

# What Every Driver Should Know About Speeding Offences

by Milena Celap

You've just been pulled over. The officer says you were speeding; you define it as time management. The officer gives you a speeding ticket. You pull onto the road, a bit slowly, just in case the officer is still watching. Your heart is racing as you imagine an increase in insurance rates. You pay your fine because you figure there's nothing else to do but pay. Read on - you may be surprised to know that there still may be hope.

Speeding is what legal profession calls an "absolute liability offence". It means that, as long as the offence itself can be established, a conviction would result. Well, that's not the whole story. A speeding ticket can be defended in many cases because there may be issues with the case that make it difficult for the prosecution to prove its case beyond a reasonable doubt.

In addition, speeding is a "quasi-criminal" offence and carries the same procedural protections as any criminal offence. That means that you are entitled to protection under the *Canadian Charter of Rights and Freedoms*, more simply known as the "*Charter*". While there may be other procedural or strategic defences to a speeding charge in a given case, this article highlights some common *Charter* issues used in speeding cases.

## **Right to a Trial**

If you pay the fine on your speeding ticket, you have admitted guilt and received your sentence. If, however, you believe the officer is wrong, deny that you were going as fast as alleged, or wish to try to have the ticket thrown out on a technicality, you can choose to have a trial. It is your *Charter* right to have a trial to see if the prosecution prove its case against you. If the officer does not attend at court on the day of your trial, there is no prospect of conviction, and your charge may be withdrawn.

## **Presumption of Innocence**

Being charged with an offence is not the same thing as being convicted of that offence. As a defendant before the court, you are considered innocent until proven guilty. That is a guaranteed right under the *Charter*. It is only after the prosecution has proven its case beyond a reasonable doubt that you could be convicted of that offence.

Being charged with an offence is not the same thing as being convicted of that offence. As a defendant before the court, you are considered innocent until proven guilty. That is a guaranteed right under the *Charter*. It is only after the prosecution has proven its case beyond a reasonable doubt that you could be convicted of that offence.

## **Disclosure Obligations**

In addition, the prosecution has a duty to provide you with full disclosure about your case in advance of your trial. This means that you are entitled to receive all documents, photographs, sketches, diagrams, accident reports, police officers' memo book notes, and so on, as they relate to your case.

The disclosure obligation is triggered when you make a detail written request for all relevant disclosure. This is something that should be done as soon as possible after you are charged. You deliver that request to the prosecutor's office, not the court office. You should keep proof of receipt of the disclosure request (e.g., fax confirmation sheet or, better yet, registered mail confirmation).

Failure on the part of the prosecution to disclose all relevant information about your case could mean that you are not prepared for trial and an adjournment is necessary. Any adjournment that is not requested or caused by you counts to-

ward the delay in getting to trial, as discussed next.

Note, that requests for radar operating manuals are usually submitted under the "Freedom of Information" legislation and are not part of the prosecution's disclosure obligations.

## **Trial within a Reasonable Time**

The *Charter* entitles you to a trial within a reasonable time. That reasonable time for provincial offences (summary conviction offences) such as speeding has been is in the range of 8 to 10 months. Anything beyond that is not likely to be considered "reasonable" in most cases.

In very busy court regions, there are often more trials than there is court time. This means that your speeding trial may be scheduled for a date many months or even more than a year from the date you were charged. It may also mean that your case may not be reached on the day of trial. Alternatively, if you have not received disclosure in advance of trial and have made a request for it well in advance, you may not be able to proceed with your trial, to no fault of your own, which means that you will need to set a different date further in the future. In all of those cases, it may mean that your *Charter* right to a speedy trial has been violated.

If you are ready to proceed with your trial but the court does not have time to hear your case that day, sometimes the prosecution asks the court to withdraw the charge. In many cases, however, the prosecution asks the court for an adjournment (postponement), a request you would oppose. If the court allows an adjournment, a new trial date would be set. In that case, if the second trial date is set far into the future to no fault of your own, your right to a speedy trial may be violated. This *Charter* protection also applies to trials that start within the reasonable range of 8 to 10 months, but do not finish within that time frame.

## **Charter Application**

If you think your *Charter* rights have been breached, you should bring a *Charter* application. *Charter* applications must be brought on 15 days' notice to the prosecution before the hearing of the application. There are a number of other rules to follow.

Unless you have legal training and experience, it would be very difficult for you to bring a *Charter* application on your own. It would be wise to hire a lawyer. However, if you cannot afford the services of a lawyer, you may consider hiring a paralegal. A paralegal may represent you in traffic court and may prepare your court documents. However, a paralegal cannot give you legal advice; only a lawyer can give legal advice.

## **Charter Remedies**

When the *Charter* application is argued in court, the court must decide whether to allow the application or dismiss it. Depending upon what you are asking the court to do, the remedy (compensation for the *Charter* violation) may vary.

In disclosure applications, where you are asking the court to order the prosecution to provide you with disclosure, the prosecution may be permit an adjournment to allow for time to prepare the disclosure.

In delay cases, the court may "stay the proceedings". This means that the charge is suspended and there is no conviction. In deciding whether that is an appropriate remedy, the court considers the length of the delay in getting to trial, whether you have contributed to the delay, whether you have waived (abandoned) your right to a trial within a reasonable time, and whether the delay has caused any prejudice (hardship) to you. The longer the delay, the more likely it is that the court will find there is prejudice to you.

## **Conclusion**

Apart from other defences relating to the facts of a particular speeding scenario, you may also be able to avoid conviction if your *Charter* rights have been violated. *Charter* rights are fundamental rights and they are put into place to ensure fairness to a person accused of a criminal or quasi-criminal offence.

So, before you pay that speeding fine and face increased insurance rates, consider whether any of your *Charter* rights have been breached, then take action to right that wrong.