never do or avoid doing or where you should not use the radar unit, given that the results may be inaccurate and unreliable. Remember, a machine was used to obtain the speed your vehicle was allegedly travelling and it is the accuracy or reliability of the machine’s alleged read-

ings which needs to be questioned, in addition to the person who is operating the machine (generally the officer).

It is also good to go back to the location where the event allegedly took place, at approximately the same time and day or same weather conditions. You can get a much better perspective if the conditions are as close as possible to the conditions (same day, time and weather conditions) when you received your ticket(s). If you received a ticket for going through an amber or red light you may want to look at the sequence of the traffic light at that intersection on the same day and time as you received your ticket. This is important because the sequencing or programming of the lights are usually different, during certain times and days of the week, during the day on a weekday the lights may be set up differently as they would be for a Friday night or the weekend. You can go to that intersection on a Friday at 11:00 p.m. (if you received your ticket on a Friday at 11:00 p.m.) and review the sequencing of the lights, when do they change, how many seconds, is there an advance green, etc. Take notes. You may want to go back to the area and look for posted signs along the road, read them, do they apply to your situation or are they directly or indirectly related to the charge that you received within your ticket. Is the area a school zone or is it a [community safety zone](#)? This will make a big difference, as the fines can be increased and the community as a whole is affected by your driving and the Justice of the Peace will take that into consideration when he/she is trying the case and coming to a decision in the matter. Take notes.

You must ask your witness questions and write down his/her answers. You are allowed to meet with your witness and to discuss the case and to ask him/her questions (examination-in-chief and re-examination) during the trial.

You should write down the questions and answers, example: (Q=question and A=answer)

Q - Please turn your mind back to July 4, 2012 can you please tell the court where you were that day, at approximately 8:42 p.m.?

A - I was in my friend's car

Q - Was there anyone else in the car?

A - Just my friend and me.

Q - Where were you situated in the car?

A - I was in the front passenger seat, sitting beside my friend.

Q - Who was driving the car?

A - My friend was.

Q - And can you please tell the court who your friend is?

A - Yes, his name is Mr. Innocent.

Q - And can you tell the court what, if anything, happened at 8:42 p.m. on July 4, 2012?

A - We, Mr. Innocent and I, were pulled over by a police officer?

Q - Can you describe what, if anything, Mr. Innocent was doing that would attract the attention of law enforcement Officers?

A - I didn't know, until the police officer gave my friend a ticket.

Q - What was the ticket for?

A - Unnecessary Slow Driving.

Q - Was there any posted speed limit on the road in which you were pulled over on?

A - Yes, it stated 40 kilometres per hour.

Q - Do you recall what speed your friend was travelling just before he was pulled over?

A - Yes, he was going about 45 kilometres.

Q - How did you come to that conclusion?

A - At the time we were going somewhere and I noticed how slow we were going and I looked at the speedometer and noticed it said 45 kilometres which made me upset because I thought the speed limit was 60 or 50 and here we are only doing 45.

Q - Did you say anything to your friend, Mr. Innocent?

A - I told him that we didn't have all night and he said "I'm going the limit" and then we were pulled over.

No further questions, your Worship.

If you write down your questions and answers and go over them with your witness, at least twice, the second time, shortly before the trial, then you will be adequately and sufficiently prepared. This will also provide your witness with a degree of comfort as they have had a chance to review their evidence and now will say it on the witness stand under oath or after being affirmed. Tell them, that after they give their testimony, they will be subject to cross-examination from the Prosecutor and/or the Justice of the Peace. This is called "proper preparation" and will ensure that there are no surprises, for your witness(es) or yourself.

You should also review the *Highway Traffic Act* or the *Provincial Offences Act* against the charge(s) laid out in your ticket(s). It may be that you were charged with the wrong offence. You can also, most likely, access the internet for the *Municipal By-Law(s)* which you allegedly violated, within a certain municipality with a city/country. Look at these things carefully, as it may provide you with the tools you require to have the ticket you received, dismissed or withdrawn by the city or the Province.

Read the law, [Canlll](#) is a great source of Canadian jurisprudence. Simply enter the information on your ticket or the situation as you would describe it, into the search box and you will be surprised at how much law, that may assist you in the defence of your ticket may come up. When using a search engine limit your search to Canadian sites rather than all sites. Canadian law is much more persuasive and would carry a lot more weight and relevancy in these matters

than U.S. law or British law. If you find a decision or two which you consider to be important, then you can print it (make three copies – one for the Justice of the Peace, one for the Prosecutor and one for yourself) and bring this with you and you can rely on it and quote from it if you think that it is on point, relevant and relates to the specifics of your ticket. This is only to be referred to and relied upon at the end of your trial in closing arguments, where you would first provide the Justice of the Peace with a copy, the Prosecutor with a copy and the third copy you would be able to read from or quote passages from.

Chapter 26

The Players

Who Will Conduct the Trial?

There will be a number of people, all with different roles and titles that will influence the outcome of your trial. Ultimately, however, it will be the Justice of the Peace (the “JP”) or the Judge who will make the final decision(s). There are several others:

1. The City Prosecutor
2. Courtroom Clerk/Reporter
3. Interpreters (languages other than English/French & Sign language)
4. Witnesses for Crown/Prosecutor (Police, Law Enforcement Officer)

What is the Difference Between a J.P. and a Provincial Judge?

There are very distinct differences between a Justice of the Peace (J.P.) and a Judge:

A Judge has generally practiced law, as a lawyer, for at least 10 years before being appointed as a Judge, either to the Ontario Court of Justice (the lower or Provincial Division) by the Provincial Ministry of the Attorney General and to the Superior Court of Justice (the higher or general division) by the Federal Ministry of the Attorney General. Generally, Judges earn about \$250,000.00 a year and do not, as a rule hear trials related to the [Highway Traffic Act](#). The areas of law that judges deal with is criminal, civil and family law. As a rule, in Ontario, Provincial Judges hear and determine over 90% of the criminal matters. There are approximately 280 full-time judges (all appointed by the Provincial Government) in Ontario who are employed to serve approximately 13 million people who live and work in Ontario and hear matters in 200 Courthouses across Ontario.

There are approximately 350 Justices of the Peace, who work 200 Courthouses across Ontario and as of June 2, 2008 can now work until they are seventy-five (75) years old (as opposed to 70 years old prior to June 2, 2008) subject to the annual approval of the Chief Justice of the Ontario Court of Justice. See the decision further down on the page, referring to section 15 of the [Charter](#) .

A Justice of the Peace (or J.P.) unlike a Judge, does not have to have comprehensive legal training and is not required to be a lawyer to be appointed as a J.P. Those who are appointed to the position of J.P. are considered laypersons, not lawyers. J.P.'s are required to strictly comply with the [Justice of the Peace Act](#), R.S.O. 1990 and act as independent Judicial Officers. In October 2006 the [Access to Justice Act](#) was passed and this brought in some significant changes for J.P.'s:

A New Justice of the Peace Appointments Advisory Committee was established and minimum qualifications for appointments were established – i.e. requiring a degree from university or a community college diploma or equivalency, including life experience and at least 10 years paid or volunteer work experience. Upon being appointed, J.P.'s receive between 6 months and 12 months of training.

Non-presiding J.P.'s earn approximately \$85,000.00 a year, while presiding J.P.'s earn over \$100,000.00 a year, about three times less than that of a Provincial Judge. There are part-time and full-time

J.P.'s. There are approximately 320 J.P.'s in Ontario.

The majority of the work of a J.P. is:

- hearing bail applications
- issuing search warrants (including telephone search warrants)
- hearing matters falling under the *Provincial Offences Act*, including the *Highway Traffic Act* and all tickets related (parking and all moving offences)

Upon Entering a Court Room, How Can You Distinguish a Provincial Judge from a Justice of the Peace?

There are at least two ways of telling the difference between a Judge and a J.P.:

1. The attire: A Provincial Judge will wear his/her robes with a red sash over their shoulder(s), whereas a J.P. will wear his/her robes with a green sash over their shoulder.
2. How they are addressed by the Crown/Prosecutor: A Judge will be referred to as "your honour" whereas a J.P. will be referred to as "your worship".

Is it Necessary for Prosecutors to be Lawyers and a Member of the Bar (Law Society of Upper Canada)?

No. It isn't necessary, but for practical reasons they should be. If they are not a lawyer, then they have to be supervised by a Crown Attorney (who are always lawyers and members of the Bar).

When Do Justices of the Peace Have to Retire, While Working in Ontario?

Several former Justices of the Peace (Brenna Brown, Moreland Lynn and Meena Nadkarni) were forced to retire at the age of 70 in accordance with sub-sections 5.1(1) paragraph 3, 5.1(2), 5.1(3) and 6 of the *Justices of the Peace Act*. These former J.P's and the Association of Justices of the Peace of Ontario decided to challenge the constitutionality of the this Act and filed a law suit against the Attorney General of Ontario.

The case was heard in the Superior Court of Ontario on Feb. 27 & 28, 2008 by Judge G.R.Strathy, J. The question that this Superior Court Judge had to answer was the following:

Does Mandatory retirement at the age of 70 violate the *Charter*, Part I of the *Constitution Act*, 1982, being schedule B to the *Canada Act*, 1982 (U.K) 1982, c.11 (the *Charter*). Specifically, do s.s.5.1 para 3, 5.1(2), 5.1(3) and 6 of the *Justices of the Peace Act* R.S.O. 1990, c.J.4 as amended, violate section 15 of the *Charter*?

He analyzed the evidence presented. Among other things, he examined the changing demographics of Canadian Society and the stereotypes associated with aging. By the year, 2021 Ontario will be home to three(3) million people over the age of 65.

On June 2, 2008 when the decision was released Judge George Strathy found that retirement at the age of 70 for Ontario Justices of the Peace couldn't be justified under s.1 of the *Charter*. He found that the Ontario Provincial government failed to meet the minimum impairment and proportionality branches of the s.1 test of the *Charter*. Judge Strathy concluded that mandatory retirement of Justices of the Peace at age 70 violates their rights under section 15 of the *Charter* and that this limit has not been justified under section 1 of the *Charter*. He ruled that a Justice of the Peace can work to the age of 75, subject to annual approval of the Chief Justice of the Ontario Court of Justice. [See Decision](#).

Chapter 27

Plea Bargaining

If I Request a Trial and I Get a Notice of Trial in the Mail, Can I Go To the Court on My Scheduled Trial Date and Try to Plea Bargain with the Crown?

Yes. You can show up and speak to the Prosecutor and agree to plead guilty to a lesser offence which will reduce the amount of demerit points that you will accumulate and will lessen the fine which you may receive. This type of negotiation is called a “plea bargain” and normally means that you would have to negotiate and come to an agreement with the Prosecutor to “plead guilty” to a lesser offence. The Prosecutor would announce his/her intention of amending the original charge and the Justice of the Peace would more than likely agree and the amended offence would be read out to you by the court’s clerk and you would be asked what your plea was and you would have to state that it is “guilty”. You could ask the Prosecutor to reduce the fine and ask for 90 days or more, to pay if you require that time to pay.

This process is found in the [Provincial Offences Act](#) , section 45(2) and it reads:

Plea of guilty to another offence – Where the defendant pleads not guilty to the offence charged but guilty of any other offence, whether or not it is an included offence, the court may, with the consent of the prosecutor, accept such plea of guilty and accordingly amend the information or substitute the offence to which the defendant pleads guilty.

The “*Courts of Justice Act*” (When your rights under the [Charter](#) have been violated and you are seeking relief/appropriate remedy):

This is the Act which would come into play if your trial date was over a year after the alleged offence occurred (i.e. – speeding, parking etc.).

In order to ensure your rights under the subsection 11(b) of the [Charter](#) (your right to be tried (have a trial) within a reasonable period (the [Morin](#) decision, as decided by the Supreme Court “states that the guidelines for all trials is eight to ten (8 to 10) months) are upheld, it is then necessary to prepare and deliver an application for a “[Stay of Proceeding](#)” motion or document. This is also known as a “notice of a constitutional question”. It is section 24(1) of the [Charter](#), which provides the Court (the J.P. presiding) the authority and jurisdiction to deal with the section 11(b) question. Section 24(1) also provides the J.P. with the ability to provide a “remedy as the court considers appropriate and just in the circumstances”. In the case where there has been an unreasonable delay between the time you received your ticket and the time that your trial was scheduled to deal with the ticket, the remedy is to have the matter (the charge contained on the ticket) stayed (the trial doesn’t happen).

You will have to serve notice (present your [Application for Stay of Proceedings](#)) to several parties (the Attorney General of Canada and the Attorney General of Ontario, the Crown Attorney/City Prosecutor at the court where your trial will be held and the J.P. that will hear your case (there are different Courts of Justice offices throughout Ontario). Some offices will allow you to serve the application for stay of proceeding by fax (Attorney General of Canada and Ontario generally do) and others will not.

It is important to remember that in order to have your constitutional challenge heard at your trial date, you must provide the “notice of a constitutional question”, or in this case, your “application for stay of proceedings” at least 15 days before your trial date is scheduled (i.e. – if your trial was scheduled for June 17, submit your notice, at the very latest, by June 1). If you mess up and neglect to file it, at least 15 days prior to the date of your trial, your opportunity to have the charges “stayed” will be denied and you will not be able to argue that your rights under subsection 11(b) have been violated and have your ticket thrown out.

This is what the *Courts of Justice Act* states:

PART VII COURT PROCEEDINGS

Application to the *Provincial Offences Act*– Section 95(3) states:

Sections 109, 126 (language of the proceedings), 132 (judge sitting on appeal), 136 (prohibition against photography at court hearings), 144 (arrest and committal warrants enforceable by police) and 146 (where procedures not provided) also apply to proceedings under the *Provincial Offences Act* and, for the purpose, a reference in one of those sections to a judge includes a justice of the peace presiding in the Ontario Court of Justice.

Notice of Constitutional question:

109.(1) Notice of a constitutional question shall be served on the Attorney General of Canada and the Attorney General of Ontario in the following circumstances:

1. The constitutional validity or constitutional applicability of an Act of the Parliament of Canada or the Legislature, of a regulation or by-law made under such an Act or of a rule of common

law is in question.

2. A remedy is claimed under subsection 24(1) of the *Canadian Charter of Rights and Freedoms* in relation to an act or omission of the Government of Canada or the Government of Ontario.

Failure to give notice:

- (2) If a party fails to give notice in accordance with this section, the Act, regulation, by-law or rule of common law shall not be adjudged to be invalid or inapplicable, or the remedy shall not be granted, as the case may be.

Form of notice:

- (2.1) The notice shall be in the form provided for by the rules of court or, in the case of a proceeding before a board or tribunal, in a substantially similar form (see [Application for Stay of Proceedings](#))

Time of notice:

- (2.2) The notice (i.e. – Application for Stay of Proceedings) shall be served as soon as the circumstances requiring it become known and, in any event, at least fifteen days (15 days) before the day (your trial date) on which the question is to be argued, unless the court orders otherwise.

Notice of appeal:

- (3) Where the Attorney General of Canada and the Attorney General of Ontario are entitled to notice under subsection (1), they are entitled to notice of any appeal in respect of the constitutional question.

Right of the Attorneys General to be heard:

- (4) Where the Attorney General of Canada or the Attorney General of Ontario is entitled to notice under this section, he or she is entitled to adduce evidence and make submissions to the court in respect of the constitutional question.

Right of the Attorneys General to appeal:

- (5) Where the Attorney General of Canada or the Attorney General of Ontario makes submissions under subsection (4), he or she shall be deemed to be a party to the proceeding for the purpose of any appeal in respect of the constitutional question.

Boards and tribunals:

- (6) This section applies to proceedings before boards and tribunals as well as to court proceedings.

For our purposes, the two most important subsections of section 109 are 1(2), 2, 2.1 and 2.2.

About This Free Version

This copy of *“Fight Your Tickets: A Comprehensive Guide to Traffic Tickets”* has been freely distributed and contains the key sections of the fightyourtickets.ca website.

The complete eBook version has nine additional chapters that will help you win your [traffic ticket](#), even without fighting it!

The new chapters are:

- I Just Want to Pay the Fine
- Importance of Caselaw and Jurisprudence
- Absolute and Strict Liability Offences
- Defence of Necessity
- Mandatory Time Limits for Laying Charges
- Challenge a Speeding Ticket and Win
- Laser Radar
- How to Win a Ticket Without Fighting It
- Pleadings and Motions Before the Court

Thanks to our sponsors you can now get the complete eBook for FREE at:



The complete and most current version of the eBook is also available for **\$19.99**, from Smashwords.com, in the iBookstore for iPad, iPhone or iPod and as a [PDF](#) from the only website you'll need to fight your [traffic tickets!](#)

A paperback that contains the complete contents of the eBook is only **\$24.99** and can be purchased online at Amazon.com, Lulu.com or Federal Publications and in the [Toronto area](#) at select bookstores.

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Part V

In the Court and Afterward

Chapter 29

The Trial

What Happens When I Show Up for Trial, What is the Normal Process That Occurs?

If your case (your charge(s)) is scheduled for trial and you are a little intimidated by the process, you may want to just show up on a day your case is not scheduled to be heard and just listen to the others that are being heard. It is a good experience for those who are going to trial, who have never sat through a trial, to sit through someone else's trial and just watch and listen to the process. It may provide you with a little [experience](#) and make it easier on you when you go to your own.

When you go to the Court make sure you bring any documentation that you wish to rely upon and of course your witnesses, if you have any. Make sure the documentation is relevant and timely.

You will have a "Notice of Trial" which will provide you with the date, the time, the address of the court and the floor or the room where the proceeding (the trial) will occur. Bring all of the documents which you have accumulated up to this date. Try to show up early, as it is in your best interest.

On the outside of the court room there is normally a bulletin board or

an area where the court docket is normally taped, tacked or stapled.

Review the sheet, it will contain the date, the number of the court room, your name, the allegation (the charge(s)) and the date on which you were charged. If your name is not on the sheet, as it should be, go to the clerk at the prosecutor's office or the main desk and make them aware that you have appeared for your trial and show them your "Notice of Trial" and ask them where your trial is scheduled. Proceed to the court room at which your trial is to occur.

When you show up for trial, dress appropriately. Your attire reflects your attitude towards the proceeding. When you dress appropriately, you show respect for the Court, the proceeding and the Justice of the Peace who will look at you when you approach the front of the room, and may, based on your attire, form a good impression of you.

Do not wear a hat, sunglasses, an MP3 player. If you bring a cell phone, make sure it is on vibrate or turn it off. If you bring any electronic gadget, do not play with it during the proceedings and make sure it does not emit any sounds or noise.

You cannot tape or make an audio recording during the hearing, if you do, you can be charged and sentenced to jail time.

Don't start eating food, it isn't a cafeteria or a theatre (all though some would disagree with this characterization) and don't bring in a drink and start drinking and never be caught chewing gum or speaking during the proceedings.

If your name is on the list, then you will have to wait until that court room convenes its business and opens up for all that are scheduled to have their matters heard at that court room. It normally opens up prior to the scheduled time to allow the Prosecutor to discuss the different cases with those who present themselves.

The Prosecutor will sit at the front, normally separated by a partition. When the court room opens, those who have matters on the court docket, or their representatives (agents, paralegals, lawyers) will line-up to check-in with the Prosecutor. This provides the defendant (you) with the opportunity to inform the Prosecutor that you are present and to discuss your case.

Sometimes the Prosecutor will inform you that the investigating officer (the police officer or Municipal Licensing Enforcement Officer or Green Hornet) is not present and that the charge(s) will be withdrawn. If this happens, agree and simply sit down to wait for your name to be called. When your name is called, stand up and proceed to the front and the Prosecutor will explain to the Justice of the Peace that the officer is not present to provide evidence with respect to your charge and as a result, he will withdraw the charge(s) and the Justice of the Peace will agree. If the officer that generated the ticket is not present, the Prosecutor cannot prove its case.

Plea Bargaining

Due to a high number of motorist's fighting their tickets and opting for trials, a lot of courtrooms, especially in larger cities, have too many matters to deal with in a single day. A courtroom with fifty (50) people, who are all scheduled to proceed with a trial on the same date, same courtroom, same time, will not have all of their trials heard; there isn't enough time. The Prosecutor, having to manage the caseload in a responsible and efficient manner, must make some decisions to deal with a crowded courtroom/caseload. One of the options available is to "plea bargain". Usually motorist's who have a trial scheduled, show up to the courtroom shortly before the time of the trial and join a line-up of people waiting to see the Prosecutor. The Prosecutor uses the same list, which is posted outside of that particular courtroom which has the name of the defendant's and a number assigned to their case. When you finally reach the Prosecutor, the prosecutor will ask you what you want to do. You should say you want to fight your case. If the Prosecutor's time in the courtroom is limited and he/she knows that all of the trials scheduled cannot be tried or if the Prosecutor is aware of problems in his/her ability to prove their case against you, you may be offered a reduced ticket (meaning a lesser charge, less fine or reduction of a speed in a speeding ticket which means zero demerit points).

This means he/she will "amend" the original charge, to a lesser

charge and will suggest to you that it is a good deal and will have less points and a fine attached to it. You may want to say “let me think about it and talk to someone else before I agree.” This will provide you with some time to think about it and to allow you to walk around the room and to look at the police officers (who will all be in their uniform). If you can’t recall how the officer looked who charged you (of if you never saw them and you received your ticket(s) in your absence) look at your ticket and Notice of Trial and look for the officer’s number. Normally this number will appear on their uniform (lapel, front chest pocket, tie, hat, shoulder). Look at all the numbers and then go out into the hallway and do the same. If you cannot see the police officer (or whoever gave you the ticket) present, it is possible the Prosecutor is aware that the officer cannot appear and therefore they would have no case to present and would be forced to withdraw the charge(s). In this case, sit down in the court room and wait until your name is called, if during this wait, the Police officer comes into the court room you may want to accept the “plea bargain” that the Prosecutor offered you. Think carefully about any plea bargain, sometimes they are reasonable and sometimes they are not.

If the Prosecutor suggests some kind of an unreasonable plea bargain or deal and you decline the offer, then the matter will proceed to a Trial. Don’t go out of your way to aggravate, antagonize or provoke the Prosecutor, this is not an effective strategy and will more likely than not, provide the Prosecutor with the motivation to screw you around and make the proceeding a lot less comfortable for you, in your attempt to challenge and win your ticket (i.e. – he will call your case last, even though the police officer is not in the court and has no intention of coming to the court to testify).

At the beginning of the hearing, the clerk will normally announce that the Honourable ? is presiding, as the Justice of the Peace (hereinafter the “J.P.”) enters the court room and the clerk asks everyone in the court room to rise or stand. Everyone stands, the J.P. goes to their seat, which is at the front of the room, in the middle, elevated at the highest level, and as the J.P. sits in their chair, the clerk announces that everyone can be seated and goes on the intercom system and invites all those with business in courtroom to come into

the courtroom.

Once the courtroom is in session (the Justice of the Peace) there is no talking. Many of our courtrooms are now equipped with powerful microphones, which are extremely sensitive and pick up all sound in the courtroom. This is just one of the reasons that people who attend a courtroom are dissuaded from talking in the courtroom.

Ontario's Court Rooms to Have Proceedings Digitally Recorded

Even the Ministry of the Attorney General is doing their best to upgrade their technology. According to the Auditor General's 2008 Annual Report – see Chapter 3 – VFM Section 3.07, page 219, the following is taking place in Ontario's Court rooms, and will continue into 2013.

Digital Audio Recording

Transcripts of court proceedings have traditionally been prepared manually by court reporters attending court, and audio recordings made with low-quality analogue recording devices. In recent years, the development of digital audio equipment allows for the efficient and high-quality recording of court dialogue, thus reducing court reporter costs. Alberta and British Columbia converted their courts to digital audio systems in 2001/02 and 2006/07, respectively. In Ontario, owing to technical and quality issues, the Ministry discontinued in 2004/05 a pilot project inherited from the former IJP that cost over \$17 million. In June 2007, the Ministry entered into a new vendor agreement to test digital recording devices at six court locations. In July 2007, the Ministry conducted an evaluation of the pilot project and decided to retain the same vendor to introduce the digital recording devices in Ontario

courts incrementally. As of March 2008, a total of 16 courthouses had successfully converted their recording systems from analogue to digital at a cost of \$750,000. The Ministry informed us that the conversion of the remaining 146 courthouses will be completed in the next two to three years. However, at the time of our audit, the Ministry had not established a formal plan specifying the scope and operational targets of the implementation, including cost projections, management approval, and plans to address computer compatibility and other technical issues.

– Auditor General of Ontario - Jim McCarter CA

What Happens Next?

The Crown/Prosecutor dispenses with the cases where an adjournment has been requested and granted by the Prosecutor or where the cases are being withdrawn or the cases in which the defendant (through themselves or their agents) pleads guilty or pleads to a lesser charge (plea bargain). The cases that are dealt with last are the cases in which a “not guilty plea” has been indicated or where the defendant (or his/her agent) wants to bring a motion before the J.P. Those who co-operate (plead “guilty”) with the Prosecutor, are rewarded with an early departure.

If the Prosecutor offers to amend a “speeding ticket” from 80 km in a 60 km zone to 75 km in a 60 km zone (reducing the ticket to 15 km over, versus 20 means that there will be no demerit points gained on your license (15 km over does not attract demerit points, but 20 km over does) and you accept this plea bargain, it is offered by the Prosecutor on the condition that you will plead guilty once your name is called.

The Prosecutor will then call your name and let the Justice of the Peace know the number on the list before him/her. The Prosecutor will inform the Justice of the Peace that he/she has spoken to you and that the Prosecutor is prepared to amend the speed on the orig-

inal ticket from 80 km to 75 km in a posted 60 km per hour zone. You will be asked to come up to the front and you will be asked your name, for the record. You will state your name.

At this point the Court Clerk will stand and say your name and read out the charge – on a certain date and time in a certain city, on a certain street, you are charged with an amended speed of 75 km in a 60 km zone, contrary to section 128 of the *Highway Traffic Act*, how do you plead to the charge? You would say “guilty”.

The Justice of the Peace will ask you, upon hearing your plea, “Do you understand that by pleading guilty, you give up your right to a trial?” You will say “yes”.

The Justice of the Peace, will ask you, upon hearing your answer to his/her question, “Are you entering this plea of your own free will?” Then you say “yes”.

The Justice of the Peace will say, a conviction will be entered, a fine will be \$ how much time do you need to pay? You will provide your answer which is whatever amount of time you need to pay the due fine. You can even pay in instalments.

The Crown/Prosecutor is under no obligation to call the cases as they are laid out on the court room docket. He/she will pick and choose and this practice is at their discretion.

When your name is called, you will have to go the front of the court, to the left side of the Prosecutor, if the Prosecutor is sitting to the right.

The Clerk of the Court will say, (your name), you were charged on the (day), (month), (year) at (the time) at (the location or address), did commit the offence of (will state alleged offence), contrary to the *Highway Traffic Act*, Section ?, Sub ?

How do you plead to this charge, sir/madam, guilty or not guilty? You will state “Not Guilty”

If you want to speak to the Justice of the Peace, you must say “Your Worship” when speaking to him/her. If the person presiding over the courtroom is a Judge, when speaking to the Judge you must say

“Your Honour”. In both instances you are simply expressing your understanding of court etiquette and showing respect for the person who will make the final decision in the matter.

It is important to keep in mind, during this entire process, that you are not a member of the legal profession. You are a “lay person” meaning that you are not a member of the legal profession. The reason that this is important, is that the Justice of the Peace who is hearing the matter, will not expect you to conduct yourself like a lawyer, because you are not a lawyer and you are merely a lay person. Courts tend to be less harsh on lay people, given their lack of understanding and knowledge of the court room. If the Prosecutor or Justice of the Peace begins to criticize or critique your style of presentation, remind them that you are a “lay person” and as such, do not have the wealth of experience in these matters as they may have.

It is at this stage that the Prosecutor must present their witness(es). If the Prosecutor has more than one witness, it is prudent to request an “exclusion order” for the Justice of the Peace presiding. An “exclusion order” is simply an “order” from the Justice of the Peace to the witnesses who have not yet taken the witness stand, to leave the room so they won’t hear the testimony (evidence) of the other witnesses in the same matter. These witnesses who are excluded, will leave the room and will be summoned when it is their turn to provide evidence under oath.

This is what you would say. “Your Worship, I notice that the Prosecutor has more than one witness, under the circumstances I am requesting an ‘exclusion order’ given that there is a possibility that the witness testifying could influence or taint the evidence of the witnesses following them and there may be a possibility that one may tailor their evidence to that of another witness and it is for these reasons, Your Worship, that I am requesting that you order that the other Prosecutor’s witnesses, be excluded from the hearing room, until they are called upon to present their own evidence.”

More times than not, the Justice will agree with you, given that there is potential that one witnesses testimony may taint another person’s testimony, given that they were influenced, even on a sub-conscious

level.

If there are no witnesses, other than the officer who generated a ticket and presented it to you or your motor vehicle, then the only witness the Prosecutor would have, would be the officer and it would not be necessary to request that the Justice of the Peace provide you with an exclusion order, given that the only witness the Prosecutor would have would be the officer.

The Prosecutor will call the officer and the officer will be sworn in by the Justice of the Peace. (The officer will agree that he/she will tell the truth, the whole truth, so help them god).

This is the Part of the Trial Referred To As “Examination-in-Chief”

The first thing that the Prosecutor will attempt to do is to introduce the officer’s notes (you should have already received them well in advance of the Trial – see the section in this site called “Disclosure”).

The Prosecutor will ask these types of questions: (Q=Question and A=Answer)

Q - Mr. ? you’re a member of the Ontario Provincial Police force and I believe you were on duty on (day,month,year) at 07:40 hours is that correct?

A - That’s correct.

Q - Would you tell the Court sir if, because of an incident that you investigated on that date at 07:40 hours, 7:40 in the morning, you made some notes with respect to that same incident.

A - I did.

Q - Do you have an independent recollection of this incident?

A - I do.

Q - Were those notes made from contemporaneous with the incident itself?

A - They were.

Q - Did you make any changes, additions, deletions, or anything to those notes since you made them?

A - None.

Q - Do you need those notes to refresh your memory only on this particular incident?

A - As a refresher, yes.

At this point the Justice of the Peace will turn to you and ask you if you have any objections with the officer referring to his notes to refresh his memory – if you say no, then the Justice will turn to the officer and tell him that he can refer to his notes.

This Stage of the Trial Could Have Taken a Different Turn

Police Officer's notes should be qualified in a Voir Dire before the officer begins to give his evidence, based on his notes. A "Voir Dire" (French meaning "to speak the truth" – this means a preliminary examination to test the competence of a witness or evidence or a "trial within a trial").

If no Voir Dire is conducted, with respect to the officer's notes and if the Justice of the Peace does not give the officer permission to use his notes, you must object. This is done to go on record. If the police officer's notes are not properly qualified in a Voir Dire or if the Justice of the Peace did not grant his/her permission to the officer to use his/her notes than you can make a motion for non-suit, by saying "Your Worship, before entering a defence, I'd motion for a non-suit, in that I made a timely objection" You should tell the Worship that your making this motion because the officer must receive

permission from the Worship before the officer relies on his notes to refresh his memory; this is what the prior court decisions demand, as part of the process.

If this doesn't happen, then the Prosecutor will ask a series of questions and the officer will rely upon his/her notes to refresh his/her memory while he/she provides evidence. Take a lot of notes while this is taking place, as you have the opportunity to cross-examine the officer upon the completion of the Prosecutor's examination-in-chief of the police officer.

When the Prosecutor is finished asking the officer questions, he/she will say that's all or no further question or Case, Your Worship, or that concludes our case. This means that it is your turn to ask the police officer questions.

Cross-Examination of the Police Officer

Hopefully, prior to the trial you had an opportunity (after requesting and receiving disclosure from the Prosecutor) to review the officer's notes and had some previously written questions arising from those notes or arising from the officer's interpretation of the events as they unfolded on the day in question, as written in his/her notes. It is best to develop a theory around your case and figure out what is important and what is not and then prepare for your main arguments, prior to coming to the court on your scheduled date of trial. Put your thoughts, your theory in writing on paper and you can begin to develop your questions, based on your personal knowledge of the case and what the officer had to say in his/her notes.

You can reasonably anticipate what the officer is going to say, based on the disclosure you received. It is unusual for an officer to deviate from what he/she has written, especially when, in more instances than not, the officer's memory is confined to the notes that he or she took at the time the incident occurred. Write down your questions in advance of the trial date and bring a pad of paper and a pen with you to the proceeding. As you ask each question, write down the officer's

response, as you will need this information to make cogent points in your final argument or your submissions at the end of the trial.

In addition to this, as the officer gave evidence (testimony) in examination-in-chief in relation to questions put to him from the Prosecutor/Justice of the Peace, hopefully you took notes to ask the officer some questions.

Remember be fair and don't try to come across as a Clayton Ruby or an Eddy Greenspan, you're not and you know it, but more importantly, the Justice of the Peace and the Prosecutor knows it. Try to be logical and avoid being overly cute, this will not constitute an endearing quality to the Justice of the Peace. If you feel the officer is misleading the court or is lying, you cannot call him/her a liar unless you can prove this. You are not allowed to suggest that the police officer is "testilying" unless you can establish this with evidence, with facts. Attacking a police officer on the witness stand is not a good idea and may attract the wrath of the Justice of the Peace. You can certainly attack the evidence, as it was presented, but it is not a good idea to make this a personal thing, and attack the officer, especially if all you have are unsubstantiated allegations.

You are allowed to put questions to the officer which are "leading questions". Leading questions are questions that suggest a certain answer or are designed to elicit a specific response. In most cases when you ask a question that is answered with a "yes", a "no" or "true" it is a leading question. Leading questions are not allowed in "examination-in-chief" (there are exceptions and often court's give some latitude when the question or answer is not controversial "i.e. – I understand you are an officer with the Ontario Provincial Police, is that true?") but are allowed in cross-examination and should be used as often as is necessary.

Re-examination

Once you have asked any questions you have of the Prosecutor's witnesses, through cross-examination, the Prosecutor has the right to

conduct, re-examination. This means that if you have asked his/her witness, any new questions in cross-examination, which were not asked by the Prosecutor in examination-in-chief, then the Prosecutor has the opportunity to ask his witness questions, which are meant to clarify the witnesses answers. The Prosecutor can not ask new questions which are not related to your cross-examination or which the Prosecutor already asked in examination-in-chief.

Example – if the Prosecutor spent time in examination-in-chief, asking the officer what the colour of the traffic light was while your vehicle was travelling through the intersection (and you received a ticket for running a red light) and you did not ask the officer about the colour of the light. The Prosecutor cannot go back to that line of questioning again, as he/she already had the opportunity during examination-in-chief to ask the officer questions about the colour of the traffic light and in fact had and at not time did you ask about this in your cross-examination. If during cross-examination you had asked a question which had not been previously canvassed or explored in the Prosecutor's examination-in-chief, then it would be proper for the Prosecutor to ask the officer questions related to your question, in re-examination.

This also applies to your witnesses. If a witness takes the stand on your behalf and you ask your witnesses questions in examination-in-chief, then the Prosecutor has the right to cross-examine your witness. Upon finishing his/her cross-examination the Justice of the Peace may ask you "do you have any questions of this witness arising out of the Prosecutor's cross-examination?" If you want to clarify something which your witness tried to say and the Prosecutor would not let your witness fully answer the question, then you have a right to say "the Prosecutor asked you ? and you answered ?, did you want to expand on your answer?" Or, "you were asked if you had a clear view of the traffic light and you said "yes", but the Prosecutor did not follow-up with the question "did you see the colour of the traffic light, and if so, what was the colour?"

Time to Put in Your Case

Once you have cross-examined the police officer or other witness offered by the Prosecutor, it is now your turn to provide the court with your version of the events. Some people wait a long time to provide the court with their side of the story and to describe, in great detail what had occurred. By this stage, there can be a lot of frustration, especially if the individual who provided you with a ticket, provides, through his/her testimony, a totally different recollection of the events leading to the issuance of the ticket, than you recall. This is your opportunity to set the record straight and to communicate the version of the events, according to your recollection. Or you may have a witness, who you can place on the stand and whom you can ask questions to in examination-in-chief.

If you go on the stand, it is probably a good idea if you write down the questions that you want asked of yourself and to allow another person (a co-worker/friend) to ask you these questions. Once you have been asked the questions and have provided an answer, then the Prosecutor has the right to cross-examine you.

Rules You Must Apply to Yourself Or Your Witness(es), While Being Subjected to Cross-examination

1. Listen to the question carefully, think about it and answer it.
2. Never let the Prosecutor set the pace of the question and answer process. Sometimes the Prosecutor, knowing your nervous and an inexperienced witness, will attempt to rush you into stating answers you may otherwise would not have answered, had you thought about it and answered at your own pace. You set the pace, answer as slowly or as quickly as you need to. You must set your own comfort level when you are on the stand answering questions.
3. Never allow the Prosecutor to put “words in your mouth”. Do not allow the Prosecutor to suggest that you said something

or did something, unless you said it or did it. Sometimes they will say “earlier you told the court that you ????????” now unless you recall telling the court ????????” do not agree with the Prosecutor and you may want to say “I’m quite nervous, I have never been on the witness stand before, can you refresh my memory with regard to your comment?” If the Prosecutor says, “when you were flying down the road in your car?” do not allow this comment or characterization about a “flying car” to go unaddressed. If you answer the question, without commenting that you were driving in your car and not “flying” then the court may interpret this lack of objection as an acceptance of the term. Even if the court can see through the Prosecutor’s play on words, words or expressions can have a subconscious effect on the Justice of the Peace. Remember, words can be very powerful, especially in a courtroom proceeding. Lawyer’s know this and that is why when their client has been in a collision with another car and their client’s car hit the vehicle of another driver, rather than use the word “hit” they will use the expression “my client’s car came ‘into contact’ with the other driver’s vehicle”.

4. Keep your answers as brief as possible. If the question can be satisfied with a “yes” or “no” then use “yes” or “no”. It is best to answer with only relevant information. Every additional word or comment you state, may end up as ammunition in the Prosecutor’s bag of tricks. If, however, you feel that specificity is important and that the details you want to provide may help win your case, then state it if you must.
5. If you don’t understand the question then say that. You can say “I don’t understand the question can you please repeat it?” or “can you please rephrase that question?” The Prosecutor or the Justice of the Peace may ask a question using a term or phrase or word that you are unfamiliar with. It may be Latin or French or legalize that cannot be understood. Tell the court “I’m not familiar with that term” or “I don’t understand that word?”. Never agree to something that you do not understand. This will be used against you and could be prejudicial.

6. Don't answer "yes" when you mean "no". Often, individuals when faced with cross-examination get nervous, tongue-tied and will try to appease the Prosecutor with the answers that the individual believes the Prosecutor wants to hear; all in an effort to end the ordeal of being cross-examined. This strategy is dangerous and will allow the Prosecutor to manipulate you to provide answers that will hurt your chances of success. If you are feeling anxious and are on the verge of an anxiety attack, take a deep breath, take a pause and regain your composure and answer at your own pace (your own speed). If the Prosecutor believes that you are "putty in their hands" they will treat you accordingly and the Justice of the Peace will not throw you a lifeline when you appear rattled or vulnerable.
7. Answer one question at a time. Individuals will sometimes attempt to anticipate a line of questioning. They will try to cover off the next question, which they believe will be asked, before they fully answer the question being put to them. This approach can lead to a number of problems. To anticipate the next question, before it is even asked, means that your focus and concentration is not fully dedicated to the question before you. It is quite possible and probable that you will end up providing more fodder for the Prosecutor's cannon, if you inadvertently provide him/her with information or an angle that they had not even considered. Answer the question put to you and don't attempt to be a mind reader with respect to the next question, which may or may not even be asked.
8. Do not let the Prosecutor bully you or intimidate you by their actions, while cross-examining you. It is inappropriate for the Prosecutor to yell or raise their voice in an effort to scare you or to intimidate you. Not only is this behaviour unprofessional, but it is disrespectful and not keeping with the behaviour one would expect in the courts. If the Prosecutor begins to exhibit this behaviour, it is your responsibility to take him/her down a notch. When this abusive behaviour starts you can turn to the Justice of the Peace and ask them to instruct the Prosecutor to refrain from this unprofessional, inappropriate and abusive

behaviour. It is the function of the Justice of the Peace to run a smooth and efficient courtroom and to deal with any of the unpleasant aspects that may occur within a proceeding within his/her courtroom. It is important to verbally state this in the courtroom as it goes on record and may provide the necessary foundation for the removal of the abusive Prosecutor (if there has been a pattern of this behaviour in other proceedings). Normally the Justice of the Peace will caution the Prosecutor, which will cause the Prosecutor to refrain from this inappropriate, unprofessional and unacceptable conduct for the remainder of the proceeding.

Closing Arguments

At this stage of the trial, all of the evidence that will be heard has been heard. Your job at this point is to concentrate on anything that was said or entered as evidence which favours or strengthens your defence. It isn't good enough that you know it, you must speak about it to the Justice of the Peace and emphasize anything which helps you.

1. You have heard the Prosecutor pose questions to his/her witnesses – this is called “examination-in-chief”. You asked the Prosecutor’s witnesses questions – this is called “cross-examination”. The Prosecutor asked his witnesses additional questions after you had finished cross-examining the witness this is called “re-examination”.
2. You presented your witness(es) or yourself and evidence was provided to the court on your behalf.
3. You took notes and highlighted comments or witness testimony which bolsters your case and helps with your defence.
4. It is now time to make your final argument by summing up the case, the evidence and pointing out to the court anything that shines a favourable light on your case. You point out to the

Justice of the Peace all the aspects of the trial which you felt was in your favour and then you wait for the Justice of the Peace's decision. For example:

Your Worship, I ask that you weigh the evidence and the facts in this case and that you find in my favour and that you dismiss the charges, given that the onus is on the Prosecutor to prove their case and that that onus has not been met in the case before you today. Thank-you.

The Prosecutor will do the same and attempt to put the best spin on his/her case and ask that the charge(s) be upheld and that a conviction should be entered against you.

5. Normally, the Justice of the Peace will provide his/her decision verbally, tying in all of the relevant aspects of a case and weighing all the factors in your favour or against your interest, with the evidence provided by both sides of the dispute. If he/she finds against you and you require time to pay the fine attached to the ticket, request as much time as you need to pay this. If the Justice of the Peace finds in your favour, know that you, by challenging the ticket(s), you successfully defended yourself and you should leave the courtroom and celebrate!

About This Free Version

This copy of *“Fight Your Tickets: A Comprehensive Guide to Traffic Tickets”* has been freely distributed and contains the key sections of the fightyourtickets.ca website.

The complete eBook version has nine additional chapters that will help you win your [traffic ticket](#), even without fighting it!

The new chapters are:

- I Just Want to Pay the Fine
- Importance of Caselaw and Jurisprudence
- Absolute and Strict Liability Offences
- Defence of Necessity
- Mandatory Time Limits for Laying Charges
- Challenge a Speeding Ticket and Win
- Laser Radar
- How to Win a Ticket Without Fighting It
- Pleadings and Motions Before the Court

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Chapter 31

Ignorance is NOT a Defence

What If I Wasn't Aware That What I Did Was Wrong?

Section 11(d) of the [Charter](#) states:

Any person charged with an offence has the right:

- (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal

Section 6(1)(a) of the Canadian [Criminal Code](#) states:

Presumption of Innocence:

a person shall be deemed not to be guilty of the offence until he is convicted or discharged under section 730 of the offence...

This means that when anyone is charged, whether it be the [Criminal Code](#) or the [Highway Traffic Act/Provincial Offences Act](#) he/she is presumed innocent until the state proves otherwise.

Once you receive a ticket and proceed to court to fight your ticket, the Courts refer to you as a defendant. In Ontario, the legislation that allows you to fight your ticket in Court is the *Provincial Offences Act*.

The *Provincial Offences Act* states under Section 81:

Ignorance of the law by a person who commits an offence is not an excuse for committing the offence.

To suggest you didn't know or you weren't aware of the rules of the road, or you were just "ignorant" of the law, in any area or city of Canada, is not a "defence" that will be accepted by the Courts.

Driving a privilege

31. The purpose of this Part is to protect the public by ensuring that,

- (a) the privilege of driving on a highway is granted to, and retained by, only those persons who demonstrate that they are likely to drive safely; and
- (b) full driving privileges are granted to novice and probationary drivers only after they acquire experience and develop or improve safe driving skills in controlled conditions.

Someone once asked a class "What do you think is the biggest danger in our society, ignorance or apathy?" The class asked him what he thought and he replied "I don't know and I don't care!"

Chapter 32

Perjury, Bribery and Contempt

Do Not: Lie while swearing an affidavit or while testifying (see “Perjury”).

Do Not: Attempt to “bribe a police officer or officer of the Court” (See “Bribery”).

Do Not: Show contempt to the Court (see “Contempt”).

Do Not: Create a Disturbance Outside of the Courtroom.

Perjury

What is Perjury?

This is when you attempt to mislead or lie, either under oath while you are giving evidence (testifying) on the witness stand or when you purposely swear an affidavit which is untrue and is meant to mislead.

The [Criminal Code](#), under the heading *Misleading Justice*, states:

[Section 131\(1\) Perjury:](#)

Subject to subsection 3:, every one commits perjury who, with intent to mislead, makes before a person who is authorized by law to permit it to be made before him/her, a false statement under oath or

solemn affirmation, by affidavit, solemn declaration or deposition or orally, know that the statement is false.

Section 132. Punishment:

Every one who commits perjury is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen (14) years.

Section 137. Fabricating Evidence:

Every one who, with the intent to mislead, fabricates anything with intent that it shall be used as evidence in a judicial proceeding, existing or proposed, by any means other than perjury or incitement to perjury is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen (14) years.

If you commit perjury or attempt to fabricate (any matter that may wind up in a judicial proceeding, such as Court) evidence, you are looking at a possible fourteen years of incarceration for one of these acts.

The worst possible situation you face, if convicted on a traffic ticket, is a fine and demerit points (or in the case of much more serious criminal charges (i.e. – D.U.I./Dangerous Driving jail time). This could lead to loss of license, loss of job, loss of mobility and a fine and an increase in your insurance premiums or loss of insurance. If you lie on the witness stand, to avoid being convicted of the grounds laid out in your ticket, consider the consequences, which drastically outweigh the effects of a conviction for a traffic offence. You can be charged with perjury (a criminal offence), and convicted, leading to the loss of your credibility, your reputation and ultimately your liberty (through incarceration) for the next fourteen (14) years of your life.

If you take the witness stand, tell the truth and if you are wary of taking the stand because your evidence may hurt your case, or the case of someone else, don't testify.

Section 88 of the *Provincial Offences Act* states: Every person who makes an assertion of fact in a statement or entry in a document or form for use under this Act, knowing that the assertion is false, is guilty of an offence and, on conviction, is liable to a fine of not more

than two thousand dollars (\$2,000.00).

Bribery

This is when you are pulled over by a police officer and think that you can hand him/her your license, ownership and insurance documents with a hundred dollar bill attached to it, in hopes that the officer takes the money and excuses the ticket. If you attempt to bribe a police officer, a judge, a justice of the peace or someone who is in a position to make your charge(s) disappear or get lost in the shuffle, you are attempting to corrupt someone and will feel the full weight of the law.

The [Canadian Criminal Code](#) speaks to this under Part IV – Offences Against the Administration of Law and Justice, [section 119\(1\)](#) Bribery of Judicial Officers, etc.:

Every one who

- (a) being the holder of a judicial office, or being a member of Parliament or of the legislature of a province, corruptly
 - (i) accepts or obtains,
 - (ii) agrees to accept,
or
 - (iii) attempts to obtain,
any money, valuable consideration, office, place or employment for himself/herself or another person in respect of anything done or omitted or to be done or omitted by him/her in his/her official capacity,
or
- (b) gives or offers, corruptly, to a person mentioned in paragraph (a) any money, valuable consideration, office, place or employment in respect of anything done or omitted or to be done or omitted by him/her in

his/her official for himself/herself or another person, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen (14) years.

Section 120 Bribery of Officers

Every one who

- (a) being a justice, police commissioner, peace officer, public officer or officer of a juvenile court, or being employed in the administration of criminal law, corruptly
 - (i) accepts or obtains,
 - (ii) agreed to accept,
 - or
 - (iii) attempts to obtain, for himself/herself or any other person any money, valuable consideration, office, place or employment with intent
 - (iv) to interfere with the administration of justice,
 - (v) to procure or facilitate the commission of an offence,
 - or
 - (vi) to protect from detention or punishment a person who has committed or who intends to commit an offence,
 - or
- (b) gives or offers, corruptly, to a person mentioned in paragraph (a) any money, valuable consideration, office, place or employment with intent that the person should do anything mentioned in subparagraph (a)(iv),(v) or (vi), is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen (14) years.

The *Police Services Act* speaks to this under **Part V Code of Conduct – section 14** (which sets out a code of conduct in the Schedule, constitutes misconduct for the purpose of **section 74** of the Act).

Schedule – Code of Conduct, section 2(1) Any chief or police or other police officer commits misconduct if he or she engages in,

- (f) Corrupt Practice, in that he or she,
 - (i) offers or takes a bribe
 - (ii) fails to account for or to make a prompt, true return of money or property received in an official capacity,
 - (iii) directly or indirectly solicits or receives a gratuity or present without the consent of the chief of police,
 - (iv) places himself or herself under a pecuniary or other obligation to a licensee concerning the granting or refusing of whose licence a member of the police force may have to report or give evidence, or
 - (v) improperly uses his or her character and position as a member of the police force for private advantage;

Judges, Justices of the Peace, Lawyers, Crowns/Prosecutors are for the most part self regulated and must strictly adhere to the Rules of Conduct as laid down by the Law Society of Upper Canada (Osgoode Hall) and the *Law Society Act*. If rules are breached and a complaint is lodged, a disciplinary hearing, made up of Benchers, convene a hearing and determine the fate of the defendant if the charges are proved true. All of these individuals are considered “officers of the court”.

In Ontario, Judges earn approximately \$250,000 a year in wages, Justices of the Peace earn approximately \$130,000 a year in wages, a first class police constable in Toronto earns \$76,656 a year in wages and a lawyer earns in excess of \$100,000+++ a year (if the lawyer is a Q.C. or an experienced senior partner in a firm they will make much more. This varies on experience and area of practice). In theory one of the reasons that officers of the Court (lawyers, crowns/prosecutors, police officers, justices of the peace and judges) are paid well, is to

ensure that they are not easily susceptible to being bribed or being influenced by \$\$\$.

If you have a fleeting thought of attempting to bribe anyone, consider the fourteen (14) years in prison and reconsider.

Contempt

Section 91 – (1) to (9) of the *Provincial Offences Act* describe what happens when one is charged with contempt by a Justice of the Peace. This applies to an “offender” which is all inclusive and wouldn’t be isolated to the defendant, this could apply to a defendant, a lawyer, a paralegal, a witness, a member of the public who is just sitting in the court room observing the proceedings. It is up to the Justice of the Peace to define the conduct and/or nature of the contempt.

91(1) Contempt – Except as otherwise provided by an *Act*, every person who commits contempt in the face of a justice of the peace presiding over the Ontario Court of Justice in a proceeding under this *Act P.O.A.* is on conviction liable to a fine of not more than \$1000.00 or to imprisonment for a term of not more than thirty (30) days, or to both.

91(2) Statement to Offender – Before a proceeding is taken for contempt under subsection (1), the Justice of the Peace shall inform the offender of the conduct complained of and the nature of the contempt and inform him or her of the right to show cause why he or she should not be punished.

91(3) Show Cause – A punishment for contempt in the face of the court shall not be imposed without giving the offender an opportunity to show cause why he or she should not be punished.

91(4) Adjournment for Adjudication – Except where, in the opinion of the Justice of the Peace, it is necessary to deal with the

contempt immediately for the preservation of order and control in the courtroom, the Justice of the Peace shall adjourn the contempt proceeding to another day.

- 91(5) Adjudication by Judge** – A contempt proceeding that is adjourned to another day under subsection (4), shall be heard and determined by the court presided over by a provincial judge.
- 91(6) Arrest for Immediate Adjudication** – Where the Justice of the Peace proceeds to deal with a contempt immediately and without adjournment under subsection (4), the Justice of the Peace may order the offender arrested and detained in the courtroom for the purpose of the hearing and determination.
- 91(7) Barring representative in contempt** – Where the offender in appearing before the court as a representative and the offender is not licensed under the *Law Society Act*, the court may order that he or she be barred from acting as a representative in the proceeding in addition to any other punishment to which he or she is liable.
- 91(8) Appeals** – An order of punishment for contempt under this section is appealable in the same manner as if it were a conviction in a proceeding commenced by certificate under **Part 1** of this Act.
- 91(9) Enforcement** – This Act applies for the purpose of enforcing a punishment by way of a fine or imprisonment under this section.

Disturbance Outside of the Courtroom

Section 91(1) of the *Provincial Offences Act* refers to someone who “commits contempt in the face of a presiding justice of the peace” means that it is confined to behaviour or conduct in the courtroom. This means that one must show discipline and restraint in the courtroom. Any extreme outbursts may result in the Justice of the Peace charging you with contempt. You must be aware and cognizant that,

at all times, you are in a courtroom where a certain decorum is not only expected, but is demanded. This not only applies inside the courtroom, but outside of the courtroom as well.

The *Courts of Justice Act* (under the title “Ontario Court of Justice”) provides the court with the authority to admonish individuals and to impose a sanction on same, for disruptive behaviour of the courtroom.

Section 41 Penalty for disturbance outside courtroom:

Any person who knowingly disturbs or interferes with a proceeding in the Ontario Court of Justice without reasonable justification while outside the courtroom is guilty of an offence and on conviction is liable to a fine not more than \$1,000 or to imprisonment for a term of not more than thirty (30) days, or to both.

Chapter 33

Reasons for Having My Ticket(s) Dismissed

On What Grounds Can I Ask that My Charge(s) be Dismissed?

There are a number. Depending on the professionalism and reasonableness displayed by the Prosecutor and the Court (the Justice of the Peace) a number of events can lead to a dismissal of your charge(s), but you must request this. Here are some: One of the main reasons for requesting a “trial” is that there is a chance that the person who charged you or wrote the ticket will not present themselves for trial and as a result, the Prosecutor will not be able to establish or prove their case and the case will most likely be tossed out. This is normally done at the request of the Prosecutor, with the consent of the Court (the Justice of the Peace). Sometimes the Prosecutor wants to adjourn and the Court will not allow it.

1. Green Hornet, MLEO or Investigating Police Officer doesn't appear at scheduled trial date. You have taken time out of your day and have devoted a lot of time and resources to show-up to your scheduled trial. If the Green Hornet (Law Enforcement Officer), MLEO (Municipal Licensing Enforcement Officer)

or Police Officer does not show up this means that the Prosecutor cannot prove its case and as a result, the charges should be dismissed. The only other option (which will only inconvenience you more) is that the trial be adjourned to a later date to have the officer, who issued the ticket(s) present to give evidence. If the Prosecutor makes this request to the Justice of the Peace oppose this motion and tell them that you will not agree to this, given the amount of time and resources you have already invested in getting to Court. You can also remind the Court that the longer it takes for the charge(s) to be heard, the more prejudice you will suffer and you may end up with a **Charter** argument under **Section 11(b)** of the **Charter**.

2. You have not received “disclosure” of the officer’s notes/evidence and as a result, you cannot possibly proceed, given that you will suffer prejudice and your rights under **Section 7** of the **Charter** will be offended and violated. As long as you submitted the request for disclosure at least 8 weeks prior to the trial and you called the office that was supposed to send you the disclosure, at least two weeks before your trial, you will be able to request a “**stay of proceedings**” under **Section 24(1)** of the **Charter**. If you have not had sufficient and adequate time to review the evidence (generally this means the investigating Officer’s notes from his/her log book) which the Prosecutor will rely upon (when the officer provides evidence in “examination-in-chief”) when he/she begins asking the Officer questions on the witness stand. You can ask that the charges be dismissed or stayed as you have been deprived the right to a full answer and defence to the charge(s) laid and to adjourn the trial to a later date, will force you to take more time off of work, invest additional resources to the case at hand. The Prosecutor may ask that the trial be adjourned to a later date in order to give his/her office the opportunity to have your request for disclosure acted on and to have the Officer’s notes sent to you. You should remind the Court that if the matter is put over to a later date, it will mean you will have to take more time (in addition to the time you have already taken to come to Court at a future date) and it will also possibly mean that you will have a **Charter**

argument under [Section 11\(b\)](#) of the [Charter](#).

3. You have exercised your right under [Section 14](#) of the [Charter](#) and have requested that a [Court appointed interpreter](#) assist, at the trial, because you understand and feel much more confident and comfortable to communicate in your first language (“mother tongue”) as opposed to your second language, English or French, or you are deaf and need a sign language (normally American Sign Language) interpreter and the Court has neglected to provide you with an interpreter on the day of your trial. If the Court cannot provide an interpreter, then you suffer prejudice (given that you are disadvantaged as you find it difficult to follow the proceedings and what the Prosecutor, Justice of the Peace, Law Enforcement Officer and/or the witnesses) and you can ask that the charge(s) be dismissed, as you do not want to adjourn the matter to a future date in hopes that the Court can get their act together at the next appearance. Remember you have a right under [Section 14](#) of the [Charter](#) to have an interpreter present during the entire proceeding. [Section 14](#) of the [Charter](#) states: “A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted (English/French) or who is deaf has the right to the assistance of an interpreter.”
4. The trial is scheduled outside of the time limit guidelines as set down by the Supreme Court (8 – 10 months in a Supreme Court Decision called [Morin](#)). This decision must be recognized, acknowledged and followed by all Courts in Canada. You have a right to a trial within a reasonable timeframe. [Section 11\(b\)](#) of the [Charter](#) states: “Any person charged with an offence has the right to be tried within a reasonable time.” Since it falls to the Supreme Court to interpret the [Charter](#), they have interpreted [section 11\(b\)](#) on a few occasions, most notably in a case called [Askov et al.](#), followed by [Morin](#), which is the seminal case and serves to define the [Askov](#) decision. Most courts (with [section 11\(b\)](#) in mind) in Ontario tend to stay (to suspend or dismiss) cases that are being brought to trial 11 to 14 months after the person has been charged. In order to seek the

remedy of having your charge(s) stayed there are a number of rules which must be adhered to. You must submit an application for “stay of proceedings” 15 days in advance of your scheduled trial date and time to the courts. If your rights under section 11(b) of the *Charter* have been breached and you want the Court to provide you with a stay pursuant to section 24 (1) of the *Charter*, then you will have to submit an “Application for Stay of Proceedings”. You must follow a specific criteria and format when submitting an “Application for Stay of Proceedings” to the Courts. Some people also refer to this as a Constitutional challenge.

Strict Liability Traffic Offences Under the *Highway Traffic Act* – most offences are considered “absolute liability” offences and the only onus on the Prosecutor is to establish that you did it and a conviction follows. It doesn’t matter why you did it, or the circumstances giving rise to the offence, if you did it and the Prosecutor can establish, through evidence, that you did it, you will be convicted. It is not necessary to establish “mens rea” or motive, if the Prosecutor establishes that you committed an “absolute liability offence” then you will be convicted and a fine will be imposed, with the possibility of accumulating *demerit points* as well. These points will remain on your driving record with the Ministry of Transportation for a period of two (2) years from the time that you committed the offence. For good measure, *Insurance Companies* tack on another year and as a result, this conviction remains on your insurance record for a period of three (3) years and many hold it against the driver for six (6) years. *Strict Liability Offences* are different. With regard to strict liability offences, the Province or the City Prosecutor needs merely to prove that the prohibited act took place by yourself and if you do not rebut this evidence, by providing an acceptable explanation for having committed the act, you will be convicted of that offence. Provincial Legislatures or one of the three Territorial Legislatures can always convert an absolute liability offence to one of strict liability by permitting the defence of due diligence to be raised. In the absence of the government doing the right thing, it is left to the Courts to perform the conversion. Under this defence, you can rely on the defence of reasonable mistake of fact and/or due diligence. Some

traffic offences which are regarded as “strict liability” offences are:

- Careless Driving
- Driving while your licence is under suspension
- Seat Belts: in a recent Ontario court case [Regina v. Kanda](#) the Court found that this type of offence was not an “absolute liability” offence as the Prosecutor argued, but was a “strict liability” traffic offence. The parent in this case, had exercised due diligence by ensuring that his 12 year old and 8 year old sons were both wearing their seatbelts when he began driving. When he was pulled over by the Police, the 8 year old son did not have his seat belt on. As a result, Mr. Kanda received a ticket, pursuant to section [106\(4\)](#) of the *Ontario Highway Traffic Act*. Mr. Kanda decided to fight his ticket and the court found, ultimately, that Mr. Kanda had exercised “due diligence” and dismissed the charge.
- Stop Signs and refusing to come to a full and complete stop. Unfortunately, a lot of Police Officers think that the 3 second rule applies when stopping at a stop sign (having to stop at a stop sign and begin counting 1000 1, 1000 2 and 1000 3). All that is necessary, is that you come to a “complete stop”, before proceeding on your way.

The Common Law Defence of Necessity – This is a special type of defence that you could raise as a defendant in court, when your case proceeds to trial. On October 11, 1984 the Supreme Court of Canada rendered a decision in a case called [William Francis Perka et al. v. the Queen](#). In this decision the Court found that the *defence of necessity* is available in Canada and should be recognized as an excuse operating (in this case) by virtue of [section 7\(3\)](#) of the [Criminal Code](#). The essential criteria for the operation of the defence is the moral involuntariness of the wrongful action measured on the basis of society’s expectation of appropriate and normal resistance to pressure. According to the Court:

This is the “I couldn’t do anything else” defence. This defence only applies in circumstances of imminent risk, where the action was taken to avoid a direct and immediate peril. The act in question may only be characterized as involuntary where it was inevitable, unavoidable and where no reasonable opportunity for an alternative course was available to the accused. As well the harm inflicted by the violation of the law must be less than the harm the accused sought to avoid. Where it is contemplated or ought to have been contemplated by the accused that his actions would likely give rise to an emergency requiring the breach of the law it may be open to him to claim his response was involuntary; mere negligence or involvement in criminal or immoral activity when the emergency arose, however, will not disentitle an accused from relying upon the defence. Finally, where sufficient evidence is placed before the Court to raise the issue of necessity the onus falls on the Crown to meet the defence and prove beyond a reasonable doubt that the accused’ act was voluntary; the accused bears no burden of proof.

Can tickets be thrown out due to a technicality? Yes. It must be noted though, that when the Government of Ontario created the *Provincial Offences Act (P.O.A.)*, the idea or philosophy behind the Act, was to avoid defeating tickets on a technicality and proceeding with the merits (the substance) of the charge(s). Justices of the Peace are very aware of this and will do their utmost to avoid defeating tickets on irregularities. The *P.O.A.* provides the Justice of the Peace (the J.P.) or a Judge with the power and authority to either amend the face of the ticket (the information written or not written, on the certificate of offence or on the parking infraction notice) or to simply adjourn the matter, so that the defendant was not prejudiced in his/her ability to have full answer and defence to the alleged charge(s). This power/authority exercised by J.P.’s/Judges is called a “curative” power or the ability to cure a technical defect or irregularity on a ticket, by amending the ticket or adjourning the matter to another day. This, however, cannot be done for all defects or ir-

regularities on a ticket, and in those instances the only remedy is to nullify or declare the charge(s) a nullity and it is at this stage, that the charge(s) described on the ticket must be dismissed or thrown out. The sections of the *P.O.A.* which must be looked at, with respect to this subject matter, are as follows:

Sections 33, 34, 35, 36(2) & 90(2): *P.O.A.* – Dividing counts – Section 33.(1)

A defendant may at any stage of the proceeding make a motion to the court to amend or to divide a count that,

- (a) charges in the alternative different matters, acts or omissions that are stated in the alternative in the enactment that creates or describes the offence; or
- (b) is double or multifarious, on the ground that, as framed, it prejudices the defendant in the defendant's defence.

Idem – Section 33.(2) Upon a motion under subsection (1), where the court is satisfied that the ends of justice so require, it may order that a count be amended or divided into two or more counts, and thereupon a formal commencement may be inserted before each of the counts into which it is divided.

Amendment of information or certificate – Section 34.(1)

The court may, at any stage of the proceeding, amend the information or certificate as may be necessary if it appears that the information or certificate,

- (a) fails to state or states defectively anything that is requisite to charge the offence;
- (b) does not negative an exception that should be negated; or
- (c) is in any way defective in substance or in form.

Idem – Section 34.(2) The court may, during the trial, amend the information or certificate as may be necessary if the matters to be alleged in the proposed amendment are disclosed by the evidence taken at the trial.

Variations between charge and evidence – Section 34.(3)

A variance between the information or certificate and the evidence taken on the trial is not material with respect to,

- (a) the time when the offence is alleged to have been committed, if it is proved that the information was laid or certificate issued within the prescribed period of limitation;
- or
- (b) the place where the subject-matter of the proceeding is alleged to have arisen, except in an issue as to the jurisdiction of the court.

Considerations on amendment – Section 34.(4)

The court shall, in considering whether or not an amendment should be made, consider,

- (a) the evidence taken on the trial, if any;
- (b) the circumstances of the case;
- (c) whether the defendant has been misled or prejudiced in the defendant's defence by a variance, error or omission; and
- (d) whether, having regard to the merits of the case, the proposed amendments can be made without injustice being done.

Amendment, question of law – Section 34.(5)

The question whether an order to amend an information or certificate should be granted or refused is a question of law.

Endorsement of order to amend – Section 34.(6)

An order to amend an information or certificate shall be endorsed on the information or certificate as part of the record and the trial shall proceed as if the information or certificate had been originally laid as amended.

Particulars – Section 35 – The court may, before or during the trial, if it is satisfied that it is necessary for a fair trial, order that a particular, further describing any matter relevant to the proceedings, be furnished to the defendant.

Motion to quash information or certificate – Section 36.(1)

An objection to an information or certificate for a defect apparent on its face shall be taken by motion to quash the information or certificate before the defendant has pleaded, and thereafter only by leave of the court.

Grounds for quashing – Section 36.(2) – The court shall not quash an information or certificate unless an amendment or particulars under section 33,34 or 35 would fail to satisfy the ends of justice.

Irregularities in form – Section 90.(1) The validity of any proceeding is not affected by,

- (a) any irregularity or defect in the substance or form of the summons, warrant, offence notice, parking infraction notice, undertaking to appear or recognizance; or
- (b) any variance between the charge set out in the summons, warrant, parking infraction notice, undertaking to appear or recognizance and the charge set out in the information or certificate.

Adjournment to meet irregularities – Section 90.(2)

Where it appears to the court that the defendant has been misled by any irregularity, defect or variance mentioned

in subsection (1), the court may adjourn the hearing and may make such order as the court considers appropriate, including an order under section 60 for the payment of costs. (Costs respecting witnesses – maximum costs to be awarded \$100.00)

Justices of the Peace or Judges have broad curative powers in sections 33, 34, 35, 36 & 90(2) to amend the information on the ticket or to simply adjourn the matter to a later date. The certificate of offence or the ticket cannot be based on any irregularity, defect or variance, *mislead* a defendant. Note all sections and subsections and then what can be quashed and what can not be quashed. Examples of the information that must be on a ticket, or the ticket must be thrown out? If the police officer, or provincial offences officer or parking enforcement officer (green hornet) has not signed the ticket, where his or her signature is to be applied, the ticket must be thrown out. Where the Prosecutor and or the Justice of the Peace has discretion to throw a ticket out? If the wrong year is on the date of the alleged infraction or if the surname is spelled wrong. The Justice of the Peace may, however, exercise his/her discretion, if the year applied to the ticket falls in January (i.e. the ticket was issued on January 9, 2013 and the Officer, in error, wrote January 9, 2012) often the J.P. will allow this, as it is a common error most of us will commit early in a new year (see Section 34 of the *Provincial Offences Act*).

Chapter 34

Conviction Notice

What Do I Do If I Receive A “Conviction Notice” in the Mail and I Was Unable to Attend the Court on My Scheduled Trial Date?

This happens for a number of different reasons. Often motorists have made a request for trial and receive a “Notice of Trial” in the mail, indicating the address of the court, the date of the scheduled hearing, the time and the court room number. When this is received, we make a note of it, as it is an important event. From time to time, defendants, who want their day in court, are unable for various reasons, to attend the court on the scheduled trial date.

If on the scheduled trial date you do not show up, then Section 9.1(1) of the *Provincial Offences Act* is triggered. Under this section, if you fail to appear at the time and place appointed for the hearing, you shall be deemed not to dispute the charge. Section 9.1(2) says that the justice shall examine the “certificate of offence”(the ticket) and shall enter a conviction in the defendant’s absence and impose the set fine for the offence, if the certificate (the ticket) is complete and regular on its face. Costs (\$10.00) will be assessed against you as well.

Under the *Provincial Offences Act (P.O.A.)*, there is a procedure laid out to deal with someone who has requested a trial, has been unable to attend and has been convicted in accordance with Section 9.1(2) and now seeks to have the conviction thrown out and seek another trial date.

This process and procedure is set out in the *P.O.A.*:

Reopening – Section 11.(1) (pursuant to the *P.O.A.*)

If a defendant who has been convicted without a hearing attends at the court office during regular hours within fifteen (15) days of becoming aware of the conviction and appears before a justice requesting that the conviction be struck out, the justice shall strike out the conviction if he or she is satisfied by affidavit of the defendant that, through no fault of the defendant, the defendant was unable to appear for a hearing or a notice or document relating to the offence was not delivered.

Part XIV.1 Photo-Radar System Evidence (under the *H.T.A.*):

Reopening – Section 205.13 (1) (pursuant to the *H.T.A.*)

If a defendant who has been convicted without a hearing attends at the court office during regular office hours within fifteen (15) days of becoming aware of the conviction and appears before a justice requesting that the conviction be struck out, the justice shall strike out the conviction if he or she is satisfied by affidavit of the defendant that, through no fault of the defendant, the defendant was unable to appear for a hearing or a notice of document relating to the offence was not delivered. (In addition see 205.13(2) “If conviction struck out”, 205.13(3) “Trial”, 205.13(4) “Notifying Officer” & 205.13(5) “Certificate”).

Part XIV.2 Red Light Camera System Evidence (under the *H.T.A.*):

Reopening – Section 205.23(1) (pursuant to the *H.T.A.*)

If a defendant who has been convicted without a hearing attends at the court office during regular officer hours within fifteen (15) days of becoming aware of the conviction and appears before a justice requesting that the conviction be struck out, the justice shall strike out the conviction if he or she is satisfied by affidavit of the defendant that, through no fault of the defendant, the defendant was unable to appear for a hearing or a notice of document relating to the offence was not delivered. (In addition see 205.23(2) “If conviction struck out”, 205.23(3) “Certificate”).

It is within the discretion of the court (normally the discretion of the Justice of the Peace) to either excuse a defendant for not showing up or not excusing them. This process is the process of applying for a Re-Opener. An application for a Re-Opener must take place within 15 days of becoming aware of the fact that you were convicted in absentia.

The defendant (the person convicted) must show up in person for this to occur. There have been cases where counsel (paralegal’s, agents) have attempted to show up on their client’s behalf and swear out an affidavit in their client’s place. These cases have all been thrown out on appeal.

To make an application to Re-Open your case, you will have to fill out a [Parking Ticket Application/Affidavit for Re-Opening](#) or if it isn’t a simple ticket, a [Offence Notice Application/Affidavit for Re-Opening](#).

It is important to remember that the onus is on the defendant to establish (prove) by way of sworn affidavit, that he/she could not attend the trial “through no fault of the defendant, the defendant was unable to appear for a hearing or a notice or document relating to the offence was not delivered”.

Keep in mind, if you knew in advance of the scheduled trial date that you were not going to be able to appear, you had an obligation to contact the court (either by calling) or sending a friend/relative/co-

worker/agent to the court to request an adjournment, due to the specific circumstances that prevented you from appearing yourself.

“Though no fault of the defendant”. This is a pretty high threshold to meet. The courts have interpreted this to mean that the defendant is faultless in the reason for failure to appear. This mechanism is a remedy provided for by the courts in rare occasions.

You must establish, that due to circumstances beyond your control you were unable to attend your trial date. As a general rule, excuses will not be accepted. The reason for your non-appearance must be exceptional in nature.

Excuses that will most likely not be accepted as proper grounds for a reopening:

- I forgot
- I slept in
- It rained/snowed
- I lost my Blackberry/iPhone/cell phone/organizer
- I lost my memory stick
- The alarm didn't go off
- I wrote down the wrong date, time or courtroom
- I got lost
- My back was sore
- I was moving
- I had a fight with my girl/boy friend/spouse
- My son/daughter had a dentist appointment
- I couldn't find a babysitter
- I had an appointment

- There was a leak in the house
- I fired my agent/paralegal/lawyer
- I misplaced the Notice of Trial
- Dog ate my Notice of Trial

If you were unable to show up for your trial, due to reasons beyond your control and reasons that could not be contributed to your negligence, then the justice will most likely grant the re-opener remedy to you.

These are some of the reasons that the courts have agreed that justify the defendant's request for a re-opener:

- You are the primary caregiver of a terminally ill parent; or
- Your lawyer shows up late; or
- You never received the notice of trial in the mail.

The court has accepted that these are all valid reasons for a Justice of the Peace, to:

- Strike the Conviction from the record
- Order a new trial
- Provide you with a second chance to have a trial (your day in court)

If you were unable to show up due to illness, then it is a good idea to attend your doctor's office and to request and receive a medical certificate, (signed and dated by your doctor) stating why, due to medical grounds, you were unable to present yourself to the court during your scheduled trial date. You will have to present this to the Justice of the Peace when you request a re-opener.

Your agent/paralegal/lawyer cannot swear out an affidavit in your place, before a Justice of the Peace, when an application for re-opener is being made. You must attend the court office and do this yourself in person.

If you show up and request a re-opener and the Justice of the Peace (the J.P.) decides that you did not appear for your hearing, due to your own fault, the J.P. will not strike out the conviction or order a new trial date on your behalf. If you think that you could not show up, through no fault of your own, then you can appeal the J.P.'s decision.

Chapter 35

Appealing a Conviction or Sentence

What Is an Appeal?

Appeals are a “review” of your trial. As a result, you may have to purchase a transcript of your trial (you will be required to order three(3) copies – one for the Provincial Judge who will hear your appeal, one for the Prosecutor who will resist your appeal and one for yourself). The Appeal Judge will review the evidence submitted at your trial and the decision of the Justice of the Peace who presided over your trial.

If You Were Found Guilty and Convicted, You Have a Right to Appeal

You have a right to appeal the conviction and/or sentence imposed. The Conviction means that you were found “guilty” of an offence and Sentence refers to the imposed fine and costs imposed, as a sanction, upon you as a result of the Conviction. The most important thing to remember is that you only have fifteen (15) days to do

this, from the time that you are convicted. Before you complete the necessary paperwork (Notice of Appeal) which initiates an appeal you must first pay all fines and costs imposed upon you by the Court and upon payment you must get a receipt (as the required proof of payment) and with this supporting documentation, you must fill out your application for the “Notice of Appeal”.

All appeals must be filed within *fifteen (15) days* of the conviction (see [section 135\(2\)](#)). All appeals are heard by Provincial Judges (Ontario Courts of Justice – Provincial Offences Division)

Once you have paid your fine and costs associated with your conviction, take this receipt (as proof of payment) to the following address in Toronto (this is for appeals made in Toronto, if you are dealing with another City in Ontario – it would be the Ontario Courts of Justice Office – [P.O.A.](#) office:

Ontario Courts of Justice, Provincial Offences Offices
Old City Hall, Room 5A
60 Queen Street West
Toronto, Ontario
Between the hours of 8:30 am and 4:30 pm

It is important to get to this office as early as possible, given that the Justice of the Peace (the J.P.) who will be swearing out your affidavit between the hours of 9 am to 4 pm. If you arrive late, you may not be able to have the J.P. assist you with the affidavit and you would have to return, another day. If you make it on time and fill out the required documentation (and your receipt as proof of payment) and swear out the required affidavit, then you will receive a Notice of Time and Place of Hearing for your Appeal.

Why You Should Appeal a Conviction

You must be aware that all convictions, for the Ministry of Transportation’s (the MTO) purposes, remain for a period of *two(2) years* from the date of the alleged offence. If for example, you were charged

with speeding, contrary to the [Highway Traffic Act](#) (Section 128) on Jan. 2, 2010 and you went to trial on Jan. 2, 2011 and were convicted, the demerit points that you accumulated, would come off your record on January 2, 2012, two years after the charge was laid and in this case, a year after you went to trial. Your insurance company has a different set of rules however, in regards to when that offence would come off your insurance record with the insurance company. If you were charged on January 2, 2010, the insurance company would remove this derogatory remark off of your insurance record on January 2, 2013, *three(3) years* after it actually transpired, *two(2) years* after you were convicted and *one (1) year* after the Ministry of Transportation allowed this conviction to come off your driving record. This is why you end up paying a lot more money for your driving insurance, because the insurance companies take advantage of every/any opportunity to increase your rates and make it as expensive as possible, for as long as possible.

You can appeal your “Conviction” only or you can appeal your “Sentence” only, but it always makes much more sense to appeal both your Conviction and Sentence at the same time (simultaneously).

If you only appeal the Conviction that means that you are appealing the fact that a Justice of the Peace (a J.P.) found you guilty of an offence. If you only appeal the Sentence, then that means you agree with the J.P.’s finding of “guilty”, but that you want the Court to lower or eliminate the associated fines and/or costs, which the J.P. imposed upon you (as a sanction) upon finding that you were guilty of committing an offence and a conviction was registered in the record against you (by the MTO for two(2) years and your insurance company for three(3) years).

To understand the procedures set out for filing an appeal, you must start at **Section 135** of the [P.O.A.](#), R.S.O. 1990. *It is important to know the following, if you intend to appeal your conviction or sentence:*

The [Ontario Provincial Offences Act](#) describes and is the authority with respect to the processing, prosecution and appeals related to Traffic Offences in Ontario. The (P.O.A.) works hand in hand with the [Highway Traffic Act](#) of Ontario.

What are the “Grounds” for an Appeal?

- you are found “guilty”, but the Justice of the Peace provided an insufficient rationale (he/she didn’t bother to connect all the dots or the evidence with the law) for your conviction.
- The Justice of the Peace dismissed a proper defence that was raised by you or your counsel (lawyer or your paralegal).
- Your lawyer or paralegal screwed up and neglected to provide adequate or sufficient representation in the matter.

Appeals Under Parts 1 and 2 of the P.O.A.

Section 135(1) – A defendant or the prosecutor of the Attorney General by way of intervention is entitled to appeal an acquittal, conviction or sentence in a proceeding commenced by Certificate under Part I or II and the appeal shall be to the Ontario Court of Justice presided over by a provincial judge.

Section 135(2) – Application for Appeal – A notice of appeal shall be in the prescribed form and shall state the reasons why the appeal is taken and shall be filed with the clerk of the court within fifteen (15) days after the making of the decision appealed from, in accordance with the rules of court.

Section 135(3) – Notice of Hearing – The clerk shall, as soon as is practicable, give a notice to the defendant and prosecutor of the time and place of the hearing of the appeal.

Section 136(1) – Court of Appeal – Upon an appeal, the court shall give the parties an opportunity to be heard for the purpose of determining the issues and may, where the circumstances warrant it, make such inquiries as are necessary to ensure that the issues are fully and effectively defined.

Section 136(2) – Review – An appeal shall be conducted by means of a review.

Section 136(3) – Evidence – In determining a review, the court may:

- a. hear or rehear recorded evidence or any part thereof and may require any party to provide a transcript of the evidence, or any part thereof or to produce any further exhibit;
- b. receive the evidence of any witness whether or not the witness gave evidence at the trial;
- c. require the justice presiding at the trial to report in writing on any matter specified in the request; or
- d. receive and act upon statements of agreed facts or admissions

Section 137 – Dismissal on Abandonment – Where an appeal has not been proceeded with or abandoned, the court may order that the appeal be dismissed.

Section 138(1) – Power of Court on Appeal – Upon an appeal, the court may affirm, reverse or vary the decision appealed from or where, in the opinion of the court, it is necessary to do so to satisfy the ends of justice, direct a new trial.

Section 138(2) – New Trial – Where the court directs a new trial, it shall be held in the Ontario Court of Justice presided over by a justice other than the justice who tried the defendant in the first instance, but the Appeal Court may, with the consent of the parties to the appeal, direct that the new trial be held before the justice who tried the defendant in the first instance or before the judge who directs the new trial.

Section 138(3) – Cost – Upon an appeal, the court may make an order under section 60 for the payment of costs incurred on the appeal and subsection (3) thereof applies to the order.

If you appeal your conviction, this means that you were found “guilty” of some charge and you will be asking the Court to overturn (throw out) your conviction.

If you appeal your sentence (fines and costs), this means that when

you were found guilty, the Court imposed, as a sanction, a fine and costs.

It is important to realize that if you only appeal the sentence (fines and costs) that you are telling the court that you agree with the conviction and only take issue with the sentence.

If you only appeal the conviction, then you telling the court that you don't take issue with the sentence.

What if I Lose My Appeal, Does it End There?

It doesn't have to end there. If you lose your appeal, you can then file an additional appeal to the Ontario Court of Appeal, wherein the Court will review the entire matter, including the Justice of the Peace's decision and the decision that the Judge (in the Ontario Courts of Justice – Provincial Offences Division) made in the initial appeal.

Chapter 36

Non-Resident Fighting An Ontario Ticket

I'm Not a Resident of Ontario but I Received a Ticket While Vacationing There. Can I Dispute the Ticket, Without Having to Attend a Court for a Trial in Ontario?

Yes. There is a mechanism that allows those motorists, who don't live in the district, province/territory or country to dispute a ticket (in writing) without having to actually attend a scheduled trial date in an Ontario courtroom.

The mechanism is found in Section 6.(1) of the *Provincial Offences Act*, it reads as follows:

6.(1) Dispute without appearance – Where an offence notice is served on a defendant whose address as shown on the certificate of offence is outside the country or district in which the office of the court specified in the notice is situate, and the defendant wishes to dispute the charge but does not wish to attend or be represented at a trial, the defendant may

do so by signifying that intention on the offence notice and delivering the offence notice to the office of the court specified in the notice and delivering the offence notice to the office of the court specified in the notice together with a written dispute setting out with reasonable particularity the defendant's dispute and any facts upon which the defendant relies.

- (2) **Disposition** – Where an offence notice is delivered under subsection (1), a justice shall, in the absence of the defendant, consider the dispute and,
 - (a) where the dispute raises an issue that may constitute a defence, direct a hearing;
 - (b) where the dispute does not raise an issue that may constitute a defence, convict the defendant and impose the set fine.
- (3) **Hearing** – Where the justice directs a hearing under subsection (2), the court shall hold the hearing and shall, in the absence of the defendant, consider the evidence in the light of the issues raised in the dispute, and acquit the defendant or convict the defendant and impose the set fine or such lesser fine as is permitted by law.
- (4) **Application of the section** – This section applies in such part or parts on Ontario as are prescribed by the regulations.

This section does not apply to all parts of Ontario (s.6.4). If the address on your driver's license indicates that you live outside the district, province, territory or country of the district with respect to the address of the court, then this applies to you.

You would have to sit down and write up a "defence" to the ticket you received (remember the 5 w's – who, what, where, when and why) and hand deliver (unless the specific court will allow you to mail it in) it along with the ticket (the "offence notice") to the court office

in that area. This should reach the court office within 15 days of receiving the ticket.

The Justice of the Peace (the J.P.) will review the ticket and your written explanation (your defence). If the J.P. does not believe that your written defence raises any issues that could constitute a defence, then you will be convicted and the set fine will be imposed. You'll receive a letter in the mail indicating that you were convicted with a request to pay the fine.

If the J.P. believes that your written explanation raises an issue which could constitute a defence to the allegation (the grounds on which the person who issued the ticket believes to be in violation of a municipal by-law, the *Highway Traffic Act Provincial Offences Act* then a hearing will be scheduled to hear your written defence to the charge(s).

Once the hearing takes place, depending on the evidence presented and the explanation received by the court, you will either be convicted or acquitted. If convicted, a fine will be imposed and you will receive notice in the mail. If acquitted, the charge(s) will be dropped.

Parking Tickets Issued in Ontario to Out of Province, Out of Country Drivers

Parking ticket fines *cannot* be collected by any city in the Province of Ontario, for vehicles that bear a licence plate issued in another Province/Territory in Canada or State or Country. See the post at fightyourtickets.ca.

Chapter 37

Court Appointed Interpreters

Legal Rights

Section 14 of the *Canadian Charter of Rights and Freedoms* states:

Section 14 - Interpreter:

A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf, has the right to the assistance of an interpreter.

Interpreters serve two hundred and fifty (250) communities in Ontario, in one hundred and seventy-nine (179) Court locations in the Province of Ontario.

According to the Ministry of the Attorney General of Ontario, you should possess the following skills to be qualified as a freelance Court appointed interpreter:

- excellent communication skills
- strong interpersonal and listening skills

- excellent memory skills
- you should possess discretion and professionalism

Freelance interpreters are paid twenty-five (\$25.00) dollars per appearance in Court (with a minimum of three (3) hours pay, irrespective of the amount of time required for the interpretation assignment). In addition to the minimum \$75.00 payment, some interpreters receive vehicle mileage, meals and paid hotel rooms.

What Do Freelance Court Appointed Interpreters Do?

The Ministry of the Attorney General states that these interpreters have a fundamental role in providing access to justice.

A freelance Court appointed interpreter has the following job description:

A freelance Court appointed interpreter assists people who are unable to communicate in the language of the proceedings by providing a continuous, precise, **impartial**, competent and contemporaneous interpretation of what is communicated in the source language into the target language. (i.e. – from Greek into English and from English into Greek).

The Court appointed interpreter is appointed by the Court to assist the defendant (the individual who received the ticket) or a witness who does not understand or speak the language (English or French) in which the Court proceedings are conducted.

Too many times, the “interpreter” rather than assisting the defendant/witness, will go out of their way to act as an advocate for the Court or the Prosecutor. When this happens, impartiality is thrown out the door and the interpreter is acting in a manner which can only

be characterized as being detrimental to the interests of the defendant(s).

There are many instances where the Prosecutor is aggressively pushing for a plea bargain with the defendant (there are a number of reasons why: the Court docket is full, the police officer doesn't recall what happened, the police officer or other officer under the *Provincial Offences Act* (Ontario) neglected to provide his or her notes when confronted with a "request for disclosure" from the defendant, the officer will not be showing up, etc., etc.) and the interpreter will step in and suggest to them that the offer of the Prosecutor is a "good one" and that the defendant should "take it".

The interpreter will inform the defendant that he/she is in the courtroom to assist, through interpretation and that he/she is busy in another courtroom and doesn't have time to wait around until the courtroom is in session and must leave soon.

Often the defendant is scared, confused, anxious and bewildered by the entire Justice system in Ontario. They just want this unpleasant experience to end as quickly as possible and view the interpreter, who speaks their language, as a friendly face and a friend who would not "mislead" them and would act in good faith, when the interpreter says it is a good deal (the so-called "deal" that the Prosecutor offers the defendant as a "plea bargain") and that they (the defendant) should take it. The interpreter will often inform the defendant that it is a good deal and will instruct them to "accept it", as a result, the defendant often accepts the deal, on the advice of their newly found buddy, the Court appointed interpreter.

It is understandable that these interpreters both want and need work and that in order to preserve their job security, many will try to ingratiate themselves with the Prosecutor and will try to do this *before* the Court proceedings are taped (this is when the deals are offered and accepted and there is no official record).

In these Court proceedings, Justices of the Peace are not allowed to dispense legal advice or legal opinions for the defendants, and therefore they do not. Some interpreters (not all), on the other hand, feel obliged to provide legal advice/opinions, even though they are

supposed to be professional and impartial. Interpreters are not an extension of the Court, but often they portray themselves, as just that. This type of behaviour is highly improper and should be both discouraged and frowned upon.

By acting as uncommissioned sales staff for the City Prosecutor, it could easily be construed that these interpreters are selling out the defendant, to curry favour with the Prosecutor/Court. This is not the job or function of an interpreter. They should not act as an advocate of the Court or the Prosecutor. The job they are paid for is to simply offer interpretation services, period

Be very wary of Court appointed interpreters who act like this. They are performing a disservice to the defendant and the justice system and are not doing the job that they were hired to do.

If the Court interpreter is a member of the [Association of Translators and Interpreters of Ontario](#), then a complaint can be laid with that association, given that this Association has developed a professional code of conduct that it expects all of its members to follow.

Part VI

Appendices

Appendix A

Legal Definitions

Definitions and expressions you should know if you are reading the *Provincial Offences Act P.O.A.* or the *Highway Traffic Act (H.T.A.)* (arranged alphabetically):

a.k.a. – also known as.

actus reus (Latin) – guilty act (see mens rea).

adjournment – adjourning or putting the matter (i.e. – the trial) over to another date.

affidavit – you make a statement, that you swear or affirm, is true.

certificate – means a certificate of offence issued under Part I or a certificate of parking infraction (ticket) issued under Part II.

children – persons under the age of eighteen years old.

counsel – means a lawyer.

court – means the Ontario Court of Justice or Judge or Justice of the Peace.

crown – this means the Prosecutor in the courtroom.

deemed not to dispute – if you have filled out a form 7 (requesting a trial) and fail to appear at the trial, you will be “deemed not to dispute” the charge and will be convicted in absentia.

defendant – this means “you” as the motorist who has been charged with an offence.

et al. – this means “and others”.

fail to respond – if you receive a ticket and neglect to act on any of the instructions on it, will mean that the court will set a date to deal with it, you will be deemed not to dispute it and a conviction will be entered on the record against you and you will receive the sanction provided.

highway – includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.

historic vehicle – means a motor vehicle that is at least 30 years old; and is substantially unchanged or unmodified from the original manufacturer’s product.

intersection – means the area embraced within the prolongation or connection of the lateral curb lines or, if none, then of the lateral boundary lines of two or more highways that join one another at an angle, whether or not one highway crosses the other.

judge – means a Provincial Judge.

justice – means a Provincial Judge or a Justice of the Peace.

King’s Highway – includes the secondary highways and tertiary roads designated under the “Public Transportation and Improvement Act”.

Lawyer – means counsel or the licensed paid professional who is retained to represent you in court or in other legal matters outside of court.

mens rea (Latin) – guilty mind.

motor vehicle – includes an automobile, motorcycle.

offence – means an offence under an Act of the Legislature or under a regulation or by-law made under the authority of an Act of the Legislature; (infraction).

parking infraction – parking ticket, normally placed on the outside of your car under the windshield wiper in your absence.

police officer – means a chief of police or other police officer but does not include a special constable or by-law enforcement officer.

prescribed – means prescribed by the rules of court.

prima facie – means on the face of it.

prosecutor – means the Attorney General or, where the Attorney General does not intervene, means the person who issues a certificate or lays an information and includes an agent acting on behalf of either of them or an agent working on behalf of the City (the Prosecutor need not be a member of the bar to be a Prosecutor)

provincial offences officer – means a police officer or another person designated under subsection(3).

Regina – when used as Regina v. – means the Queen versus an individual or corporation.

re-opening – the act of requesting that the Justice of the Peace re-open your case, to provide you with an additional opportunity to challenge your charge (s).

representative – means, in respect of a proceeding to which this Act applies, a person authorized under the *Law Society Act* to represent a person in that proceeding.

set fine – means the amount of the fine set by the Chief Justice of the Ontario Court of Justice for an offence for the purpose of proceedings commenced under Part I or Part II of the *P.O.A.*

Stare Decisis – means “to stand by decided matters”. Lower courts must follow the decisions of the Supreme Court of Canada.

stay of proceeding – means that your charge (s) are suspended indefinitely or cancelled due to an error of the court (i.e. – the trial wasn’t conducted quickly enough pursuant to sections 11(b) & 24(1) of the *Charter*).

ticket – a certificate of offence or a parking infraction notice.

trial in absentia – the trial proceeds in the absence of the defendant. Or “Convicted in Absentia” – found guilty in your absence.

Voir Dire – A “trial within a trial” or French “to speak the truth”.

young person – there are different interpretations under the Act (it could be 16 or under 18).

“Your Honour” – is how you address a Judge, in the courtroom.

“Your Worship” – is how you address a Justice of the Peace, in the courtroom.

chapter[Ontario Provincial Offences Courts]Ontario Provincial Offences Courts (Court of Justice)

There are fifty-five (55) Provincial Offence Court offices throughout Ontario, which deal with *Highway Traffic Act* matters and the *Provincial Offences Act*:

Barrie/Orillia Provincial Offences Court

56 Mulcaster Street,

Barrie, Ontario

L4M 3M3

Tel: 705-739-4291, Fax: 705-739-4292

Belleville Provincial Offences Court
235 Pinnacle Street - 1st Floor, Room # 104
Postal Bag 4400
Belleville, Ontario K8N 3A9
Tel: (613) 966-0331, Fax: (613) 966-7045
Toll Free: 1-800-510-3306
P.O.A. Courtroom is located on the 3rd Floor

Bomanville Provincial Offences Court
132 Church Street North
Bomanville, Ontario

Brampton Provincial Offences Court
5 Ray Lawson Avenue,
Brampton, Ontario
L6Y 5L7
Tel: 905-450-4770

Brantford Provincial Offences Court
102 Wellington Square,
Brantford, Ontario
N3T 5R7
Tel: 519-751-9100, Fax: 519-751-0404

Brockville Provincial Offences Court
41 Court House Square,
Brockville, Ontario
K6V 7N3
Tel: 613-342-2357, Fax: 613-342-8891

Bruce County Provincial Offences Court
215 Cayley Street
Walkerton, Ontario
N0G 2V0

Burlington Provincial Offences Court (serves Milton, Oakville & Burlington)

2051 Plains Road East,

Burlington, Ontario

L7R 5A5

Tel: 905-637-1274, Fax: 905-637-5919

Caledon Provincial Offences Court

6311 Old Church Road,

Caledon East, Ontario

L0N 1E0

Tel: 905-584-2273, Fax: 905-584-2861

Toll Free Phone 1-800-303-2546

Cambridge Provincial Offence Court

152 Main Street,

Cambridge, Ontario

N1R 6R1

Tel: 519-740-5796, Fax: 519-622-4081

Cayuga Provincial Offences Court

45 Munsee Street North,

P.O. Box 220,

Cayuga, Ontario

N0A 1E0

Tel: 905-772-3327, Fax: 905-772-5810

Chatam-Kent Provincial Offences Court

21633 Communication Road, R.R. # 5

Blenheim, Ontario

N0P 1A0

Cochrane Provincial Offences Court

149 4th Ave, P.O. Box 2069

Cochrane, Ontario

P0L 1C0

Tel: 705-272-2538

Cornwall Provincial Offences Court (serving United Counties of Stormount, Dundas and Glengarry, Alexandria and Morrisburg)

26 Pitt Street, 3rd Floor

Cornwall, Ontario

K6J 3P2

Tel: 613-933-4301

County of Grey Provincial Offences Court(Owen Sound and Walkerton)

595 – 9th Avenue East

Owen Sound, Ontario

N4K 3E3

Tel: 519-376-2205

County of Haldimand Provincial Offences Court(Cayuga)

45 Munsee Street North

Cayuga, Ontario

N0A 1E0

Tel: 905-772-3327

Elgin-St. Thomas Provincial Offences Court

450 Sunset Drive

St. Thomas, Ontario

N5R 5V1

Tel: 519-631-1460

Elliot Lake Provincial Offences Court

100 Tudhope, Suite 4

Espanola, Ontario

P5T 1S6

Tel: 705-862-7875

Elmdale Provincial Offences Court

Knox Building

35 Queen Street West,

Elmdale, Ontario
L0L 1P0
Tel: 705-739-4241, Fax: 705-739-4292

Espanola Provincial Offences Court
100 Tudhope Street, Suite 4
Espanola, Ontario
P5T 1S6

Fort Erie Provincial Offences Court
200 Jarvis Street,
Fort Erie, Ontario
L2A 2S4
Tel: 905-871-8811
Niagara Falls Office 905-371-9855

Fort Frances Provincial Offences Court
320 Portage Avenue
Fort Frances, Ontario
P3A 3P9
Tel: 807-274-1676

Gore Bay Provincial Offences Court
15 Water Street, P.O. Box 298
Gore Bay, Ontario
POP 1H0
Tel: 705-282-2837

Guelph Provincial Offences Court
55 Wyndham Street North
Old Quebec Street (Mall), Suite 215
Guelph, Ontario
N1H 7T8
Tel: 519-826-0762, Fax: 519-826-0284

Haileybury Provincial Offences Court
451 Meridian Avenue
P.O. Box 2050
Haileybury, Ontario
P0J 1K0
Tel: 705-672-3221

Hamilton Provincial Offences Court John Sopinka Courthouse
45 Main Street East, Suite 408,
Hamilton, Ontario
L8N 2B7
Tel: 905-540-5593, Fax: 905-540-5730

Huron & Goderich County Provincial Offences Court
1 Courthouse Square,
Goderich, Ontario
N7A 1M2
Tel: 519-524-8394, Fax: 519-524-2044

Kawartha Lakes & Lindsay Provincial Offences Courts
440 Kent Street West, Lower Level
Lindsay, Ontario
K9V 5P2
Tel: 705-324-3962, Fax: 519-661-1944

Kemptville Provincial Offences Court
15 Water Street,
Kemptville, Ontario
Tel: 613-342-5003

Kenora Provincial Offences Court
1 Main Street South,
Kenora, Ontario
P9N 3X2
Tel: 807-467-2984, Fax: 807-467-8530

Kingston Provincial Offences Court McDonald Cartier Building
279 Wellington Street,
Kingston, Ontario
K7K 6E1
Tel: 613-547-8557, Fax: 613-547-8558

Kitchener Provincial Offences Court
77 Queen Street North,
Kitchener, Ontario
N2H 2H1
Tel: 519-745-9446, Fax: 519-745-0520

Leeds and Grenville Provincial Offences Court
32A Wall Street,
Brockville, Ontario
K6V 4R9
Tel: 613-342-2357, Fax: 613-342-3968

Lindsay Provincial Offences Court
440 Kent Street West, Lower Level,
Lindsay, Ontario
K9V 5P2
Tel: 705-324-3962, Fax: 519-661-1944

London Provincial Offences Court
824 Dundas Street,
London, Ontario
N5W 5R1
Tel: 519-661-1882, Fax: 519-661-1944

L'Original Provincial Offences Court
28 rue Court Street, C.P. P.O. Box 347,
L'Original, Ontario
Tel: 613-675-4661, Fax: 613-675-4940
Toll Free Phone: 1-800-667-6307

Milton Provincial Offences Court
100 Nipissing Road,
Milton, Ontario
L9T 5B2
Tel: 905-876-2025, Fax: 905-876-0586

Mississauga Provincial Offences Court
950 Burnhamthorpe Road West,
Mississauga, Ontario
L3C 3B4
Tel: 905-615-4500

Napanee Provincial Offences Court

County Memorial Building

41 Dundas Street East,

Napanee, Ontario

K7R 1H7

Tel: 613-354-4882, Fax: 613-354-3112

Newmarket Provincial Offences Court

465 Davis Drive, Suite 200

Newmarket, Ontario

L3Y 7T9

Tel: 905-898-0425, Toll Free: 1-877-331-3309

Toll Free Phone: 1-877-331-3309

Niagara Falls Provincial Offences Court (serves St. Catharines, Welland and Niagara Falls)

4635 Queen Street,

Niagara Falls, Ontario

L2E 6V6

Tel: 905-371-8988, Fax: 905-371-9855

Toll Free Phone: 1-866-278-8303

Norfolk Provincial Offences Court Justice Complex

530 Queensway Avenue West, 4th Floor

P.O. Box 473,

Simcoe, Ontario

N3Y 4L2

Tel: 519-428-2494, Fax: 519-428-4291

Northumberland County Provincial Offences Court

860 William Street Upper Level,

Coburg, Ontario

K9A 3A9

Tel: 905-372-3329, Fax: 905-372-6529

Toll Free Phone: 1-800-354-7050

Oakville Provincial Offences Court

1225 Trafalgar Road, P.O. Box 206,

Oakville, Ontario

L6J 5A2

Tel: 905-338-4394, Fax: 905-338-4257

Orangeville Provincial Offence Court

10 Louisa Street

Orangeville, Ontario

L9W 3P9

Tel: 519-941-5808, Fax: 519-940-3685

Orillia Provincial Offences Court

575 West Street South,

Orillia, Ontario

L3V 7N6

Tel: 705-326-2960, Fax: 705-326-3613

Oshawa-Durham Provincial Offences Court

701 Rossland Road East, Lower Level

Whitby, Ontario

L1N 8Y9

Tel: 905-668-3130

Ottawa Provincial Offences Court
100 Constellation Crescent, 1st Floor,
Ottawa, Ontario
K2G 6J8
Tel: 705-326-2960, Fax: 705-326-3613
Toll Free Phone: 1-800-724-2913

Owen Sound Provincial Offences Court
595 9th Avenue East,
Owen Sound, Ontario
N4K 3E3
Toll Free Phone: 1-800-724-2913

Penetanguishene County Provincial Offences Court
Town Hall, 10 Robert West,
Penetanguishene, Ontario
Tel: 705-739-4291, Fax: 705-739-4292

Perth Provincial Offences Court
80 Gore Street
Perth, Ontario
K7H 1H9
Tel: 613-267-3311

Peterborough Provincial Offences Court
99 Simcoe Street,
Peterborough, Ontario
K9H 2H3
Tel: 705-742-7777, Fax: 705-743-9292

Prince Edward County Provincial Offences Court

#1, 67 King Street,

Picton, Ontario

K0K 2T0

Tel: 613-476-2148

Richmond Hill Provincial Offences Court

50 High Tech Road,

Richmond Hill, Ontario

L4B 4N7

Tel: 905-762-2105

Toll Free Phone: 1-866-758-0750

Sarnia Provincial Offences Court

Bayside Mall

Lambton Shared Services Centre, 2nd Floor

150 North Christina Street, Suite Y01A,

Sarnia, Ontario

N7T 7W5

Tel: 519-344-8880, Fax: 519-344-9379

St. Catharines Provincial Offences Court

71 King Street,

St. Catharines, Ontario

L2R 3H7

Tel: 905-687-6590, Fax: 905-687-6614

Stratford, Perth County Provincial Offences Court

1 Huron Street,

Stratford, Ontario

N5A 5S4

Tel: 519-271-0531

Sudbury Provincial Offences Court

178 Elm Street West

Station "A" P.O. Box 6800

Sudbury, Ontario

P3C 1V1

Tel: 705-673-6202

Thunder Bay Provincial Offences Court

110 Archibald Street North

Thunder Bay, Ontario

P7C 3X8

Tel: 807-625-2999

Timmins Provincial Offences Court

220 Algonquin Boulevard East

Timmins, Ontario

P4N 1B3

Tel: 705-360-1332

Toronto - Ontario Court of Justice # 4871

70 Centre Avenue

Toronto, Ontario

M5G 1R5

Toronto Court Services

137 Edward Street, 2nd Floor

Toronto, Ontario

M5G 2P8

Tel: 416-338-7320, Fax: 416-338-7388

Toronto - Old City Hall - Provincial Offences Court
60 Queen Street West,
Toronto, Ontario
M5H 2M4
Tel: 416-327-5614

Toronto East Provincial Offences Court
1530 Markham Road,
Scarborough, Ontario
M1B 3G4
Tel: 416-338-7320, Fax:416-338-7388

Toronto North Provincial Offences Court
North York Civic Centre
5100 Yonge Street,
North York, Ontario
M2N 5V7
Tel: 416-338-7320, Fax: 416-338-7388

Toronto West Provincial Offences Court
York Civic Centre
2700 Eglinton Avenue West,
Toronto, Ontario
M6M 1V1
Tel: 416-338-7320, Fax: 416-338-7388

Wasaga Beach Provincial Offences Court
30 Lewis Street
Wasaga Beach, Ontario
L9Z 1A1
Tel: 705-739-4241, Fax: 705-739-4292

Waterloo Provincial Offences Court (through the Cambridge and Kitchener Courts)
77 Queen Street North

Kitchener, Ontario
N2H 6P4
Tel: 519-740-5794

Welland Provincial Offences Court
3 Cross Street,
Welland, Ontario
L3B 5X6
Tel: 905-734-6387, Fax: 905-734-7816
Toll Free Phone: 1-800-756-9477

Whitby Provincial Offences Court
701 Rossland Road East, Lower Level
Whitby, Ontario
L1N 8Y9
Tel: 519-537-4890

Windsor Provincial Offences Court
251 Goyeau Street, Suite 300,
Windsor, Ontario
N9A 6V2
Tel: 519-255-6555, Fax: 519-255-6556

Woodstock Provincial Offences Court
415 Hunter Street,
Woodstock, Ontario
N4S 4G6
Tel: 519-537-4890

Four (4) Digit ICON numbers on your Ticket or Notice:

Often, motorists receive Yellow Offence Notices or Notice of Fine and Due Date or a Red Light Camera Offence Notice and are not sure who to talk to or where they should go to Request a Trial Date to contest their tickets. Often there is a sequence of numbers on the ticket or notice which can aid a motorist in locating the office responsible for

their tickets.

On a [Yellow Offence Notice](#) – look at the top left hand corner and you will see a four (4) digit ICON number.

On a [Notice of Fine & Due Date Notice](#) or a [Red Light Camera Offence Notice](#) – look at the first four (4) digits of the Offence Number – this is the four (4) digit ICON number.

After you have identified those four (4) digits, review this [list of ICON numbers](#). You will find the four (4) digit ICON number, the corresponding Provincial Offences Office and corresponding phone numbers.

Ontario Ministry of the Attorney General - [List of Ontario Court Addresses](#).

Appendix B

Set Fines and Victim Fine Surcharges

Fines and Community Safety Zones and Construction Zone Areas

Fines vary from offence to offence, but be advised that when you are charged for an offence under the *Highway Traffic Act* the fines, associated with that specific offence, double in some cases, where the motorist is charged in *Community Safety Zone* or in a *Construction Zone* with the construction worker(s) working there. Here is an example using “speeding” as a typical charge pursuant to the *Highway Traffic Act*, with the applicable schedules under Section 128:

Section of the <i>H.T.A.</i> Charge	Km/h over posted speed limit	Normal Set Fine SCH. "B"	Community Safety Zone Fine SCH. "D"	Construction Zone with Worker Working SCH. "F"	Speeding Photo Radar SCH. "C"
Speeding SEC. 128 - SCH. B, D & F.	1 to 19km	\$2.50/km over	\$5.00/km over	\$5.00/km over	\$2.50/km over
Speeding SEC. 128 - SCH. B, D & F.	20 to 29km	\$3.75/km over	\$7.50/km over	\$7.20/km over	20-34 over - \$3.75/km over
Speeding SEC. 128 - SCH. B, D & F.	30 to 49km	\$6.00/km over	No out of court settlement	No out of court settlement	35-49 over - \$6.00/km over
Speeding SEC. 128 - SCH. B, D & F.	50km or over	No out of court settlement	No out of court settlement	No out of court settlement	50-60 over - \$8.00/km over and 61 km and over - no set fine

Any area that is considered a *Community Safety Zone* and/or a *Construction Zone* (with or without a construction worker present) will be dealt in a much more **severe** way by the courts, given that it is considered to be a public and societal safety issue.

The following offences (a sampling), under the *Highway Traffic Act*, have much higher fines when the motorist is charged within what is defined as a *Community Safety Zone*:

Section of the <i>H.T.A.</i>	Offence	Set Fine	Fine in a community safety zone
130	Careless Driving	\$260.00	No Set Fine (It is at the discretion of the Justice of the Peace as to the Fine eventually set)
132	Unnecessary Slow Driving	\$85.00	\$120.00
135(3)	Fail to yield to vehicle on right	\$85.00	\$150.00
136(1)(a)	Disobey Stop Sign - stop wrong place	\$85.00	\$120.00
136(1)(a)	Disobey Stop Sign - fail to stop	\$85.00	\$150.00
138(1)	Fail to yield - yield sign	\$85.00	\$150.00
140(1)(a)	Fail to yield to pedestrian	\$150.00	\$300.00
140(1)(b)	Fail to yield to pedestrian approaching	\$150.00	\$300.00
141(2)	Improper right turn	\$85.00	\$120.00

Section of the <i>H.T.A.</i>	Offence	Set Fine	Fine in a community safety zone
141(6)	Improper left turn	\$85.00	\$120.00
142(1)	Fail to signal for turn	\$85.00	\$120.00
142(1)	Fail to signal - lane change	\$85.00	\$120.00
142(8)	Fail to signal stop	\$85.00	\$120.00
144(7)	Fail to yield to pedestrian	\$150.00	\$300.00
144(15)	Amber Light - fail to stop	\$150.00	\$300.00
144(18)	Red Light - fail to stop	\$150.00	\$300.00
176(3)	Fail to obey school crossing stop sign	\$150.00	\$300.00

If you go through the *Highway Traffic Act* (the *H.T.A.*) and the different related schedules, you'll find that a majority of the "community safety zone" fines begin at section 128 through to section 182 of the *H.T.A.*

Here is an example of tickets that can be issued to bicyclists:

Offence	H.T.A. Section Bicycle*	Set Fine	Court Fee	Victim Fine	Total
Careless Driving	130	\$260.00	\$5.00	\$60.00	\$325.00
Red Light – Fail to Stop	144(18)	\$150.00	\$5.00	\$25.00	\$180.00
Disobey Stop Sign – Fail to Stop	136(1) (a)*	\$85.00	\$5.00	\$20.00	\$110.00
Improper Lighting	62(17)*	\$20.00	\$5.00	\$10.00	\$35.00
Improper Brakes	64(3)*	\$85.00	\$5.00	\$20.00	\$110.00
No Bell or Defective Bell	75(5)	\$85.00	\$5.00	\$20.00	\$110.00
Failure to Wear Proper Helmet	104(2.1)*	\$60.00	\$5.00	\$20.00	\$85.00
Failure to Yield to Pedestrian	140(1) (a)	\$85.00	\$5.00	\$20.00	\$110.00
Drive Wrong Way – One Way Traffic	153	\$85.00	\$5.00	\$20.00	\$110.00

Offence	H.T.A. Section Bicycle*	Set Fine	Court Fee	Victim Fine	Total
Bicycle – Fail to Turn Out to Right when Overtaken	148(6)*	\$85.00	\$5.00	\$20.00	\$110.00
Cyclist – Ride in or along Crosswalk	144(29)*	\$85.00	\$5.00	\$20.00	\$110.00
Cyclist – Fail to Stop to Identify Self	218(2)*	\$85.00	\$5.00	\$20.00	\$110.00
Ride two (2) on a Bicycle	178(2)*	\$85.00	\$5.00	\$20.00	\$110.00

* specific to the operation of bicycles and to bicyclists

In addition to the fines reflected in the *H.T.A.* there is a [Victim Fine Surcharges](#). The fines associated with the use of bicycles above, has incorporated the Victim Fine Surcharge, as an example.

Victim Fine Surcharges

This surcharge is applied against set fines, where convictions have been registered (Part I or Part III of the Act) – see section 60 of the [Provincial Offences Act](#).

This surcharge is 20% of the imposed fine (i.e. – if the fine is \$100.00 then the surcharge will be \$20.00). It remains 20% up to a \$1000.00. Any fine over \$1000.00 will have a surcharge of 25%.

The victim fine surcharge can be found within the [Provincial Offences](#)

Act (Ontario Regulation 161/00). The **Victim Fine Surcharge** ranges from \$10 (for set fines between \$0-\$50) up to \$125 (for set fines between \$501 to \$1000) and a surcharge of 25% of any fine imposed over \$1000.00:

Fine Range	Surcharge
\$0 - \$50	= \$10
\$51 - \$75	= \$15
\$76 - \$100	= \$20
\$101 - \$150	= \$25
\$151 - \$200	= \$35
\$201 - \$250	= \$50
\$251 - \$300	= \$60
\$301 - \$350	= \$75
\$351 - \$400	= \$85
\$401 - \$450	= \$95
\$451 - \$500	= \$110
\$501 - \$1000	= \$125

\$1000.00 and over - Surcharge is 25% of the actual fine

In 1996 the **Victims Bill of Rights** was passed. This *Act* uses revenue from the Victim Fine Surcharge to fund the “Victim Justice Fund” which supports services/programs such as the Victim Crisis Assistance and Referral Services, SupportLink, Victim Support Line and Victim/Witness Assistance Programs.

Apparently, although Victims of Crime are suppose to be able to access this well funded “Victim Justice Fund”, it is much more **difficult** than one might think. Although it was designed for civilians, law enforcement officers **appear** to be easily compensated through this **fund**, with ease, whenever they request it.

Fee for Late Payment of Fines

Under the *Provincial Offences Act* (Ontario Regulation 679/92) an administrative fee can be imposed for late payment of fines. The regulation states the following:

FEE FOR LATE PAYMENT OF FINES

1. The administrative fee payable in respect of a fine the payment of which is in default is,
 - (b) \$20 for fines imposed on or after the 16th of December, 1992.

When is a Fine Considered in “Default”?

Section 69, subsection (1) of the *Provincial Offences Act*, R.S.O. 1990 states the following:

The payment of a fine is in default if any part of it is due and unpaid for fifteen (15) days or more.

If I Don't Pay the Fine Can it Affect My Credit Rating?

Yes. Section 69.1(1) of the *Provincial Offences Act* states the following:

Disclosure to consumer reporting agency:

When a fine has been in default for at least 90 days, the Ministry of the Attorney General may disclose to a consumer reporting agency the name of the defaulter, the amount of the fine and the date the fine went into default.

Fee Where Fine is in Default

Section 70(1) speaks to an additional fee, in addition to the unpaid fine:

Where the payment of a fine is in default and the time for payment is not extended or further extended under subsection 66(6), the defendant shall pay the administrative fee prescribed by the regulations (the administrative fee = \$20.00).

Section 70(2) further states:

Fee collectable as a fine For the purpose of making and enforcing payment, a fee payable under this section shall be deemed to be part of the fine that is in default.

Community Safety Zones

[Ontario Highway Traffic Act – Ontario Regulation 510/99:](#)

1. The part of a highway described in a schedule to the Regulation is designated as a community safety zone for the hours, days and months specified in the schedule.

Comment: All sixteen (16) schedules (containing townships, towns, municipalities and districts listed have a designation that *is effective 24 hours a day, seven days a week and every month of the year.*

Schedule 1 – Town of Whitby

Schedule 2 – Township of Rama

Schedule 3 – Township of Springwater

Schedule 4 – Township of McDougall

Schedule 5 – Township of Sequin

Schedule 6 – Town of Caledon

Schedule 7 – Municipality of Clarington

Schedule 8 – Township of Sioux Narrows Nestor Falls

Schedule 9 – Municipality of Northern Bruce Peninsula

Schedule 10 – Municipality of Temagami

Schedule 11 – District of Algoma

Schedule 12 – Town of Orangeville

Schedule 13 – Township of Chatsworth

Schedule 14 – Municipality of Whitestone

Schedule 15 – Township of Champlain

Schedule 16 – Township of Scugog

Section 214.1(8) of the *Highway Traffic Act* speaks to the doubling of fines/ penalties received as a result of a conviction in a Community Safety Zone, see [section 214.1\(8\)](#) of the *Highway Traffic Act*.

*If you are ticketed in any of these areas, expect your **finest to double.***

Appendix C

Insurance Rates

The Effect of a Ticket on Your Insurance Rates

Private Insurance companies only understand one word – “profit”; their motto is “greed”. Private Insurance companies will take any opportunity to increase their profits. Providing insurance is an extremely profitable and lucrative business, especially in the Province of Ontario. When a motorist in Ontario is convicted of an offence, the conviction will remain on the “driver’s record” with the Ministry of Transportation for a period of two(2) years from the date that the motorist was charged with the offence (not from the conviction date). At the same time, privately owned insurance companies insist that the same motorist have the conviction registered on their “insurance record” for an extra year, in this case, three(3) years from the date that the motorist was charged. Upon learning of the conviction, many private insurance companies in Ontario, will increase the premiums of the driver, for a period of anywhere from three(3) to seven(7) years. Staying with a private insurance company, long term, does not normally benefit the driver and it is best to continue to keep your options open and continue searching for a better deal, with a different insurer. Private Insurance Companies in Ontario all have their own conviction surcharge schedule. Depending on the type of conviction (the more serious, the more you’ll pay) and

your prior driving/insurance record, your insurance company may insist that you be covered under New Facility or Facility Association. This means that on top of the insurance premiums that you are already paying, Facility Association may charge additional amounts anywhere from 100-250% of what you already pay (i.e. – normal premiums \$1,500.00 + Facility \$3,750.00 = \$5,250.00) In order to be the motor vehicle operator and to drive the vehicle, the vehicle must be insured. The reason, so many of us dread the thought of receiving a traffic ticket and the conviction that may follow; is the real possibility that our insurance company, upon becoming aware of the conviction, may increase our insurance premiums for the following three (3) to six (6) years following the conviction. This is generally the reason we fight our tickets so vigorously. Currently, the cost of living is so high and the last thing any driver needs to include in their budget, is the ever increasing insurance premiums (which are seldom ever justifiable) of the private insurance companies. Given the obscene profits which the private insurance companies make in Ontario, the best solution available to consumers, (who have no choice but to purchase automobile insurance if they want to drive) is to insist on Public Auto Insurance. Several Provinces, [British Columbia \(ICBC\)](#), [Manitoba](#), [Saskatchewan](#) and [Quebec](#) have provincially owned and operated automobile insurance and the residents benefit from the cheaper premiums. Ontario Private Insurance Companies offer the most expensive automobile insurance in Canada. Public Auto Insurance offers cheaper insurance premiums to motorists and is controlled by the Provincial Government. Public Auto Insurance works in other Provinces in Canada and it would certainly work in Ontario. Private Insurance companies are notorious, if subjected to strong public criticism, for crying poor, while laying off employees and jacking up their insurance rates. Every time the private insurance companies complain of loss, they are erecting new buildings or purchasing existing skyscrapers. In 2008, the Financial Services Commission of Ontario the “[Commission](#)” approved insurance increases, an average of 2.49%, to half of the Insurance Companies in Ontario. Here is a breakdown of the four (4) largest increases, which the Commission approved for the following Private Insurance companies:

- Farm Mutual Reinsurance = 5.95%
- Allstate Insurance = 5%
- RBC (Royal Bank) General Insurance = 3.75%
- State Farm Insurance = 3.08%

The rate changes approved in 2004, 2005, 2006 and 2007 were -10.60%, -2.43%, -1.27% and +0.55%, respectively, for the entire market. In the third quarter of 2008, for the 77.97% of the market that had rate changes approved, the average rate change was +1.12%, when weighted by market share. The rate changes approved in the third quarter of 2008 become effective in the third quarter of 2008 or later for renewal business. The approved rate change shown for each insurance company is the average for that particular company. The impact of a rate change on an individual consumer will vary depending on where the consumer lives, the type of car he or she is driving, and other risk characteristics. FSCO will continue to ensure that insurance companies' rate changes are reasonable and justified, and that the rates insurers charge are balanced with their ability to meet their future claims costs.

The [Insurance Bureau of Canada](#) posted on-line, profits for its' members in 2003 up to 673% (2.6 Billion Dollars) and a year later, in 2004 up 61.5% or 4.2 Billion Dollars. When the public freaked, the Insurance Bureau of Canada made the decision to hide its' members profit's and put an end to posting its members ever increasing profits on its website. Ontario is now an official "have not" province and will begin to rely upon and receive, equalization payments in 2009. Future equalization payments will be calculated and linked to the moving average of GDP (Gross Domestic Product) growth. Private Insurance Companies have found that advertising with the "we care for you" message is very profitable, no one is fooled. The system is designed to yield maximum profits, annually, for private insurance companies and not protection for consumers. In Ontario, the Provincial Government must seriously consider the introduction of Public Auto Insurance, which would be a great thing for consumers of all ages who drive on Ontario's roads. See the [Auto Insurance Consumers' Bill of Rights](#) for more information on this issue.

To Submit a Complaint Against Your Insurance Company

If you have a [complaint](#) against your insurance company or if you have an issue with your automobile insurance policy with your insurance company, contact [The Ontario Financial Services Commission](#) or call (outside of Toronto 1-800-668-0128) or in Toronto 416-250-6750.

[Auto Insurance Claims Forms \(OCF Forms\)](#)

[Ten \(10\) Tips to Save on Automobile Insurance](#)(this is an old list found in the Toronto Star – but highly relevant in these tough economic times).

Appendix D

Accident Reporting

If I am Involved in an Accident, Either Directly or Indirectly, What, if any Responsibility, Do I Have Under the Highway Traffic Act?

Under the *H.T.A.* – Part XIV Records and Reporting of Accidents and Convictions

199(1) – Duty to report accident:

Every person in charge of a motor vehicle or street car who is directly or indirectly involved in an accident shall, if the accident results in personal injuries or in damage to property, apparently exceeding an amount prescribed by regulation, report the accident forthwith to the nearest police station and furnish him or her with the information concerning the accident as may be required by the officer under subsection (3).

200(1) – Duty of person in charge of vehicle in case of accident:

Where an accident occurs on a highway, every person in charge of a vehicle or street car that is directly or indirectly involved in that accident shall,

- remain at or immediately return to the scene of the accident;
- render all possible assistance;
- upon request, give in writing to anyone sustaining loss or injury or to any police officer or to any witness his or her name, address, driver's licence number and jurisdiction of issuance, motor vehicle liability insurance policy insurer and policy number, name and address of the registered owner of the vehicle and the vehicle permit number.

200(2) – Penalty:

Every person who contravenes this section is guilty of an offence and on conviction is liable to a fine of not less than \$200 and not more than \$1,000 or to imprisonment for a term of not more than six (6) months, or to both, and in addition the person's licence or permit may be suspended for a period of not more than two years.

201 – Notification of damage to trees, fences, etc.

Every person who, as a result of an accident or otherwise, operates or drives a vehicle or leads, rides or drives an animal upon the highway and thereby damages any shrub, tree, pole, light, sign, sod or other property on the highway or a fence bordering the highway shall forthwith report the damage to a police officer.

If you leave the scene of an accident, this is commonly referred to as a "Hit and Run" and given society's intolerance for this type of

unacceptable behaviour, the consequences can be severe (incarceration for six (6) months, loss of driving licence for 2 years and a fine, ranging from \$200.00 to \$1000.00). Additional consequences could include your insurance company immediately cancelling your auto insurance policy (your a high risk now) or ensuring you'll pay your normal premiums and then have Facility Association apply a 250% surcharge on top of the premiums you were used to paying up to that point and the possible loss of employment (due to your inability to operate a motor vehicle).

The [Criminal Code](#) also addresses this situation.

Section 252(1) states:

Every person commits an offence who has the care, charge or control of a *vehicle*, vessel or aircraft that is involved in an accident with

- (a) another person,
- (b) a *vehicle*, vessel or aircraft and with the intent to escape civil or criminal liability *fails to stop the vehicle*, vessel or, if possible, the aircraft, give his/her name and address and where any person has been injured or appears to require assistance, offer assistance.

Section 252 of the [Criminal Code](#) therefore sets out the essential elements, that is, leaving the scene without rendering assistance or providing a name and address. If such is the case, **subsection 2** (which I have not included) raises a presumption that the person in control of the vehicle to avoid civil or criminal liability unless there is evidence to the contrary.

Many motorists don't realize that if they are convicted in the Courts for "failing to remain at the scene of a collision" that they will accumulate seven(7) demerit points on their driving record with the Ministry of Transportation for a period of two(2) years and for a period of three(3) years with their insurance company. In other Provinces,

for instance, Manitoba, you'll receive 15 demerit points, in Prince Edward Island, you'll receive 12 points, in Newfoundland & Labrador you'll receive 12 demerit points. Don't forget, the *Canadian Driver Licence Compact (the CDLC)* – Article 4.1.2 Traffic Offences: “*Failure to remain at the scene of an accident and failing to report the ‘accident’ to a police officer or peace officer.*” Not only is this information shared with the other Provinces and Territories who have signed on to the CDLC, but will remain with you if you try to move there. The States of New York and Michigan are also privy to it, given the Reciprocal Agreement between Ontario and those States.

If that same motorist who failed to remain at the scene of a collision, then further compounds their situation by “failing to report a collision to a police officer” they will accumulate an additional three(3) demerit points on their driving record with the Ministry of Transportation(M.O.T.) for a period of two(2) years and for a period of three(3) years with their insurance company (they have now accumulated ten (10) demerit points and their insurance rates will now go through the roof, for the next three(3) to six(6) years). One more additional charge may be the difference of not being able to drive (not being able to afford the skyrocketing insurance premiums) and not being allowed, under the law to drive (due to loss of driving privileges). Remember, under the *H.T.A.* – Part IV Licences – Section 31 – *Driving is a Privilege.*

It must be remembered, that a fully licensed driver receives a warning letter from the M.O.T. when he/she accumulates six(6) points, and at nine(9) points the M.O.T. may summon him/her to an interview where the onus rests on this motorist to discuss his/her driving record and provide a rationale as to why his/her licence should not be suspended. Once this motorist has accumulated fifteen(15) demerit points, his/her licence will be suspended for thirty(30) days, from the date that the licence is surrendered.

Appendix E

The Demerit Point System in Ontario

The [Highway Traffic Act](#) – Section 56 states: “Demerit Point System – The Lieutenant Governor in Council may make regulations for a demerit point system for drivers of motor vehicles or of street cars.” Related language can be found in subsections [56\(2\)](#), [\(3\)](#), [\(4\)](#) & [\(5\)](#). Remember that demerit points stay on your record with the Ministry of Transportation (M.T.O.) for two years from the date of the actual *offence* (from the date that you received your ticket(s)), not the date of the *conviction*.

The following information can be found in the [Ontario Regulation 339/94 – Demerit Point System](#) made under the [H.T.A.](#)

You can access the following information from the [Ontario Ministry of Transportation](#) website.

Here are the Points that you will receive, for a period of two(2) years (from the date of the offence) on your driving record and three(3) years on your insurance record, if convicted of the following traffic related offences:

7 Points

1. Failing to remain at the scene of a collision – [Section 200](#) of the *H.T.A.*
2. Failing to stop, when signalled/requested by a police officer – [Section 216](#) of the *H.T.A.*

6 Points

1. Careless Driving – [Section 130](#) of the *H.T.A.*
2. Racing – [Section 172](#) of the *H.T.A.*
3. Exceeding the speed limit by 50 km per hour, or more – [Subsections 175\(11\) & \(12\)](#) of the *H.T.A.*

5 Points

1. Driver of a public vehicle or school bus, failing to stop at an unprotected railway crossing – [Subsections 174\(1\) & \(2\)](#) of the *H.T.A.*

4 Points

1. Exceeding the speed limit by 30 to 49 km per hour – [Section 128\(b\)](#) of the *H.T.A.*
2. Following too closely – [Section 158](#) of the *H.T.A.*

3 Points – There are seventeen(17) different driving offences in which your driving record can accumulate three(3) points:

1. Exceeding the speed limit by 16 to 29 km per hour – [Section 128\(c\)](#) of the *H.T.A.*
2. Failing to yield right of way – [Subsections 135\(2\) & \(3\), Subsections 136\(1\)\(b\), 136\(2\), 138\(1\), 139\(1\), 141\(5\), 144\(7\), \(8\) & \(21\)](#), of the *H.T.A.*
3. Failing to obey the directions of a police officer – [Section 134\(1\)](#) of the *H.T.A.*

4. Failing to report a collision/accident to a police officer – [Subsections 199\(1\) & \(1.1\)](#) of the *H.T.A.*
5. Crowding the driver’s seat – [Section 162](#) of the *H.T.A.*
6. Driving or operating a vehicle on a closed road – [Subsection 134\(3\)](#) of the *H.T.A.*
7. Failing to slow and carefully pass a stopped emergency vehicle – [Subsection 159.1\(1\)](#) of the *H.T.A.*
8. Improper passing – [Subsection 148 \(8\)](#) & [Sections 149, 150 and 166](#) of the *H.T.A.*
9. Driving through, around or under a railway crossing barrier – [Section 164](#) of the *H.T.A.*
10. Failing to obey a stop sign, traffic control stop/slow sign, traffic/signal light or railway crossing signal or school crossing stop sign – [Clause 136\(1\) \(a\)](#), [Subsections 144\(14\), \(15\), \(16\), \(17\), \(18\), \(21\)](#), [Section 146.1\(3\) & \(4\)](#), [Section 163](#) and [Subsection 176\(3\)](#) of the *H.T.A.*
11. Driving the wrong way on a divided highway/road – [Clause 156\(1\)\(a\)](#) of the *H.T.A.*
12. Improper driving where highway/road is divided into lanes – [Section 154](#) of the *H.T.A.*
13. Going the wrong way on a one way street or highway – [Section 153](#) of the *H.T.A.*
14. Crossing a divided highway/road where no proper crossing is provided – [Clause 156\(1\)\(a\)](#) of the *H.T.A.*
15. Failing to move, where possible, into another lane when passing a stopped emergency vehicle, if it is safe to do so – [Section 159.1\(2\)](#) of the *H.T.A.*
16. Improper use of a high occupancy vehicle lane – [Subsection 154.1\(3\)](#) of the *H.T.A.*
17. Motor vehicle equipped with and/or carrying a speed measurement warning device (radar detector) – [Subsection 79\(2\)](#) of the *H.T.A.*

2 Points – There are seventeen (17) different driving offences in which your driving record can accumulate two(2) Points:

1. Driver failing to properly wear a seat belt – [Subsection 106\(2\)](#) of the *H.T.A.*
2. Driver failing to ensure that a passenger, under 16 years of age, is properly wearing a seat belt – [Subclause 106\(4\)\(a\)\(i\)](#) of the *H.T.A.*
3. Driver failing to ensure that a passenger, less than 23 kg is properly secured – [Subsection 8\(2\)](#) of Regulation 613 of the *Revised Regulations of Ontario, 1990.*
4. Driver failing to ensure infant/child passenger is properly secured in an appropriate child restraint system or booster seat – [Subsection 8\(3\)](#) of Regulation 613 of the *Revised Regulations of Ontario, 1990.*
5. Driver failing to ensure child passenger is secured as prescribed – [Subsection 8\(4\)](#) of Regulation 613 of the *Revised Regulations of Ontario, 1990.*
6. Failing to stop at a pedestrian crossing – [Subsections 140\(1\), \(2\) & \(3\)](#) of the *H.T.A.*
7. Improper right turn – [Subsections 141\(2\) & \(3\)](#) of the *H.T.A.*
8. Improper left turn – [Subsections – 141\(6\) & \(7\)](#) of the *H.T.A.*
9. Prohibited turns – [Section 143, Subsection 144\(9\)](#) of the *H.T.A.*
10. Failing to obey signs (under regulation [Section 182\(1\)](#)) – [Subsection 182\(2\)](#) of the *H.T.A.*
11. Failing to signal – [Subsections 142 \(1\), \(2\) & \(8\)](#) of the *H.T.A.*
12. Failing to share the road – [Subsections 148\(1\), \(2\), \(4\),\(5\), \(6\) & \(7\)](#) of the *H.T.A.*
13. Backing up on a highway – [Subsection 157\(1\)](#) of the *H.T.A.*
14. Unnecessary slow driving – [Section 132](#) of the *H.T.A.*
15. Failure to lower headlamp beams – [Section 168](#) of the *H.T.A.*

16. Improper opening of a vehicle door – [Section 165](#) of the *H.T.A.*
17. Towing people – on toboggans, bicycles, ski's, skate boards, roller-blades, etc. prohibited – [Section 160](#) of the *H.T.A.*

On September 30, 2007 the Provincial Government brought in the [Safer Roads to a Safer Ontario Act, Bill "203"](#). This legislation amends the [Highway Traffic Act](#) and imposes tougher penalties on those who commit dangerous acts on the roads in Ontario.

Since this law has come into effect, the Ontario Provincial Police estimate that someone is charged every hour in the Province of Ontario, under this Act. The Ontario Provincial Police [Commissioner](#) suggested that motorists don't get it and cited that several individuals have been charged twice and a handful of people have been charged four times. What he didn't say is that two of his own O.P.P. officers (Constables Lloyd Tap and Michael Deyell) were charged driving on highways near Peterborough, Ontario but not treated the same as other civilian motorists that were charged. Example: *Street Racing* – Prior to Sept. 30/07 the minimum fine for street racing was \$200 and the maximum fine was \$1000 or 6 months in jail or a combination of the two, with a suspension of the driver's licence for a maximum of 2 years. Under this new Act, the fine for racing has been multiplied by 10 – the minimum fine is \$2000.00, up to a maximum fine of \$10,000.00. The Suspension of the Driver's Licence has increased to a maximum of 2 years for the first offence and a maximum of 10 years for another racing conviction. In addition, there will be a 7 days administrative driver's licence suspension and vehicle impoundment. The driver's licence suspensions will apply to all driver's, not only to people with valid Ontario Licences.

[Bill 203](#) has been enacted as Chapter 13 of the Statutes of Ontario, 2007. The Bill amends the *Highway Traffic Act* and the Remedies for Organized Crime and Other Unlawful Activities Act, 2001 and makes consequential amendments to several other Acts.

Example of some of the new language introduced under [Bill 203 "Safer Roads to a Safer Ontario Act"](#):

Impaired Driving:

Currently, section 48 provides for a 12-hour administrative driver's licence suspension for drivers whose blood alcohol concentration exceeds 0.05. The licence suspension period is increased to three days for a first suspension under this section, seven days for a second suspension and 30 days for a subsequent suspension. Amendments are made to sections 48.1, 48.2 and 48.3 to parallel some of the wording changes in section 48.

Street Racing:

Section 172 prohibits street racing. The current penalty for street racing is a \$200 minimum and \$1,000 maximum fine or six months imprisonment, or both a fine and imprisonment, and a maximum driver's licence suspension of two years. The fine is increased to a \$2,000 minimum and \$10,000 maximum. The driver's licence suspension is increased to a maximum of two years for a first offence and a maximum of 10 years for a subsequent offence. In addition, there will be a seven-day administrative driver's licence suspension and vehicle impoundment. The driver's licence suspensions will apply not only to people with Ontario driver's licences, but to drivers licensed by another jurisdiction as well. (See Reciprocal agreements between Ontario the U.S. States of New York and Michigan (see [section 40](#) of the *Highway Traffic Act*), as well as the Canadian Driver Licence Compact "CDLC").

New section 172.1 is enacted. It prohibits driving a motor vehicle equipped with a nitrous oxide fuel system except where the nitrous oxide connection is not operational. Subsection 41(1) is amended so that a person convicted under the recently passed street racing offences in the [Criminal Code](#) (Canada) will be subject to the same automatic driver's licence suspensions on conviction as are persons convicted of impaired driving under the [Criminal Code](#) (Canada). A consequential amendment is made to section 46. Section 214.1 is amended to provide that a person who is convicted of street racing in a community safety zone is subject to the same increased licence suspensions as would be imposed under section 172. Currently, the maximum licence suspension under section 214.1 is two years.

Demerit Points and Probationary/New Drivers

As a Class G1, G2, M1 or M2 driver, if you get two(2) or more demerit points, you will be sent a warning letter.

- At six(6) points, you may have to go to an interview to discuss your driving record and provide reasons why your licence should not be suspended. If you don't attend, your licence may be suspended.
- At nine(9) points, your licence will be suspended for 60 days from the date you surrender it to the Ministry of Transportation. You can lose your licence for up to two years if you fail to surrender your licence. A driver's licence may be surrendered at any Driver & Vehicle Issuing Officer, Ministry of Transportation Queen's Park Driver and Vehicle Issuing Officer, or mailed (through Canada Post – prices increased January 11, 2010 – *Registered Mail* – cost of first class Canadian stamp=\$0.57 + \$7.95 Registration Fee + 5% GST – Total = \$8.95) to:

Ministry of Transportation
Driver Improvement Office
Building "A", Main Floor
[2680 Keele Street](#),
Downsview, Ontario
M3M 3E6

After the suspension, the number of points on your driving record will be reduced to four(4). Any additional points could again bring you to the interview level. If you reach nine(9) points for the second time, your licence can be suspended for six(6) months from the date that you surrender your licence to the Ministry of Transportation.

Demerit Points and Fully Licensed Drivers

As a fully licensed driver, if you get six(6) demerit points, you will be sent a warning letter.

- At nine(9) points, you may have to go to an interview to discuss your driving record and provide reasons why your licence should not be suspended. If you don't attend, your licence may be suspended.
- At fifteen(15) or more points, your licence will be suspended for thirty(30) days from the date you surrender your licence to the Ministry of Transportation for the first suspension. You can lose your licence for up to two(2) years if you fail to surrender your licence. A driver's licence may be surrendered at any Driver & Vehicle Licence Issuing Office, Ministry of Transportation Queen's Park Driver and Vehicle Licence Issuing Office, or mailed (through Canada Post – prices increased effective January 11, 2010 – *Registered Mail* – cost of first class Canadian stamp=\$0.57 + \$7.95 Registration Fee + 5% GST – Total= \$8.95) to:

Ministry of Transportation
Driver Improvement Office
Building "A", Main Floor
[2680 Keele Street](#)
Downsview, Ontario
M3M 3E6

After the suspension, you may be required to complete a driver re-examination (vision, knowledge and road tests), the number of points on your driving record will be reduced to seven(7). Any extra points could again, bring you to the interview level. If you reach fifteen (15) points again, your licence will be suspended for six(6) months.

Demerit Points for Out-of-Province Convictions

Drivers convicted of a driving related offence in the [State of New York](#) or [State of Michigan](#) or any province or territory, will have home jurisdiction penalties such as demerit points and/or suspensions applied to their Ontario driver record as if the offence occurred in Ontario. See [Ontario Highway Traffic Act](#) – Part IV Licences, Driver, Driving

Instructor, Section 40(1) – Agreements with U.S. States – [Reciprocal Agreements](#) within Canada and with the United States of America.

Examples of out-of-province convictions, where Ontario demerit points and/or suspensions will be applied include:

Traffic

- Speeding
- Fail to obey stop sign
- Fail to obey signal light
- Fail to stop for school bus
- Racing
- Fail to remain or return to scene of collision
- Careless driving

Criminal

- Motor manslaughter
- Criminal negligence
- Dangerous driving
- Failure to remain at scene of a collision
- Impaired driving
- Driving while disqualified or prohibited

The Ontario Registrar of Motor Vehicles is required to keep these records under [Section 205\(1\)](#) of the *Ontario Highway Traffic Act* and may use them for the purposes of administering the Ministry's Demerit Point System. Inquiries should be directed to:

Licensing Administration Office
Ministry of Transportation
Main Floor, Building "A",
[2680 Keele Street](#)
Downsview, Ontario
M3M 3E6

Appendix F

Demerit Points/Set Fines/Court Fees/Victim Fine Surcharges

This chapter will link the offence, with the number of demerit points and the set fine, the court fee and victim surcharge related to a conviction of one of these offences. The courts are much more severe if the offence took place in a [community safety zone](#) or in or around a construction zone. Speeding is dealt with under section 128 of the *Highway Traffic Act*; if you speed near a [construction zone](#), expect the fine to be doubled. If an offence is committed in these areas, normally the fines associated with the offence double, or in some instances, rather than doubling the fine, instead, a No Set Fine (N.S.F.) is applied, which is worse than the doubling of a fine.

Penalty for Speeding:

- (14) Every person who contravenes this section or any by-law or regulation made under this section is guilty of an offence and on conviction is liable, where the rate of speed at which the motor vehicle was driven,
- (a) is less than 20 kilometres per hour over the speed limit, to a fine of \$3 for each kilometre per hour that the motor vehicle was driven over the speed limit;
 - (b) is 20 kilometres per hour or more but less than 30 kilometres per

hour over the speed limit, to a fine of \$4.50 for each kilometre per hour that the motor vehicle was driven over the speed limit;

- (c) is 30 kilometres per hour or more but less than 50 kilometres per hour over the speed limit, to a fine of \$7 for each kilometre per hour that the motor vehicle was driven over the speed limit; and
- (d) is 50 kilometres per hour or more over the speed limit, to a fine of \$9.75 for each kilometre per hour that the motor vehicle was driven over the speed limit. 2005, c.26, Sched. A, s.17(7) (see [Racing](#) under Accumulation of six(6) Demerit Points upon conviction below)

Penalty for Speeding in Construction Zones:

14.1 Every person who contravenes this section in a construction zone designated under subsection (8) or (8.1) when there is a worker in the construction zone is liable on conviction, not to the fines set out in subsection (14), but, where the rate of speed at which the motor vehicle was driven,

- (a) is less than 20 kilometres per hour over the posted speed limit, to a fine of double the fine set out in clause (14)(a) for each kilometre per hour that the motor vehicle was driven over the speed limit;
- (b) is 20 kilometres per hour or more but less than 30 kilometres per hour over the posted speed limit, to a fine of double the fine set out in clause (14)(b) for each kilometre per hour that the motor vehicle was driven over the speed limit;
- (c) is 30 kilometres per hour or more but less than 50 kilometres per hour over the posted speed limit, to a fine of double the fine set out in clause (14)(c) for each kilometre per hour that the motor vehicle was driven over the speed limit; and
- (d) is 50 kilometres per hour or more over the posted speed limit, to a fine of double the fine set out in clause (14)(d) for each

kilometre per hour that the motor vehicle was driven over the speed limit. 2005, c.26, Sched. A, s.17(8). (See [Racing](#) under Accumulation of six(6) Demerit Points upon conviction below).

There are set fines and in some instances, no set fine (N.S.F.). Where it is labelled an N.S.F., the fine levied will be at the discretion of the court (normally the Justice of the Peace will decide the fine).

In addition to the set fine, is the court fee (normally \$5.00) and the victim fine surcharge, which is applied in this manner:

Victim Fine Surcharges

Effective January 1, 1995, a Victim Fine Surcharge is applied to all [Provincial Offence Act Offences](#) fines, with the exception of parking tickets. This Fine Surcharge generates millions upon millions of dollars for the Province of Ontario.

This surcharge is applied against set fines, where convictions have been registered (Part I or Part III of the Act) – see section [60](#) of the *Provincial Offences Act*.

This surcharge is 20% of the imposed fine (i.e. – if the fine is \$100.00 then the surcharge will be \$20.00). It remains 20% up to a \$1000.00. Any fine over \$1000.00 will have a surcharge of 25%.

The victim fine surcharge can be found within the *Provincial Offences Act* [Ontario Regulation 161/00](#). The Victim Fine Surcharge ranges from \$10 (for set fines between \$0-\$50) up to \$125 (for set fines between \$501 to \$1000) and a surcharge of 25% of any fine imposed over \$1000.00:

Fine Range		Surcharge		
\$0	-	\$50	=	\$10
\$51	-	\$75	=	\$15
\$76	-	\$100	=	\$20
\$101	-	\$150	=	\$25
\$151	-	\$200	=	\$35
\$201	-	\$250	=	\$50
\$251	-	\$300	=	\$60
\$301	-	\$350	=	\$75
\$351	-	\$400	=	\$85
\$401	-	\$450	=	\$95
\$451	-	\$500	=	\$110
\$501	-	\$1000	=	\$125

\$1000.00 and over - Surcharge is 25% of the actual fine

On June 11, 1996 the Victims' Bill of Rights, 1995 was proclaimed as law. This Bill has been using revenue, since January 1, 1995 from the Victim Fine Surcharge to fund the [Victim Justice Fund](#) which supports services/programs such as the Victim Crisis Assistance and Referral Services, SupportLink, Victim Support Line and Victim/Witness Assistance Programs.

The "Total Fine" used below, is the Set Fine + the Court Fee (normally \$5.00) plus the Victim Fine Surcharge (normally 20% of the set fine, up to a fine of \$1000 – after that it is 25% of the actual fine). "Section" refers to the section of the *H.T.A. (Ontario Highway Traffic Act)* which defines the offences referred to below:

Accumulation of seven (7) Demerit Points, upon conviction:

- Fail to Remain at scene of collision – Section [200\(1\)\(a\)](#) of the *H.T.A.* – Total Fine = N.S.F. (No Set Fine)
- Fail to Render Assistance – Section [200\(1\)\(b\)](#) of the *H.T.A.* – Total Fine = N.S.F. (No Set Fine)
- Fail to Give Required Information – Section [200\(1\)\(c\)](#) of the *H.T.A.*

– Total Fine = N.S.F.

The penalty for these offences can be found in [Section 200 \(2\)](#) of the *H.T.A.* The Justice of the Peace will exercise his/her discretion and based on the severity of the event and the offender's driver's record, penalties could range anywhere from a \$200 to a \$1000 fine, six(6) months in jail (or both) and a possible suspension of one's driver's licence for not more than two (2) years.

Accumulation of six(6) Demerit Points, upon conviction:

- Careless Driving – [Section 130](#) of the *H.T.A.*:

The penalty for these offences can be found in [Section 130](#) of the *H.T.A.* The Justice of the Peace will exercise his/her discretion and based on the severity of the event and the offender's driver's record, penalties could range anywhere from a \$200 to \$1000 fine, six(6) months in jail (or both) and a possible suspension of one's driver's licence for not more than two(2) years.

- Racing (Exceeding the Speed Limit by 50 km/h or more over posted speed limit), Stunt Driving of a Motor Vehicle – [Section 172\(1\)](#) of the *H.T.A.*

The penalty for this offence can be found in [Section 172\(2\)](#) of the *H.T.A.* The Justice of the Peace will exercise his/her discretion and based on the severity of the event and the offender's driver's record, penalties range anywhere from a \$2000 to \$10,000 fine, six(6) months in jail (or both) and a possible suspension of one's driver's licence for not more than two(2) years for the first conviction of this offence.

- Failing to Properly Stop for a School Bus with Lights Flashing- [Section 175\(11\) & \(12\)](#) of the *H.T.A.* = \$490

Accumulation of five(5) Demerit Points, upon conviction:

- Public Vehicles Required to Stop at Railway Crossings – Section 174(1) & (2) of the *H.T.A.*- Total Fine = \$105.00

Accumulation of four(4) Demerit Points, upon conviction:

- Exceeding the Speed Limit by 30 – 49 km/h over posted speed limit)– Section 128(b) of the *H.T.A.* = See Section 128(14)(c) of the *H.T.A.* which charges the driver speeding \$7 per each kilometre driven over the posted speed limit; if the same offence is committed in a construction zone (see Section 128(14.1)(c) of the *H.T.A.*), the \$7 fine doubles to \$14 per each kilometre driven over the posted speed limit.

Accumulation of three(3) Demerit Points, upon conviction:

- Exceeding the Speed Limit by 16 – 29 km/h over the posted speed limit – Section 128(c) of the *H.T.A.*
- Failing to Yield Right of Way:

Fail to Yield at Uncontrolled Intersections -Section 135(2) & (3) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180)

Fail to Yield to Traffic on Through Highway – Section 136(1)(b) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180)

Fail to Yield to Traffic on a Through Highway – Section 136(2) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180)

Fail to Yield – Yield Sign – Section 138(1) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180)

Fail to Yield from Private Road – Section 139(1) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone

the fine is \$180)

Left Turn Across Path of Approaching Vehicle – Section 141(5) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180)

Fail to Yield to Pedestrian – Section 144(7) of the *H.T.A.* – Set Fine = \$180 (in a community safety zone the fine is \$380)

- Fail to Yield to Traffic – Section 144(8) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180)

Fail to Yield to Flashing Red Light – Section 144(21) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180)

- Failing to Obey Directions of a Police Officer – Section 134(1) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180)
- Failing to Report an Accident to a Police Officer – Section 199(1) & 199(1.1) of the *H.T.A.* – Set Fine = \$110
- Crowding Driver's Seat – Section 162 of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180)
- Driving or Operating a Vehicle on a closed Road/Highway – Section 134(3) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180)
- Failing to Slow and Carefully Pass a Stopped Emergency Vehicle – Section 159.1(1) of the *H.T.A.* – Set Fine = \$490
- Passing Traffic when Roadway Not Clear – Section 148(8) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180):

Drive Left of Centre Approaching Crest of Grade – Section 149 of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180)

Passing to Right of Vehicle Not in Safety – Section 150 of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180)

Passing Streetcar Improperly – Section 166 of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180)

- Driving Through, Around or Under Railway Crossing Barrier – Section 164 of the *H.T.A.* – Set Fine = \$110 (community safety zone the fine is \$180)

- Failing to Obey Posted Signs:

Disobey Stop Sign – Fail to Stop – Section 136(1)(a) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180)

Green Arrow – Fail to Proceed as Directed – Section 144(14) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

Amber Light – Fail to Stop – Section 144(15) of the *H.T.A.* – Set Fine = \$180 (in a community safety zone the fine is \$365)

Amber Arrow – Fail to Stop – Section 144(16) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

Flashing Amber Light – Fail to Proceed with Caution – Section 144(17) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

Red Light – Fail to Stop, Proceed before Green – Section 144(18) of the *H.T.A.* – Set Fine = \$180 (in a community safety zone the fine is \$365)

Flashing Red Light – Fail to Stop/Yield – Section 144(21) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180)

Fail to Obey Traffic Control Stop Sign – Section 146.1(3) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

Disobey Railway Crossing Signal – Stop in Wrong Place, Fail to Stop, Proceed Unsafely – Section 163 of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180)

School Crossing Stop Sign – Fail to Obey – Section 176(3) of the *H.T.A.* – Set Fine = \$180 (in a community safety zone the fine is \$365)

- Driving the Wrong Way on a Divided Highway/Road – Section 156(1) (a) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180)

Failing to Move, where possible, into another lane when Passing a Stopped Emergency Vehicle, if it is safe to do so – Section 159.1(2) of the *H.T.A.* – Set Fine = \$485

- Improper Use of a High Occupancy Vehicle Lane – Section 154.1(3) of the *H.T.A.* – Set Fine = \$110

Motor Vehicle Equipped with and/or Carrying a Speed Measuring Warning Device (radar detector) – Section 79(2) of the *H.T.A.* – Set Fine = \$170 (Powers of Police Officer Section 79(3) A police officer may at any time, without a warrant, stop, enter and search a motor

vehicle that he or she has reasonable grounds to believe is equipped with or carries or contains a speed measuring warning device contrary to subsection (2) and may seize and take away any speed measuring warning device found in or upon the motor vehicle.

Accumulation of two (2) Demerit Points, upon conviction:

- Driver Failing to Properly Wear a Seat Belt – Section 106(2) of the *H.T.A.* – Set Fine = \$110
- Driver failing to ensure that a Passenger, Under 16 Years of Age, is Properly Wearing a Seat Belt – Section 106(4)(a)(i) of the *H.T.A.* – Set Fine = \$110
- Driver failing to ensure that a passenger, less than 23 kg is properly secured – Subsection 8(2) of Regulation 613 of the Revised Regulations of Ontario, 1990 – Set Fine = \$110
- Driver failing to ensure infant/child passenger is properly secured in an appropriate child restraint system or booster seat – Subsection 8(3) of Regulation 613 of the Revised Regulations of Ontario, 1990 – Set Fine = \$110
- Driver failing to ensure child passenger is secured as prescribed – Subsection 8(4) of Regulation 613 of the Revised Regulations of Ontario, 1990 – Set Fine = \$110
- Failing to Stop at a Pedestrian Crossing (a Crosswalk) – Section 140(1) of the *H.T.A.* – Set Fine = \$180 (in a community safety zone the fine is \$365)

Pass Stopped Vehicle at Crossover (a Crosswalk) – Section 140(2) of the *H.T.A.* – Set Fine = \$180 (in a community safety zone the fine is \$365)

Pass Front of Vehicle within 30 Metres of Crossover (a Crosswalk) – Section 140(3) of the *H.T.A.* – Set Fine = \$180 (in a community safety zone the fine is \$365)

- Improper Right Turn – Section 141(2) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

Improper Right Turn – Multi-Lane Highway – Section 141(3) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

- Left Turn – Fail to Afford Reasonable Opportunity to Avoid Collision – Section 141(5) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

Improper Left Turn – Section 141(6) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

Improper Left Turn – Multi-Lane Highway – Section 141(7) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

- Prohibited turns:

U-turn On a Curve, Railway Crossing, Near Crest of Grade, Bridge, Viaduct or Tunnel – No Clear View – Section 143 of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180)

Proceed Contrary to Sign at Intersection – Section 144(9) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

- Failing to Obey Signs (under regulation Section 182(1)) – Section 182(2) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

- Failing to signal:

Turn, Change Lane, Fail to Signal for Turn- not in Safety – Section 142(1) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

Start From Parked Position, Stopped Position, Stopped Position and Fail to Signal – Not in Safety – Section 142(2) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$180)

Fail to Stop, Fail to Signal Decrease in Speed, Improper Signal to Stop and Improper Signal to Decrease in Speed – Section 142(8) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

- Failing to Share the Road:

Fail to Share Half Roadway – Meeting Vehicle – Section 148(1) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

Fail to Share Roadway – Meeting Bicycle – Section 148(4) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

Fail to Turn Out to Left to Avoid Collision – Section 148(5) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

Bicycle – Fail to Turn Out to Right When Overtaken – Section 148(6) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

Fail to Stop to Facilitate Passing, Fail to Assist in Passing – Section 148(7) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

- Backing Up On a Shoulder/Highway – Section 157(1) of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)
- Unnecessary Slow Driving – Section 132 of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

- Failure to Lower Headlamp Beams – Section 168 of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)
- Improper opening of a vehicle door – Section 165 of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)
- Towing People – on toboggans, bicycles, ski's, skate boards, rollerblades, etc. prohibited – Section 160 of the *H.T.A.* – Set Fine = \$110 (in a community safety zone the fine is \$150)

What Changes Have Been Made to the Highway Traffic Act As A Result of the Enactment of Bill 126?

On April 23, 2009 – Bill 126 received Royal Assent today. The Provincial Government plans on putting this law into force in 2010. This new Bill covers a number of different areas in the *Highway Traffic Act*, which includes, but is not limited to the following: New Rules surrounding consuming alcohol and driving (when this law comes into force, Novice and Young Driver's will be expected not to have been drinking at all before driving, driver's who drive while their driver's licence is suspended will have their motor vehicles impounded for progressive periods of time, depending on how many times they are caught while their driver's licence is suspended, many of the fines under the *Highway Traffic Act* are increasing, etc., etc.). The increase in the fines will not be reflected above, until these fines actually come into force. Here is a small sample (of the increase in fines) of what Bill 126 will bring with it, once it comes into force and begins to affect driver's on Ontario roads and highways:

Bill 126 increases many of the financial fines under the *H.T.A.* (sections 106, 130, 144 & 146 and 200):

Seatbelts – see **Section 106** of the *H.T.A.* – fine was \$60 to \$500 (see **general penalty**) increases to \$200 to \$1,000.

Careless Driving – see **Section 130** of the *H.T.A.* – fine was \$200 to

\$1,000 increases to \$400 to \$2,000.

Failure to Stop at Red Light/Red Light Camera – see Sections [144](#) & [146](#) of the *H.T.A.* – fine was \$150 to \$500 this fine increases to \$200 to \$1,000.

Duty of person in charge of vehicle in case of accident (remain or immediately return to scene of accident, render all possible assistance and provide particulars upon request) – see Penalty [Section 200\(2\)](#) of the *H.T.A.* – fine was \$200 to \$1,000 increases to \$400 to \$2,000.

Appendix G

Green Alternatives – Motorcycles, Mopeds and e-Bikes

Free Parking in the City of Toronto

In the City of Toronto, on October 26, 2005 the City Council passed a resolution which had the effect of allowing all Motorcycles, Motor Scooters and Mopeds to park for free on any street in Toronto in which parking is allowed.

A motorcycle, motor scooter or moped can park in any Green “P” parking (outdoors or indoors) for free as long as the motorcycle, motor scooter or moped is parked at an angle, not more than sixty (60) degrees to the curb and at least three (3) metres or 9.8424 feet away from a Fire Hydrant.

The City of Toronto ensured that motorcycles, motor scooters and mopeds were exempt from the by-laws and the [Ontario Highway Traffic Act](#) (for the purposes of parking within the City of Toronto).

Motor Scooter – Maximum Speed – 70 kms/hr or less

Moped – Does not attain a speed greater than 50 kms/hr

In order to operate a Motor Scooter or Moped, the driver has to be at least sixteen(16) years of age and have an “M” License with an “L” condition.

Motor Scooters and mopeds are prohibited from travelling on controlled access highways, including the 400 series Highways.

The Definition of a Motor Scooter (also known as a limited-speed motorcycle) can be found in Regulation 340/94 under the [Highway Traffic Act](#). Regulation 340/94 is also known as the “Driver’s Licences” regulation of the *Highway Traffic Act*.

Vehicles that *can* operate on the road, are as follows:

- Limited-Speed Motorcycles (includes motor scooters and mopeds)
- Motor-Assisted Bicycles
- Motor Tricycles
- Bicycles
- Power-Assisted/Electric Bicycles

Vehicles that cannot operate on the road, are as follows:

- Pocket Bikes
- Electric and Motorized Scooters (known as “Go-peds”)
- Power Assisted Bicycles: (also known as an “e-bike”)

In Ontario, in order to operate a power-assisted bicycle, the rider has to be at least sixteen(16) years of age and must be wearing a bicycle approved (C.S.A. approved) helmet while riding an e-bike.

These e-bikes or Power-Assisted Bicycles can achieve a maximum speed of thirty-two(32) km/h.

The [legislation](#) surrounding the use of an e-bike is unique in every Province and Territory:

[British Columbia](#)

allow these bikes for public road use and are not defining them as motor vehicles.

Age restriction – must be at least sixteen (16) years of age to operate this bike.

Alberta

allow these bikes for public road use and are not defining them as motor vehicles.

Age restriction – must be at least twelve(12) years of age to operate.

Saskatchewan

all these bikes for public road use and are not defining them as motor vehicles.

Manitoba

allow these bikes for public road use and are not defining them as motor vehicles.

Age restriction – must be at least fourteen(14) years of age to operate.

Ontario

allow these bikes for public road use and are not defining them as motor vehicles.

Age restriction – must be at least sixteen(16) years of age to operate

Quebec

allow these bikes for public road use and are not defining them as motor vehicle.

Age restriction – must be at least sixteen(16) years of age to operate

Nova Scotia

allow these bikes for public road use and are not defining them as motor vehicles.

Newfoundland & Labrador

allow these bikes for public road use and are not defining them as motor vehicles.

Yukon Territory

allow these bikes for public road use and are not defining them as motor vehicles.

These e-bikes cost anywhere from \$1,000.00 to \$2,500.00 in Ontario.

An e-bike or Power-Assisted Bicycle is defined in section 2(1) of the [Motor Vehicle Safety Regulations](#) (Canada).

Even though an e-bike is not defined as a “motor vehicle” in Ontario yet, every operator of one must ride it in a safe manner, so they must wear an approved bicycle helmet, have proper equipment (i.e. – Lights that work, Brakes that work and a Bell that rings)

Will the Fines For an e-Bike be the Same as Those on a Traditional Bicycle?

Yes – the same sanctions apply with respect to the normal rules of the road and the equipment standards. Other fines, i.e. – riding an e-bike without a helmet, or riding an e-bike under the age of sixteen(16) would attract stiffer fines, ranging from \$250.00 to \$2,500.00.

In addition to the set fine, is the court fee (normally \$5.00) and the victim fine surcharge, which is applied in this manner:

Victim Fine Surcharges

Effective January 1, 1995, a Victim Fine Surcharge is applied to all [Provincial Offence Act Offences](#) fines, with the exception of parking tickets. This Fine Surcharge generates millions upon millions of dollars for the Province of Ontario.

This surcharge is applied against set fines, where convictions have been registered (Part I or Part III of the Act) – see section 60 of the *Provincial Offences Act*.

This surcharge is 20% of the imposed fine (i.e. – if the fine is \$100.00 then the surcharge will be \$20.00). It remains 20% up to a \$1000.00. Any fine over \$1000.00 will have a surcharge of 25%.

The victim fine surcharge can be found within the *Provincial Offences Act* [Ontario Regulation 161/00](#). The Victim Fine Surcharge ranges from \$10 (for set fines between \$0 - \$50) up to \$125 (for set fines between \$501 to \$1000) and a surcharge of 25% of any fine imposed over \$1000.00:

Fine Range		Surcharge	
\$0	-	\$50	= \$10
\$51	-	\$75	= \$15
\$76	-	\$100	= \$20
\$101	-	\$150	= \$25
\$151	-	\$200	= \$35
\$201	-	\$250	= \$50
\$251	-	\$300	= \$60
\$301	-	\$350	= \$75
\$351	-	\$400	= \$85
\$401	-	\$450	= \$95
\$451	-	\$500	= \$110
\$501	-	\$1000	= \$125

\$1000.00 and over - Surcharge is 25% of the actual fine

On June 11, 1996 the Victims' Bill of Rights, 1995 was proclaimed as law. This Bill has been using revenue, since January 1, 1995 from the Victim Fine Surcharge to fund the [Victim Justice Fund](#) which supports services/programs such as the Victim Crisis Assistance and Referral Services, SupportLink, Victim Support Line and Victim/Witness Assistance Programs.

Here are some of the offences, the sections of the *H.T.A.* section that apply, the set fines, the court fees and the Victim Fine Surcharges and the total owing (after adding up the set fine, court fee and the victim fine surcharge):

Offence	H.T.A. Section Bicycle*	Set Fine	Court Fee	Victim Fine	Total
Careless Driving	130	\$260.00	\$5.00	\$60.00	\$325.00
Red Light – Fail to Stop	144(18)	\$150.00	\$5.00	\$25.00	\$180.00
Disobey Stop Sign – Fail to Stop	136(1) (a)*	\$85.00	\$5.00	\$20.00	\$110.00
Improper Lighting	62(17)*	\$20.00	\$5.00	\$10.00	\$35.00
Improper Brakes	64(3)*	\$85.00	\$5.00	\$20.00	\$110.00
No Bell or Defective Bell	75(5)	\$85.00	\$5.00	\$20.00	\$110.00
Failure to Wear Proper Helmet	104(2.1)*	\$60.00	\$5.00	\$20.00	\$85.00
Failure to Yield to Pedestrian	140(1) (a)	\$85.00	\$5.00	\$20.00	\$110.00
Drive Wrong Way – One Way Traffic	153	\$85.00	\$5.00	\$20.00	\$110.00
Bicycle – Fail to Turn Out to Right when Over-taken	148(6)*	\$85.00	\$5.00	\$20.00	\$110.00

Offence	H.T.A. Section Bicycle*	Set Fine	Court Fee	Victim Fine	Total
Cyclist – Ride in or along Crosswalk	144(29)*	\$85.00	\$5.00	\$20.00	\$110.00
Cyclist – Fail to Stop to Identify Self	218(2)*	\$85.00	\$5.00	\$20.00	\$110.00
Ride two (2) on a Bicycle	178(2)*	\$85.00	\$5.00	\$20.00	\$110.00

* specific to the operation of bicycles and to bicyclists

Highway Traffic Act – [Section 218\(1\) Cyclist to Identify Self](#) A police officer, who pulls over a cyclist, whom he/she believes has contravened the *Highway Traffic Act* or a section of the *Municipal Act*, has the right to ask the cyclist to identify themselves. All the cyclist must do, is to provide their name and address. No affirmative obligation exists for a bicycle rider to carry identity documentation. The bicycle rider meets his/her obligation under this section of the *Highway Traffic Act*, by simply providing their correct name and correct address. If the police officer wants to generate a ticket, it should contain the same name and address provided to him or her, by the bicycle rider.

[Ontario Regulation 630 – Vehicles on Controlled-Access Highways](#) – speaks to [bicycles](#), motor assisted bicycles and certain motorcycles that are not permitted on specific highways in Ontario.

See the number of bicycle accidents in Toronto in [2008](#) (including the worst nine(9) intersections for accidents)

[Bill 126](#), Road Safety Act, 2009 (Royal Assent received on April 23, 2009) provides some new sections/definitions to the Ontario *Highway Traffic Act* regarding bicycles, power-assisted bicycles:

The [definition of bicycle](#) now includes “power-assisted bicycles”. You

must now be a minimum of sixteen(16) years old to drive a power or motor-assisted bicycle. You must now have the proper lights, reflectors and lamps while operating a power-assisted bicycle and at the same time, must be wearing a bicycle or motorcycle helmet. See [paper](#) from the Legislative Library which asks the question “When do Ontario Acts & Regulations come into force”?

Ontario License required for limited-speed motorcycle (motor scooter) and Moped drivers (motor-assisted bicycle) – see [information](#).

What is the definition of a limited-speed motorcycle (LSM) (motor scooter/moped/motor-assisted bicycle)? see [descriptions](#).

Update: May 23, 2009 - Safe Cycling in Toronto “[Video](#)”

Update: May 23, 2009 - Should cyclists have to [pay for their use of the streets](#)?

Update: June 22, 2009 – E-Bikes - if you lost your licence due to a Criminal Code infraction such as impaired driving, you are not allowed to ride an E-Bike. If you are caught riding one, with a suspended licence, you will be ticketed with “Driving while Disqualified” charges. See [story](#).

Bibliography

Important Laws/Links for Your Defence

Different Legislation, Acts, Laws, By-laws, Codes & Rules That Will Affect You With Regard To Tickets, Requesting A Trial and the Act Of Challenging Your Tickets in Court

1. [Constitution Acts 1867-1982](#) (The *Constitution Act*, 1867 & The *Constitution Act*, 1982)
2. [The Canadian Charter of Rights and Freedoms](#) (“the Charter”)
3. [Courts of Justice Act](#) (“C.J.A.”)
4. [Provincial Offences Act](#) (Ontario) (“P.O.A.”) Parts I, II & III
5. [Provincial Offences Procedure Act](#)
6. [Highway Traffic Act](#) (Ontario) (“H.T.A.”)
7. [Ontario’s Demerit Point System](#)
8. [Ontario Municipal Act, 2001](#)
9. [City of Toronto’s Municipal Code](#)
10. [Evidence Act](#)
11. [Rules of the Ontario Court](#) (Provincial Division) In Appeals under Section 135 of the P.O.A.

12. *Compulsory Automobile Insurance Act*
13. *Fault Determination Rules*
14. *Ontario Rules of Civil Procedure*
15. *Bill C-2* (allows Police to compel suspected drug impaired driver's to provide a blood, urine or saliva sample for analysis) This Bill is an amendment to the Criminal Code of Canada.
16. *Justices of the Peace Act*
17. *Police Services Act*
18. *The Law Society of Upper Canada*
19. *Rules of Professional Conduct* (for lawyers)
20. *The Law Society Act*
21. *Paralegal Regulation* (pursuant to the Law Society of Upper Canada and the *Law Society Act*) This includes a link for the Paralegal Rules of Conduct & Paralegal Standing Committee.
22. *The Judges Act*
23. *Safer Roads to a Safer Ontario Act* – (Chapter 13 of the Statutes of Ontario 2007) Effective Oct.13/07
24. *Civil Remedies Act, 2001* – (Amended February 20, 2008)
25. *Bill 85 – The Photo Card Act, 2008* (November 27, 2008)
26. *City of Toronto Act, 2006*
27. *Municipal Act, 2001 e-guide*

About This Free Version

This copy of *“Fight Your Tickets: A Comprehensive Guide to Traffic Tickets”* has been freely distributed and contains the key sections of the fightyourtickets.ca website.

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- Laser Radar
- How to Win a Ticket Without Fighting It
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