

April 17, 2015

To: **PROSECUTOR and CLERK OF THE COURT**

Provincial Offences Office  
575 West Street South, Unit 10  
Orillia, ON L3V 7N6  
Phone: 705-326-2960  
Fax: 705-326-3613

Prosecutor's Office  
45 Cedar Pointe Drive  
Barrie, ON L4N 5R7  
Phone: 705-739-4220 x5190  
Fax: 705-739-4227

Offence Number: [REDACTED]  
Offence Date: **April 10, 2015**  
Charge: **SPEEDING**  
Defendant: **Anne-Marie** [REDACTED]

**AGENT and REPRESENTATIVE**

Please be advised that I, ANNE-MARIE [REDACTED] give my husband JEFF [REDACTED] permission to act on my behalf as my agent and to represent me in the above matter per the Law Society Act Bylaw #4 Part 5 Section 30 Subsection 5.1.

Please forward all correspondence to him at:

Jeff [REDACTED]  
[REDACTED]

Thank you

Anne-Marie [REDACTED]  
[REDACTED]

To: **PROSECUTOR and CLERK OF THE COURT**

Provincial Offences Office

575 West Street South, Unit 10, Orillia

Phone: 705-326-2960

Fax: 705-326-3613

May 29, 2015

Prosecutor's Office

45 Cedar Pointe Drive, Barrie

Phone: 705-739-4220 x5190

Fax: 705-739-4227

Defendant: Anne-Marie [REDACTED] Charge: **SPEEDING**

Offence Date: **April 10, 2015** Offence Number: [REDACTED]

**DISCLOSURE REQUEST**

With regards to the charge information above, please accept my request for the following disclosure so that I can prepare a defense, and make full answer to the charge:

- A copy of BOTH sides of the original Certificate of Offence;
- A full copy of the officer's notes. If any part of the officer's notes are not legible, please have the officer provide a typed copy as well. If short-form writing is used in the officer's notes, please have the officer provide an explanation for the short forms;
- The make, model and serial number of the radar/laser unit used;
- All manuals for the unit used. Please provide the FULL manual(s) with all pages;
- Proof of officers training for the unit used;
- Proof of calibration and accuracy of unit used (including but not limited to: calibration policies and procedures, calibration records, repair history, maintenance records, and/or other records/certificates for the unit;
- A copy of the driving record which may be tendered at trial;
- Audio / Video Recordings;
- Copies of Certified Documents;
- Copies of witness statements and "Will-states" for all witnesses;
- Any other pertinent materials related to this case governed by R. vs STINCHCOMBE;
- I also request that you advise me of any information, which is not being disclosed and an explanation for such non-disclosure.

Please mail disclosure to the address below. If it's more convenient for you, I can accept disclosure by email at:

Thank you [REDACTED]

Jeff [REDACTED]  
[REDACTED]

To: **PROSECUTOR and CLERK OF THE COURT**

Provincial Offences Office

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Fax: 705-326-3613

Prosecutor's Office

45 Cedar Pointe Drive, Barrie

Phone: 705-739-4220 x5190

Fax: 705-739-4227

July 5, 2015

Defendant: Anne-Marie [REDACTED]

Charge: [REDACTED]

Offence Date: April 10, 2015

Offence Number: [REDACTED]

## 2<sup>nd</sup> DISCLOSURE REQUEST

Thank you for the disclosure that you sent, however I have two issues that still need to be addressed.

- In my original request, I asked for a copy of BOTH sides of the original Certificate of Offence. This was not provided to me. Please provide me a copy of BOTH sides of the original Certificate of Offence.
- In my original request, I asked that if any part of the officer's notes were not legible, to please have the officer provide a typed copy as well. There are several parts of the officers notes that are not legible. I have included a copy of the notes and circled the items that I can not decipher. Please have the officer provide a typed copy of these parts of the notes.

Please mail disclosure to the address below. If it's more convenient for you, I can accept disclosure by email at:

Thank you

Jeff [REDACTED]

To: **PROSECUTOR and CLERK OF THE COURT**

Provincial Offences Office

575 West Street South, Unit 10, Orillia

Phone: 705-326-2960

Fax: 705-326-3613

Prosecutor's Office

45 Cedar Pointe Drive, Barrie

Phone: 705-739-4220 x5190

Fax: 705-739-4227

Sept 8, 2015

Defendant: Anne-Marie [REDACTED]

Charge: **SPEEDING**

Offence Date: April 10, 2015

Offence Number: [REDACTED]

### 3rd DISCLOSURE REQUEST

On July 5, 2015 I sent a 2<sup>nd</sup> disclosure request but have not received a reply yet. The following two issues still need to be addressed.

- In my original request, I asked for a copy of BOTH sides of the original Certificate of Offence. This was not provided to me. Please provide me a copy of BOTH sides of the original Certificate of Offence.
- In my original request, I asked that if any part of the officer's notes were not legible, to please have the officer provide a typed copy as well. There are several parts of the officers notes that are not legible. I have included a copy of the notes and circled the items that I can not decipher. Please have the officer provide a typed copy of these parts of the notes.

Please mail disclosure to the address below. If it's more convenient for you, I can accept disclosure by email at:

[REDACTED]

Thank you,

[REDACTED]

Jeff

[REDACTED]

NOTICE OF MOTION  
AVIS DE MOTION

BETWEEN  
ENTRE

City of Barrie Prosecutor

Prosecutor  
Poursuivant

and  
et

Anne-Marie

Defendant  
Défendeur

TAKE NOTICE that an application will be made by the  
SACHEZ QU'UNE requête sera déposée par

defendant

(Prosecutor/Defendant) (poursuivant/défendeur)

on  
le  
at  
à

October 29

yr.  
an

2015

before the Ontario Court of Justice  
devant la Cour de justice de l'Ontario

in the following matter:  
en ce qui concerne l'affaire suivante :

Offence:

Offence Date: April 10/15 Speeding HTA Section 12.9

for an Order as follows:  
pour une ordonnance comme suit :

Right to record hearing (audio only) with my own  
device to supplement my hand written notes.

And further take notice that in support of this application will be read the affidavit of  
Sachez aussi qu'à l'appui de cette requête sera lu l'affidavit de

Jeffrey

and such other and further evidence as may be required.  
ainsi que d'autres preuves qui s'avéreront nécessaires.

Dated this  
Failli le

19

day of  
jour de

September

yr.  
an

2015

Signed  
Signature

Address  
Adresse

TO: / À:

Prosecutor (or Defendant) and Clerk of the Court  
Poursuivant (ou Défendeur) et au greffier de la Cour

DISTRIBUTION:



Defendant/Prosecutor  
défendeur/poursuivant



Counsel for Defendant/Prosecutor  
avocat du défendeur/poursuivant



Agent for Defendant/Prosecutor  
mandataire du défendeur/poursuivant

FOR INFORMATION ONLY: 1-800-387-4669  
Toll-free number 416-325-0111



POUR PLUS DE RENSEIGNEMENTS SUR L'ACCESSIBILITÉ  
DES PERSONNES HANDICAPÉES  
APPELEZ LE 1-800-387-4669  
ou le 416-325-0111

## AFFIDAVIT

I, JEFFREY [REDACTED] of [REDACTED]

*make oath and say as follows:*

This affidavit is in support of the **Notice of Motion** in the matter of Offence Number [REDACTED] (ANNE-MARIE [REDACTED] charged with SPEEDING on April 10, 2015) for **the right to audio record the hearing with my own device to supplement my hand written notes.**

*Grounds are further set forth below:*

(1) Courts of Justice Act: Section 136(2)(b) says that "*Nothing in subsection (1) prohibits a lawyer, a party acting in person or a journalist from unobtrusively making an audio recording at a court hearing, in the manner that has been approved by the judge, for the sole purpose of supplementing or replacing handwritten notes. R.S.O. 1990, c. C.43, s. 136 (2); 1996, c. 25, s. 1 (22).*"

(2) Cost Effective and Timely: Recording the hearing with my own device will help me to supplement my notes in a cost effective and timely method. Having to purchase written transcripts and audio transcripts is a financial burden and the time delays prevent the review of material while it fresh in my mind.

## **AFFIDAVIT**

(3) Protocol Regarding the Use of Electronic Communication Devices in Court Proceedings

(herein "OCJ Protocol"): The Ontario Court of Justice offers a policy on those wanting to record a hearing with their own device. The protocol is founded on the "open courts" principle, which requires transparency and accountability in the judicial system to foster public confidence in the administration of justice.

(4) Audio Recordings Permitted - Section 3(iv) of OCJ Protocol: The protocol permits the audio recording of proceedings for note-taking purposes by everyone from counsel to members of the public.

(5) Publication Bans and Other Restrictions – Section 4 of OCJ Protocol: There are no publication bans, sealing orders or other restrictions imposed on this proceeding.

(6) Judicial Orders – Section 5 of OCJ Protocol: Using my own device to audio record this proceeding will not disrupt court proceedings or interfere with the proper functioning of the court electronic equipment or interfere with witness testimony or unreasonably infringe anyone's privacy/security.

(7) Practice Directive - Recording of Court Proceedings by a Solicitor a Party Acting in Person or a Journalist (herein "Practice Directive"): On April 10<sup>th</sup>, 1989, in an official

## AFFIDAVIT

Practice Directive of the Ontario Courts Advisory Council to Ontario's judges, and approved by the former Chief Justice of Ontario W.G.C. Howland, the courts were directed that recording under Section 146 (now Section 136) of the Courts of Justice Act was to be "*considered as being approved without an oral or written application to the presiding judge.*"

(8) Practice Directive still in force: In paragraph 5 of R. v. Schertzer, 2012 ONSC 227 the above mentioned Practice Directive is noted as being "*still in force*".

### Conclusion

Section 136(2)(b) of the Courts of Justice Act gives me the right to audio record the hearing to supplement my notes and there is nothing that should prohibit me from doing so, as confirmed by the *OCJ Policy Protocol Regarding the Use of Electronic Communication Devices in Court Proceedings*, and the *Ontario Courts Advisory Council's Practice Directive Recording of Court Proceedings by a Solicitor a Party Acting in Person or a Journalist* issued by former Chief Justice Howland.

Signature: \_\_\_\_\_

JEFFREY 

Sworn by said \_\_\_\_\_

before me, \_\_\_\_\_

on the \_\_\_\_\_ day of \_\_\_\_\_, yr. \_\_\_\_\_

\_\_\_\_\_  
(A commissioner, notary, etc)

NOTICE OF MOTION

BETWEEN City of Barrie Prosecutor [REDACTED] Prosecutor  
and  
ANNE-MARIE [REDACTED] Defendant

TAKE NOTICE that an application will be made by the Defendant

on October 29, 2015, before the Ontario Court of Justice  
at [REDACTED]

in the following matter:

Offence # [REDACTED] Offence Date: April 10/15 Speeding HTA snc128

for an Order as follows:

To exclude all radar evidence

And further take notice that in support of this application will read the sworn declaration of  
Jeffrey [REDACTED], and such other and further evidence as may be required.

Dated this 25<sup>th</sup> day of October, 2015

at [REDACTED]

Signed [REDACTED]

Address [REDACTED]

TO: Prosecutor and Clerk of the Court

## SWORN DECLARATION

I, JEFFREY [REDACTED] of [REDACTED]

*make oath and say as follows:*

This sworn declaration is in support of the **Notice of Motion** in the matter of Offence Number [REDACTED] (ANNE-MARIE [REDACTED] charged with SPEEDING on April 10, 2015) to **exclude all radar evidence**.

*Grounds are further set forth below:*

(1) Radar Device used: Per the manual provided by the Prosecutor's office for disclosure, the radar device in question that was used in this case by Midland Police Services is manufactured by Decatur Electronics, and can be called a Scout, a Genesis Scout, a GHD, a Genesis Handheld Directional, or a Genesis GHD (herein "Genesis GHD"). This radar device operates on a transmission frequency of 24.150 GHz.

(2) Industry Canada: In Canada, devices that emit radiofrequency fields (RF) are regulated by Industry Canada. These include cellular phones, cellular phone antennas (base stations), radio and TV transmitters, and radars.

(3) Technical Acceptance Certificate required: Radio/radar equipment that operates in the 24.075 GHz to 24.175 GHz frequency bands requires a Technical Acceptance Certificate (herein "TAC").

## SWORN DECLARATION

(4) Applicable Regulations: The regulations that are applicable are:

- **Radiocommunication Act**

- **Radiocommunication Regulations SOR/96-484**

- Annex 7 of the **Radio Standards Specification RSS-210**, Issue 8, License-exempt Radio Apparatus (All Frequency Bands): Category I Equipment

(5) Radio Equipment List: Industry Canada provides a Radio Equipment List which contains a list of all devices with a TAC. This list can be searched online at:

<https://sms-sgs.ic.gc.ca/equipmentSearch/searchRadioEquipments>

(6) No TAC: There is no TAC listed for the Genesis GHD (or any other of the names mentioned in paragraph 1) on Industry Canada's Radio Equipment List when doing a search by COMPANY NAME for "Decatur".

(7) No TAC: There is no TAC listed for the Genesis GHD (or any other of the names mentioned in paragraph 1) on Industry Canada's Radio Equipment List when doing a search by HARDWARE VERSION IDENTIFICATION NUMBER (HVIN) for "Genesis", "Scout", "Genesis Scout", "Genesis Handheld Directional", "GHD", or "Genesis GHD".

(8) No TAC: There is no copy of a TAC listed in the Genesis GHD manual (*see Schedule A*).

(9) Not approved for use in Canada: The Genesis GHD radar device does not have a TAC, and is therefore not approved for use in Canada.

## SWORN DECLARATION

(10) Access to manual of other radar devices: The Crown/prosecutor has full access to the manual for the Decatur Genesis II Select Directional radar device used by the Ontario Provincial Police.

(11) Additional proof of TAC requirement: The manual for the Decatur Genesis II Select Directional radar device used by the Ontario Provincial Police, includes a copy of it's TAC (*see Schedule B*) which is additional proof that radar devices in Canada are required to have a TAC.

## CONCLUSION

Based on the reasons above, the Genesis GHD Radar Device used by Midland Police Services does not have a Technical Acceptance Certificate as required by Industry Canada and the applicable regulations mentioned above. Without a Technical Acceptance Certificate, the Genesis GHD radar device is not approved for use in Canada. Since the device is not approved for use in Canada, all evidence from this device must be considered unreliable, and all evidence from this device is not admissible and should be excluded.

*I declare, under penalty of perjury, that all statements contained herein are true to best of my knowledge and understanding.*

Signature: \_\_\_\_\_

JEFFREY [REDACTED]

OCTOBER 29, 2015 - Penetanguishene

*Ask to see original Certificate of Offence before trial starts. Make sure was filed within 7 days. [ ]*

Ask to EXCLUDE witnesses.

**MOTION – Record with own device**

**MOTION – Exclude Radar evidence because no TAC**

Ask to EXCLUDE witnesses.

*PLEAD to READING of CHARGE – What section and subsection specifically???? \_\_\_\_\_  
Should be exact charge below ....*

**Rate of speed**

**128. (1) No person shall drive a motor vehicle at a rate of speed greater than,  
(a) 50 kilometres per hour on a highway within a local municipality or within a built-up area;**

AMEND SPEED

If amendment to charge is requested see NOTES-AMEND SPEEDING CHARGE UP AT TRIAL and use the OPTION 2 argument.

If amendment approved at start of trial, ask "So certificate has now been amended?"

If the answer is yes then see NOTES-AMEND SPEEDING CHARGE UP AT TRIAL and use the OPTION 1 argument.

**Provincial Offences Act, RSO 1990, c P.33** (Current version: in force since Jul 1, 2014)  
**PART IV - TRIAL AND SENTENCING - Trial**

**Section 34**

**Amendment of information or certificate**

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**

(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.**

**Variances between charge and evidence**

(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**

(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 amendment can be made without injustice being done.**

**Amendment, question of law**

(5) The question whether an order to amend an information or certificate should be granted or refused is a question of law. R.S.O. 1990, c. P.33, s. 34 (1-5).

**Endorsement of order to amend**

(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. R.S.O. 1990, c. P.33, s. 34 (6); 1993, c. 27, Sched.

OPTION 1 – REQUEST AMENDMENT BEFORE OFFICER TESTIFIES

**Section 34 Subsection 2 of the Provincial Offences Act states that the court may amend the information only if the matters supporting the amendment are disclosed by evidence taken at the trial. There has been no evidence given yet, and therefore there is nothing to support the amendment.**

*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.*

OPTION 2 - REQUEST AMENDMENT BEFORE OR AFTER OFFICER TESTIFIES

**The amendment will cause a prejudice and misleading to the defendants defense as the consequences are greater if found guilty. There is a higher fine, more demerit points and greater impact to insurance rates, so the choice on whether to risk the greater consequences if found guilty to the amended charge or to just plead guilty to the original lower charge has not been considered.**

**The prosecutor is dealing with these types charges on a daily basis, so they are certainly aware that they would be doing this and had sufficient time to advise the defendant ahead of time that they were going to ask to amend the charge up at the trial. But having not given advance notice causes prejudice and is misleading to the defendant, and therefore the amendment should not be allowed.**

Could possibly ask for an adjournment in order to have time to discuss the issue?

- Request that the time count against the prosecution as they should have advised you in advance.

## OFFICERS NOTES

When officer takes stand, they will ask to use their notes:

Independent recollection? [ ]    Own hand writing? [ ]    For refreshing memory? [ ]

**Ask officer about two different types of notes.**

- Why different?    - Original or copy?    - Where were they kept?

**Ask officer if they have an independent recollection of the events of the day and this particular event?**

**(OBJECT to use of notes if he says NO and ask them to drop charge)**

If he says YES then ask JP if this is appropriate time to question the officer on this independent recollection, or would I do that during cross examination? I think you do this during x-exam but not sure.

## OBJECTING TO USE OF DRIVERS LICENSE AS IDENTIFICATION

As soon as officer starts to mention the drivers license OBJECT and see NOTES-IDENTIFICATION (3 pages) and use Common Law Confessions Rule and Charter.

## **NOTES – IDENTIFICATION** 1 of 3

**NOTE:** *If prosecution makes any arguments with Case Law, ask which level of court it is from. The ONCA (Court of Appeal) and SCC (Supreme Court of Canada) are the higher court decisions that are binding on the lower courts. The ONCJ (Court of Justice) and ONSC (Superior Court) are the lower courts and decisions are not binding.*

### **OBJECT to Drivers License, Insurance and Registration**

Information was not voluntary but was required to be given by statute. Therefore it is not admissible based on the Common Law Confessions Rule.

Also there is the  
Section 7 Charter Right to remain silent, and the  
Section 11(c) Charter Right not to be compelled to be a witness, and the  
Section 13 Charter Right not to self-incriminate, and  
therefore it should also be excluded under Section 24(2) of the Charter as well.

?? VOIR DIRE ??

### **Common Law Confessions Rule and Charter Rights**

**= Paragraph [90] of R. v. Grant, [2009] 2 SCR 353, 2009 SCC 32**

**= Paragraph [9] of R. v. Slopek 1974 OJ No 826**

**= Paragraphs [40],[42],[43] of R. v. Soules, 2011 ONCA 429**

## **NOTES – IDENTIFICATION 2 of 3**

**NOTE:** If prosecution makes any arguments with Case Law, ask which level of court it is from. The ONCA (Court of Appeal) and SCC (Supreme Court of Canada) are the higher court decisions that are binding on the lower courts. The ONCJ (Court of Justice) and ONSC (Superior Court) are the lower courts and decisions are not binding.

## **CASE LAW good for DEFENSE**

### Supreme Court of Canada:

R. v. White, [1999] 2 SCR 417, 1999 SCC 689 <http://canlii.ca/t/1fq1m>  
Horvath v. The Queen, [1979] 2 SCR 376, 1979 CanLII 16 (SCC) <http://canlii.ca/t/1mkv0>  
R. v. Hodgson, [1998] 2 SCR 449, 1998 SCC 798 <http://canlii.ca/t/1fgrf>  
R. v. Oickle, [2000] 2 SCR 3, 2000 SCC 38 <http://canlii.ca/t/525h>

### Ontario Court of Appeal:

R. v. Slopek 1974 OJ No 826  
R. v. Soules, 2011 ONCA 429 <http://canlii.ca/t/flqcz>  
R. v. Grant, [2009] 2 SCR 353, 2009 SCC 32 <http://canlii.ca/t/24kwz>  
R. v. Dick, 1947 CanLII 12 (ON CA) <http://canlii.ca/t/1vhs8>  
R. v. Barrett, 1993 CanLII 3426 (ON CA) <http://canlii.ca/t/1p79d>  
R. v. Moore-McFarlane, 2001 ONCA <http://canlii.ca/t/1f3k2>  
R. v. Sabri, 2002 ONCA <http://canlii.ca/t/1cwgg>  
R. v. Panko, 2010 ONCA 660 <http://canlii.ca/t/2cvzl>

### Lower courts so not binding:

R v Murray, 2011 ONSC 2537 <http://canlii.ca/t/flmv1>  
R. v. Soules, 2010 ONSC 1014 <http://canlii.ca/t/28212>  
R. v. Wenham, 2014 ONSC 994 <http://canlii.ca/t/g3532>  
R. v. Wilson, 2004 ONCJ 123 <http://canlii.ca/t/1hjkv>  
R. v. Bunn, 2001 MBCA 12 (CanLII) <http://canlii.ca/t/1fl6q>

### Supposed to be good but can't locate them:

R v Belanger  
R v Da Costa 2001  
R v Delmorone 2002 OJ 3988  
R v Erven  
R v Faria  
R v Mascia [1993] OJ No 638  
R v Naces [2001] OJ No 3854  
R v Patel [2010] OJ No 981  
R v Tornabene  
R v Zalai 2000 OJ No 3294

## **CASE LAW against defense for the Crown**

**NOTE:** These are lower court decisions (not ONCA and not SCC) so not binding

R. v. Colquhoun [2002] OJ No 349  
R. v. Rathore 2015 ONCJ 203  
R. v. Logue 2015 ONSC Number 535  
R. v. Smith, 2014 ONCJ 595

**NOTES – IDENTIFICATION** 3 of 3

**CASE LAW List for Crown and JP**

R. v. Slopek 1974 OJ No 826

R. v. Soules, 2011 ONCA 429

R. v. Grant, [2009] 2 SCR 353, 2009 SCC 32

R. v. White, [1999] 2 SCR 417, 1999 SCC 689

R. v. Dick, 1947 CanLII 12 (ON CA)

R. v. Barrett, 1993 CanLII 3426 (ON CA)

R. v. Moore-McFarlane, 2001 ONCA

R. v. Sabri, 2002 ONCA

R. v. Panko, 2010 ONCA 660

Horvath v. The Queen, [1979] 2 SCR 376, 1979 CanLII 16 (SCC)

R. v. Hodgson, [1998] 2 SCR 449, 1998 SCC 798

R. v. Oickle, [2000] 2 SCR 3, 2000 SCC 38

BURDEN OF PROOF – CHECK OFF EACH THING AS OFFICER MENTIONS

Now as trial continues, pay attention to everything officer is saying ...

**DID YOU OBJECT to ID Drivers License** [ ]

Who was the Driver [ ] HTA (did officer say "Driver as defined in the HTA") [ ]

Motor Vehicle [ ] HTA (did officer say "Motor Vehicle as defined in the HTA") [ ]

Highway [ ] HTA (did officer say "Highway as defined in the HTA") [ ]

Rate of Speed of vehicle [ ]

Posted Speed on road [ ]

Never lost sight of vehicle [ ]

Radar Training [ ]

Radar Test BEFORE [ ] Passed [ ]

Radar Test AFTER [ ] Passed [ ]

After examination in chief (before cross-exam) make a **MOTION of NON-SUIT** if they missed a required element that they had to prove.

**HTA Definitions**

*"driver's licence" means a licence issued under section 32 to drive a motor vehicle on a highway;*

*"driver" means a person who drives a vehicle on a highway;*

*"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;*

*"motor vehicle" includes an automobile, a motorcycle, a motor-assisted bicycle unless otherwise indicated in this Act, and any other vehicle propelled or driven otherwise than by muscular power, but does not include a street car or other motor vehicle running only upon rails, a power-assisted bicycle, a motorized snow vehicle, a traction engine, a farm tractor, a self-propelled implement of husbandry or a road-building machine;*

*"vehicle" includes a motor vehicle, trailer, traction engine, farm tractor, road-building machine, bicycle and any vehicle drawn, propelled or driven by any kind of power, including muscular power, but does not include a motorized snow vehicle or a street car;*

## **CROSS EXAMINATION**

The ticket only says Section 128. Which subsection did you lay the charge under?

Leading up to the area where you were setup, is it a 60km/h zone correct?

Did you check if the posted 50km/h begins sign was actually there?

If NO: So it's possible the 50km/h sign was not there or missing?

If NO: But you can not say 100% for sure that it was there, since you did not check for it?

Did you ever lose sight of the vehicle?

## **DEFINITIONS**

Can you please tell me the definition of "driver's license" as defined in the HTA?

Can you please tell me the definition of "driver" as defined in the HTA?

Can you please tell me the definition of "highway" as defined in the HTA?

Can you please tell me the definition of "motor vehicle" as defined in the HTA?

You stated earlier she was driving on a "highway" as defined in the HTA?

But you do not know the definition of "highway" as defined in the HTA?

You stated earlier she was driving a "motor vehicle" as defined in the HTA?

But you do not know the definition of "motor vehicle" as defined in the HTA?

With regards to the definition of "motor vehicle" it specifically lists some things that are included and some things that are not included. Can you tell me any of the things that are not included?

## INDEPENDENT RECOLLECTION

See ALFANO Independent Recollection x-exam document

Date: \_\_\_\_\_ Client: \_\_\_\_\_  
JP: \_\_\_\_\_ Clerk: \_\_\_\_\_ Crown: \_\_\_\_\_

Independent Recall

.1

- |  |       |     |
|--|-------|-----|
| ✓ *. During your set up how many cars did you stop that day?             | _____ | ( ) |
| ✓ *. Do you specifically remember the ticket prior to this one?          | _____ | ( ) |
| ✓ *. Do you remember the ticket after my client's occurrence?            | _____ | ( ) |
| ✓ *. What was the make of the car driven by the Defendant?               | _____ | ( ) |
| ✓ *. What was the model of the car?                                      | _____ | ( ) |
| ✓ *. What was the colour of the car?                                     | _____ | ( ) |
| *. Was it a sedan or wagon?  | _____ | ( ) |
| ✓ *. How many occupants?   | _____ | ( ) |
| ✓ *. Did the driver get out of the car to greet you?                     | _____ | ( ) |
| ✓ *. What Documents did you ask for?                                     | _____ | ( ) |
| ✓ *. What Documents were surrendered to you?                             | _____ | ( ) |
| ✓ *. Are there any distinguishing features on the Defendant?             | _____ | ( ) |
| ✓ *. What was the Defendant wearing?                                     | _____ | ( ) |
| ✓ *. Did the Defendant have a beard?                                     | _____ | ( ) |
| ✓ *. Did the Defendant have a moustache?                                 | _____ | ( ) |
| ✓ *. Did you specifically look at those notes prior to this court today? | _____ | ( ) |
| ✓ *. (If yes) Why?   | _____ | ( ) |



Independent Recall

.2

- |   |       |     |
|---|-------|-----|
| *. If I chose another ticket at random in that book, could you give any evidence on it without looking at the notes?  | <hr/> | [ ] |
| *. Officer, how many tickets do you write in a month? (approx.)   | <hr/> | [ ] |
| *. Specifically how much evidence can you give in this case without your notes?   | <hr/> | [ ] |
| *. Officer, if I was willing to admit the Day, Date and Identity, could you state from memory all necessary facts to run a trial?   | <hr/> | [ ] |
| *. Officer, would you be able to identify the Defendant, if the Defendant was in a group of people? (If no, how can the officer then say he has an independent recollection of the stop. He should at least be able to ID the person involved). | <hr/> | [ ] |
| *. The evidence you will give today outside your notes...is it from memory, or simply repetition of knowing what you have to say at a speeding trial?   | <hr/> | [ ] |

## TESTING

Are you aware if the radar unit you used is certified by Industry Canada for use in Canada?

Are you aware if there is a Technical Acceptance Certificate issued for the radar unit you used?

You said you tested the device 8:00am and 9:05am?

Can you detail the testing procedure that you used?

*Three parts to test when button is pushed:*

*DISPLAY TEST [ ] CIRCUITRY TEST [ ] SPEED SIMULATION TEST [ ]*

Did you follow the test procedure listed in the manual for this device?

OR Did you follow the testing procedure showing to you in your training?

So when the radar unit says PASS on the screen, that is when you put in your notes that it passed? (*NOTE: We want officer to say yes to this as this was only the 2<sup>nd</sup> of the the 3 part test*)

OR At what point would you write the words PASSED in your notebook?

Can you describe the three different phases or steps of the test?

*Ask JP if can approach witness? (ONLY do this if officer did not know test procedure exactly)*

Give officer copy of manual

Ask officer if this is the manual for device

Ask officer to read Section 8 Testing Procedure.

---

Did you test radar using tuning forks?

Did you test radar against a moving vehicle of a known speed?

So the only test you performed was pressing the TEST button, and nothing else?

*Ask JP if can approach witness?*

Give copy of LAW ON SPEEDING

Ask officer to read name of book on right half of page.

Ask officer to read highlighted text on the last page.

*Ask JP to take Judicial Notice of the book*

*THE LAW ON SPEEDING AND SPEED DETECTION DEVICES 3<sup>rd</sup> Edition*

*formerly known in previous editions as THE LAW ON SPEEDING AND RADAR*

*by A. Shakoor Manraj and Paul D. Haines*

*If says NO, then present cases making reference to it:*

[para 25] Abrametz v Canada, 2014 SKCA 84 (CanLII)

[para 8 ] R. v. Chow, 1991 CanLII 5840 (AB QB)

[para 23] R. v. Kleiner, 2008 ONCJ 159 (CanLII)

R vs. Joudrey 1992 Nova Scotia Provincial Court

## TESTING and TRAINING and SETUP

See ALFANO Training and Setup x-exam document

<b>RADAR QUESTIONNAIRE</b>	
When was your last complete training course?	[ ]
How long was this course?	[ ]
Where did you take this course?	[ ]
What did the course consist of?	[ ]
Did you pass the course?	[ ]
What was a passing grade for the course?	[ ]
What was your Grade?	[ ]
(If less than 100%) This means you did not know ____%	[ ]
(If grade not known) Did you get 100%?	[ ]
What questions did you not know?	[ ]
Did you review the exam afterward?	[ ]
Who was your instructor?	[ ]
Was this instructor a police officer?	[ ]
Are you aware of the qualifications that would make this particular person a Radar Instructor?	[ ]
Have you received any instructions by anyone from your Police Force regarding the testing and operation of the radar unit you used this date?	[ ]
Have you received any instructions by anyone from the Manufacturer of the radar regarding the testing and operation of the radar unit you used this date?	[ ]
What were the written materials given to you during your training?	[ ]
Was this material in the form of a training presis?	[ ]
Have you read the Manufacturers manual regarding testing and operating for this unit?	[ ]
(If yes) Have you read them since the course?	[ ]
Is this the only radar unit you were trained on?	[ ]
How many field hours did you have as “hands on” training on this unit?	[ ]
What does the acronym RADAR stand for?	[ ]

Is there anything you have today that would indicate to the court that in fact the training you received by your employer is in accordance with the testing and operation procedure required by the manufacturer?	[ ]
Did you receive a certificate or diploma at the completion of the course?	[ ]
(If yes) Do you have any certificates to show the court today as to your qualifications?	[ ]
What type of radar were you using that day?	[ ]
Who is the manufacturer of this radar?	[ ]
Were you stationery or moving at the time?	[ ]
Were you outside or inside your police vehicle while operating the radar setup at this time?	[ ]
Was someone else with you that day?	[ ]
Were you the only operator of the radar unit that day?	[ ]
At the start of the shift was the radar unit already there?	[ ]
Is it permanently mounted to the vehicle?	[ ]
Where is the antenna mounted?	[ ]
Is the radar head pointed through any objects such as glass or fiberglass?	[ ]
Are there any obstructions to it's use such as a headrest or mirror?	[ ]
Are there read deck lights in the police car?	[ ]
(If moving) Does the radar head bounce up and down or from side to side when you are moving?	[ ]
Do you have an MDT or police computer in the car?	[ ]
How many police radios were in the car that day (mitre set?)	[ ]
Did you transmit on any radio during your radar operation that day?	[ ]
Did you send MDT messages at or prior to the speeds allegedly locked in as the Defendant's?	[ ]

Did you receive a radio call or computer transmission while you were operating radar that day?	[ ]
Do you have the times marked in your notes?	[ ]
Would you agree that if you tested a radar set incorrectly, or with leaving some of the tests out that the radar set may not work properly?	[ ]
Do you test the radar set from memory?	[ ]
Is this testing from written material from the manufacturer?	[ ]
Is this testing from written materials from police precis?	[ ]
How many times would have say you have tested that type of radar?	[ ]
Isn't it true that CB bases, radio, or television transmission towers can effect the proper determination of speed in a radar set?	[ ]
Isn't it true that by reflecting such a beam off a large surface area such as a billboard, rockface, etc., that I is possible to obtain a speed reading from a vehicle approaching from behind you, or even traveling at a 45 degree angle from your position?	[ ]
Is it true that overhead tension wires can effect the proper reading in the radar set?	[ ]
Could you describe the location area for your set up?	[ ]
Was it raining that day?	[ ]
Are you aware that rain and fog can affect the operation of radar?	[ ]
(If yes). How does rain affect radar?	[ ]
How does fog affect radar?	[ ]
How many lanes are there at this location?	[ ]
How many lanes of traffic were you monitoring?	[ ]
How wide is the roadway?	[ ]
Is the roadway straight?	[ ]
Is the roadway level?	[ ]

Are there any significant changes in the roadway geography within the radar range?	[ ]
Were there any large reflective surfaces within the radar range such as:	
- billboards	[ ]
- large signs	[ ]
- rock faces	[ ]
- bridges	[ ]
- large flat buildings	[ ]
- large parked objects (trucks)	[ ]
Are there any CB bases, radio or television stations in the area?	[ ]
Any construction using heavy machinery within 900m?	[ ]
This 900m is a radius line. Did you check a 4km area?	[ ]
Any diesel or gas generators in the area?	[ ]
Are there any overhead tension wires within your operating area?	[ ]
Is there any large electrical heavy industry in the immediate area?	[ ]
Are there any 90 degree roadways in your operating area?	[ ]
Is there any dense foliage in the area? (the signal can bounce off a large tree)	[ ]
Were you hidden by anything at your location?	[ ]
Were you parked up against a fence or centre median? (what type?)	[ ]
During your course of instruction to become qualified did you ever learn a mathematical formula to determine the range of the radar?	[ ]
Did you work out mathematically the range (distance and width) of your radar beam that day? (if no.... it is a testing requirement).	[ ]
Isn't it true that when the radar beam comes off the antenna it is similar in shape to that of a flashlight, that it spreads out to some degree and is not emitted in a laser type pencil beam?	[ ]
	[ ]

How many lanes of traffic was the beam covering?	[ ]
Did you recall specifically or have you made any notes on other traffic in the area?	[ ]
Can you give the location of traffic in both directions? (Is the officer able to state with certainty that there were no other vehicles within 23m (75 ft) of the target area).	[ ]
Is the radar beam visible to the naked eye?	[ ]
It is possible then, that the radar beam may have registered another vehicle going in the opposite or same direction?	[ ]
How do you know for certain?	[ ]
During your entire operating session on that date did your radar set receive any spurious readings at all?	[ ]
Between readings of Motor Vehicles, what was showing on your radar set?	[ ]
During your testing of the radar did you receive any spurious readings?	[ ]
How do you differentiate signals created by oncoming traffic as compared with signals from traffic going in the opposite direction on your particular machine? ( i.e. it is a digital readout and the beam is invisible).	[ ]
How far away was the Defendant's vehicle from your radar when you first monitored it?	[ ]
What lane was the Defendant's vehicle in when you first saw it?	[ ]
Did the Defendant's vehicle change lanes or reduce speed during your initial sighting and radar use?	[ ]
Was any other traffic at all in sight at this time (Lone/Lead.... Why?)	[ ]

If the radar set showed the Defendant's vehicle not to be exceeding the speed limit would you have caused the vehicle to be stopped?	[ ]
Can you tell the court in detail exactly how you tested this radar set that day without using your notes (the officer must show the court that he is familiar with the set)	[ ]
Are these all of the tests you performed that day?	[ ]
Are you absolutely sure that these are all of the tests your performed that day? (the officer cannot state later "I forgot. Yes I did that test")	[ ]
<b>GO TO SPECIFIC RADAR QUESTIONS</b>	<b>FOR THE SET HE WAS USING</b>
Officer, did you test the radar set with tuning forks?	[ ]
[ ] Were the tuning forks identified in any way?	[ ]
What speed value were stamped on the forks?	[ ]
Which one is larger?	[ ]
If you hit the tuning fork harder does it vibrate faster?	[ ]
On what surface was the fork activated?	[ ]
Is this an approved surface?	[ ]
How far away from the radar head did you hold the tuning fork (should be 6 inches)	[ ]
Does your training dictate how far away from the radar head you should hold the tuning fork?	[ ]
Which tuning fork did you use first?	[ ]

## SETTINGS and USE of DEVICE

As far as the settings on the device are concerned, can you tell me what MODE you had the unit operating in? (FASTEST or STRONGEST)

What about the DIRECTION setting? (T=Toward or A=Away or TA=both)

What about the SENSITIVITY setting? (1=min and 6=max)

What is the minimum and maximum distance range for that sensitivity setting?

Does the radar unit tell you which vehicle its getting a reading from?

So your not sure of the distance at which the unit can get a reading?

So it's possible that another vehicle that was further away that you had not observed yet could have been causing the reading?

## **SUBMISSIONS**

*Make lots of points about Reasonable Doubt*

- Did not confirm speed limit sign was posted and it is a 60kmh zone right before this area
- Did not know HTA definitions of driver, highway and motor vehicle, or the exclusions listed in motor vehicle.
- Independent recollection issues?
- Training issues?
- Setting issues?
- Testing issues? Maybe did not follow test procedure exactly OR wrote PASS down to early?
- Testing LAW OF SPEEDING ... tuning forks and vehicle of known speed
- No Industry Canada Technical Acceptance Certificate

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Third Edition



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SHAKOOR dedicates this Book  
in honour of his departed parents

JANE MAKBULAN MANRAJ

and

AZEEZ RAHAMAT MANRAJ

who, by their principles, knowledge, wisdom, devotion and  
kindness, have enriched their son's life.

PAUL dedicates this Book to his wife, Patricia Haines, his  
Daughter and Son-in-Law, Sheila and Mark Gordon and  
their three children, Lucas, Nicholas and Kyle. He also  
wishes to dedicate this Book to all those who  
so valiantly administer Justice.

## Chapter 10

# MAJOR FACTORS THAT CREATE FAULTY RADAR USE

### IMPROPER CALIBRATION

Any scientific piece of equipment used for measuring a physical quantity, with the exception of perhaps a scaled ruler or mechanical micrometre, is required to be periodically calibrated by the user. There is no scientist or technician working in any legitimate testing or fabricating environment who is not keenly aware of this necessity, for without constant checking for reliable output from their measuring devices, they can never be sure of the accuracy of their results. Good quality control procedures demand it and a police radar unit is no exception.

Unfortunately, there are some manufacturers of police radar equipment who convey the notion that because their units, like quartz watches, are crystal-controlled units, external calibration by a tuning fork is not necessary. This is absolutely false. Every police radar unit has a frequency and a counting circuit, both of which function independently but are required to operate synchronously. They can and do fall out of synchronization, however, and it is only through close and independent monitoring that such malfunctioning can be identified.

There are many police officers who feel that just flicking on the calibrate switch or test switch built into their radar unit, examining the reading that comes up to see if it matches the programmed speed reading and then switching it back to regular operation, constitutes a proper calibration. It is not. All the police officer has done is to cause the internal frequency setting device, the crystal, to generate a signal. The crystal's pulses are counted according to a preset ratio of pulses counted to pulses generated. Such counts correlate to a specified speed. All the police officer has done is to test the counting circuit, which may be functioning perfectly. The crystal mixer diode or klystron transmitter, however, may be malfunctioning. In short, an internal calibration without reference to an external source is no calibration at all.

Ideally, the radar unit should be calibrated by testing its speed registration mechanism against moving vehicles of known speed. This, however, is impractical and is why tuning forks are substituted. When a