OCJPOAGuide

ONTARIO COURT OF JUSTICE

GUIDE FOR DEFENDANTS IN PROVINCIAL OFFENCES CASES

This Guide provides defendants with general information about the court process for provincial offences cases. It does not cover every circumstance that might arise in your case.

THINK ABOUT GETTING LEGAL ADVICE

This Guide does not provide legal advice.

You are strongly urged to get legal advice from a lawyer or paralegal about your legal options and the possible penalties you could face.

In deciding whether or not to obtain legal advice, especially if you plan to represent yourself, consider:

- the charge you are facing,
- the complexity of the case,
- your understanding of the legal process and the issues, and
- the risk of a substantial fine, jail time or other penalty that would have significant personal impact (for example, driving demerit points, driver's licence suspension).

You can be referred to a lawyer or paralegal through the:

Law Society Referral Service: 1-800-268-8326 toll free or 416-947-3330. The Law Society Referral Service will give you the name of a lawyer or paralegal within or near your community, who will provide a free consultation of up to 30 minutes to help you determine your rights and options.

Lawyer and Paralegal Directory: You can search on-line for lawyers and paralegals by name, city or postal code at: **http://www1.lsuc.on.ca/LawyerParalegalDirectory/index.jsp.**

You can also look for a lawyer or paralegal on the Internet or in the telephone directory. You may be eligible for legal aid if there is a likelihood of jail if you are convicted. For more information, contact Legal Aid Ontario at 1-800-668-8258 toll free or at 416-979-1446.

You may be able to get free legal advice or representation at your local community legal aid clinic or from law students at a university-based student legal aid services society (SLASS). Each clinic and SLASS has its own guidelines and financial eligibility for accepting clients, so you should contact them directly. For a list of community or SLASS clinics near you, visit: **http://www.legalaid.on.ca/en/contact/default.asp** or call Legal Aid Ontario at 1-800-668-8258 toll free or at 416-979-1446.

WHAT HAVE YOU BEEN CHARGED WITH AND WHAT ARE YOUR OPTIONS?

Your **ticket** (also known as an "offence notice" or "parking infraction notice") **or summons** sets out the offence with which you are charged.

If you get a ticket **that is not a parking ticket (such as a speeding ticket)**, your options will be set out on the back of it. There are two types of tickets. If you receive the first type (Form 3), you have three options:

(i) Plead guilty by paying the total amount shown on your ticket.
(ii) Go to the court office shown on the ticket and plead guilty and make submissions about the penalty (including the amount of fine or how much time you have to pay).
(iii) Ask for a trial date. See the back of your ticket for information about how to get a trial date set.

If you receive the second type of ticket (Form 4), the second option is different. You may request a meeting with a prosecutor by checking a box on the ticket. You will then receive a notice of the date and time of the meeting. By meeting with the prosecutor, you do not give up your right to a trial; however, you may be able to resolve the case. Possible resolutions could include a withdrawal of the charge or an agreement in which you plead guilty to a less serious charge. If you or someone on your behalf does not attend the meeting or the court date scheduled after the meeting, you may be found guilty.

You might also be able to meet with a prosecutor if you receive the first type of ticket. Contact the court office shown on your ticket as soon as possible if you want to discuss your case with a prosecutor.

If you get a **parking ticket,** you have two options:

(i) Plead guilty by paying the total amount shown on your ticket.
(ii) Ask for a trial date. See the back of your ticket for information about how to get a trial date set.

If you have questions about a parking ticket, contact the office shown on the parking ticket.

If you get a **ticket** and do not do one of these things within 15 days of receiving your ticket, or if you or someone on your behalf does not attend court for your trial, you may be found guilty.

If you get a **summons**, you or someone on your behalf **must** attend court at the time and place shown on the summons:

(i) If you or someone on your behalf does not attend court and it is a trial date, a warrant for your arrest may be issued or your trial may go ahead without you. If your trial goes ahead without you, you might be convicted and sentenced. Depending on the offence with which you have been convicted, you might be sentenced to jail and a warrant issued for your arrest.
(ii) If you or someone on your behalf does not attend court and the date is not a trial date, a trial date may be set at that time and you will not be notified of the trial date.
(iii) If you or someone on your behalf does not appear at the time and place shown on the summons or for a scheduled court date, you may be charged with "failing to appear" in court.
(iv) If you or someone on your behalf does not attend a scheduled court date, it is your responsibility to find out from the court office what happened, including whether a trial date was set and for what date.

BEFORE THE TRIAL DATE

- **Accessibility accommodation for persons with disabilities**

You should contact the court office shown on your ticket or summons to obtain information about a courthouse's accessibility features, or if you or one of your witnesses needs accessible court services.

- **Meet with the prosecutor**

In some courts, the prosecutor will meet with defendants before the day of trial to discuss the potential resolution of the charge. Contact the court office shown on your ticket or summons to ask about this meeting. By meeting with the prosecutor, you do not give up your right to a trial.

- **Disclosure**

Anyone charged with an offence is entitled to receive, free of charge, all the information in the prosecutor's possession or control that is relevant to the charge. This could include: investigating officer notes, witness statements, diagrams, and photographs. This information is called "disclosure" and you must ask for it in order to get it. This request may have to be made in writing. Contact the court office shown on your ticket or summons as soon as possible to find out how to receive the disclosure materials for your case.

- **Interpreter**

If you or one of your witnesses requires an interpreter for a scheduled court date, immediately advise the court office shown on your ticket or summons. The court office provides interpreter services for court hearings free of charge.

- **French or bilingual proceeding**

If you speak French, you are entitled to a bilingual proceeding if you are charged with a provincial offence, or to a French trial if you are charged with an offence under federal legislation. Notify the court office shown on your ticket or summons as soon as possible of your intention to have a bilingual or French proceeding.

- **Summons to Witness (also known as a "subpoena")**

A Summons to Witness is a court order requiring the witness to come to court. Witnesses must appear in person in the courtroom for the trial. The prosecutor is not required to subpoena or call anybody as a witness on your behalf. If there are any witnesses who you want to testify on your behalf, contact the court office shown on your ticket or summons well ahead of time to find out how to apply for a Summons to Witness.

- ***Charter* notice**

If any of your rights under the *Charter of Rights and Freedoms* (the "*Charter*") were breached, such as your right to be tried within a reasonable time, the justice of the peace might "stay" the charge against you (which means the case ends) or might refuse to allow evidence obtained as a result of the breach of your *Charter* rights to be used in your trial. If you want to argue that your rights and freedoms under the *Charter* have been breached or that the law under which you have been charged is unconstitutional, you must provide the Attorney General of Canada and the Attorney General of Ontario with a written notice of constitutional question at least 15 days before your trial date. You should also provide a copy of this written notice to the court office and the prosecutor. At trial, you will have to prove that you provided the required written notice.

The addresses and fax numbers for the Attorney General of Ontario and the Attorney General of Canada are:

The Attorney General of Ontario
Constitutional Law Branch
4th floor, 720 Bay Street
Toronto, Ontario M5G 2K1
fax: (416) 326-4015

The Attorney General of Canada
Suite 3400, Exchange Tower
Box 36, First Canadian Place
Toronto, Ontario M5X 1K6
fax: (416) 952-0298

OR
Justice Building
234 Wellington Street
Ottawa, Ontario K1A 0H8
fax: 613-954-1920

WHAT SHOULD I DO IF I CAN'T ATTEND COURT ON A SCHEDULED DATE?

If you know ahead of a scheduled court date that you cannot attend court or go ahead with your case, immediately contact the court office shown on your ticket or summons to ask if, and how, the date can be rescheduled. If on a scheduled court date you cannot attend or go ahead with your case, you or someone else on your behalf will have to go to the court to ask the justice of the peace if the case can be rescheduled and explain why. If it is a trial date, and the justice of the peace does not reschedule the case, your trial might go ahead and you might be found guilty.

WHAT SHOULD I DO IF I DECIDE I WANT TO PLEAD GUILTY AFTER MY TRIAL DATE IS SET?

You always have the right to plead not guilty and to have a trial. You also have the right to decide to give up your right to a trial and to plead guilty at any time. If you have a trial date and decide ahead of time that you want to plead guilty, notify the court office shown on your ticket or summons as soon as possible. If you have a ticket with a fine on it, you can pay the total payable amount at any time before the trial date. A conviction will be registered and you will not have to go to court.

A justice of the peace may accept your guilty plea in court, but only if he or she is satisfied that:

a. You are making the plea voluntarily.
b. You understand that the plea is an admission of the offence.
c. You understand the consequences of the plea.
d. You understand that the justice of the peace is not bound by any agreement you made with the prosecutor, including what sentence should be imposed.

If the justice of the peace is not satisfied with any of the above issues, he or she may decide not to accept your guilty plea and may proceed with the trial, or you might have to return to court on another day.

TRIAL OVERVIEW

- ***Provincial Offences Act***

The *Provincial Offences Act* sets out the procedures that must be followed in respect of all provincial offence proceedings, including trials, sentencing, and appeals. You can view the *Provincial Offences Act* online at:

http://www.e-laws.gov.on.ca.

- **Presumption of innocence, reasonable doubt and burden of proof**

Everyone charged with an offence is presumed to be innocent. The justice of the peace will find you guilty only if the evidence satisfies him or her beyond a reasonable doubt that you are guilty. The phrase "reasonable doubt" does not require proof to an absolute certainty or beyond any doubt nor is it an imaginary or frivolous doubt; but it does involve a significant level of proof far beyond the "balance of probabilities" standard of proof in civil cases.

For you to be found guilty there must be evidence beyond a reasonable doubt of each "essential element" of the offence. Generally, the essential elements of an offence are set out in the wording of the charge against you.

There are three categories of offences, each with their own proof requirements:

(i) **Absolute liability:** In "absolute liability" offences, the prosecutor is only required to prove that you committed the act with which you are charged. Intent to commit the prohibited act is not part of the essential elements of an absolute liability offence, and the prosecutor does not have to prove any mental element on your part. Generally, you will be found guilty if the justice of the peace is satisfied about this beyond a reasonable doubt. Parking and speeding are examples of absolute liability offences.

(ii) **Strict liability:** In "strict liability" offences, the prosecutor must prove beyond a reasonable doubt that you committed the act with which you are charged. Like in absolute liability offences, the prosecutor does not have to prove any mental element. However, unlike in absolute liability offences, you may raise a defence by proving on a balance of probabilities that you took all reasonable steps to avoid the particular act or that you reasonably believed in a mistaken set of facts which, if true, would render the act innocent. Most provincial offences are strict liability offences.

(iii) ***Mens rea* offences:** "*Mens rea*" refers to a "guilty mind". In *mens rea* offences the prosecutor must prove beyond a reasonable doubt that you committed the act with which you are charged and that you had a guilty mind. A *mens rea* offence usually contains the words "wilfully," "with intent," "knowingly," or "intentionally" in the law creating the offence. It is unusual for a provincial offence to be a *mens rea*

offence. Charges under the Criminal Code are examples of *mens rea* offences. An example of a provincial *mens rea* offence is having in your possession a false or invalid insurance card that you know or ought to know is false or invalid contrary to s. 13.1(a) of the *Compulsory Automobile Insurance Act*.

- **Evidence**

There are various ways that either the prosecutor or a defendant may introduce evidence in court. The two most common ways are through witnesses who testify in court and by filing documents or photographs with the court. There are rules regarding when and how these can be filed in court. In some cases, a party will be permitted to rely upon a certified document instead of having a witness (including investigating officers, such as the police officer who gave you the ticket) testify in court about the content of the document.

WHAT TO EXPECT ON THE DAY OF YOUR TRIAL

- **Time**

Typically many cases are scheduled to be heard in one courtroom at the same time. You and your witnesses must arrive at the courtroom on time and be ready to start your trial right away. However, be prepared to wait in the likely event that other cases start before yours.

- **What to bring**

(i) A pen and paper to take notes during the trial.
(ii) The originals and two copies of any documents or photographs you want to use or file during your trial.
(iii) The disclosure material you received from the prosecutor.
(iv) Print copies of any electronic (e.g. cellphone, video camera) photographs you want to use at trial.
(v) Copies of any Summons to Witness (subpoena) that have been served.

- **Role of the justice of the peace and others in the courtroom**

i) Justice of the peace: The justice of the peace is an independent and impartial judicial officer who will hear your trial and decide if you are guilty or not guilty. You should call the justice of the peace "Your Worship", or "Sir" or "Madam". The justice of the peace is required to ensure that you receive a fair trial. He or she should review the trial procedures with you, but is not allowed to give legal advice.

ii) Prosecutor (sometimes called "the Crown"): The prosecutor is the person with the authority to prosecute the offence. It is the prosecutor's responsibility to prove that you committed the offence with which you are charged.

iii) Court clerk: The court clerk sits in front of the justice of the peace and assists him or her by: reading the charges out loud and asking you if you plead guilty or not guilty, swearing or affirming witnesses, or taking care of the exhibits during the trial.

iv) Court reporter or court monitor: The court reporter or court monitor is responsible for making a recording of what is said during the trial, or for monitoring the equipment that records everything that is said. This person may also be the court clerk.

ORDER OF TRIAL

- **Advising the justice of the peace of any problems with the trial going ahead**

You should tell the justice of the peace at the start of your case if you want to argue that the charges should not go ahead because of a problem regarding, for example, the form of the ticket or summons, a breach of your *Charter* rights, or your ability to proceed with the trial (such as a witness who could not come to court that day).

- **Arraignment**

Your trial will start with an "arraignment" in which you will be asked to confirm your name, the charges against you will be read out loud, and you will be asked how you plead.

- **Plea**

You may plead guilty or not guilty. If you plead not guilty, your trial will go ahead. If you plead guilty, and are found guilty, you will be able to speak to the justice of the peace about the circumstances surrounding the offence, what you think the penalty should be, your ability to pay a fine and how much time you need to pay.

- **Order excluding witnesses**

At the beginning of the trial, you or the prosecutor may ask the justice of the peace to order all witnesses in the case to remain outside the courtroom until they testify. This is to make sure that witnesses do not change their evidence based on what they hear other witnesses say in the courtroom. Defendants are entitled to hear all of the evidence, and you will not have to leave the courtroom when other witnesses testify even if you intend to be a witness yourself. However, you must not tell any witnesses what evidence was given in the courtroom or the questions that were asked.

- **Case for the prosecution**

  i) Examination-in-chief: The prosecutor calls his or her witnesses first. The prosecutor will ask his or her witnesses questions in order to bring out evidence that supports the prosecution's case. This is called examination-in-chief. You have the right to object to evidence given by a witness or to questions asked by the prosecutor that you believe are irrelevant or improper. It is generally improper to ask questions that suggest the answers (called "leading questions") in examination-in-chief. For example, it would be proper to ask a witness "What colour was the car?" It would be improper to ask "Was the car red?"

  ii) Cross-examination: You will be allowed to cross-examine each prosecution witness after the prosecutor finishes the examination-in-chief of that witness. When you cross-examine the prosecutor's witnesses, you may ask them questions to test the reliability, accuracy or truth of what they have said. You may also ask the prosecutor's witnesses questions about things that you think might help your defence. The questions you ask of the witnesses in cross-examination will not be treated as evidence. It is only the answers of the witnesses that are considered evidence.

  You are not permitted to argue with witnesses. You are also not permitted at this stage of the trial to make statements about why you should be found not guilty. You are allowed to put your version of the events directly to the witness in cross-examination. Unlike in examination-in-chief, you are also allowed to suggest answers that will assist your case. For example, you may ask "Was the car red?" instead of asking "What colour was the car?" When you suggest facts to a witness they might agree with all, part or none of your suggestions.

  If you intend to call defence evidence that is different from what a prosecution witness has told the court, you should suggest your version of the facts to that prosecution witness during your cross-examination. This gives the witness a chance to agree or disagree with your version of the facts. If you don't suggest your version of the facts to prosecution witnesses, the court may give less weight to your version or the prosecutor may be allowed to call the witness again in "reply". (See below under "*Prosecution reply*".)

  You are entitled to ask the justice of the peace to see the notes of any prosecution witness, and to use those notes while cross-examining the witness. For example, you might want to cross-examine a witness about any inconsistencies between his or her notes and what he or she has said in the courtroom.

  In certain circumstances, you will be allowed to cross-examine the prosecution witnesses about whether they have a criminal or provincial offence record.

iii) Re-examination: When you finish your cross-examination of a witness, the prosecutor might be allowed to re-examine that witness about anything new brought out in your cross-examination.

iv) Notes of Investigating Officers and Other Witnesses: The prosecutor might ask the justice of the peace if an investigating officer who is on the witness stand may use his or her investigation notes to refresh his or her memory. You are entitled to see the notes. The justice of the peace will ask you if you want to ask the officer any questions in relation to the officer using the notes to refresh his or her memory or if you want to call evidence on this issue. The justice of the peace will also ask you if you want to make submissions about whether the officer should be allowed to use the notes while testifying. This process also applies to notes used by any other witness.

v) Statements you might have made to an investigating officer or other person in authority: Sometimes the prosecutor will want to introduce evidence of a statement that you are alleged to have made to an investigating officer or another person in authority. The prosecutor must satisfy the justice of the peace beyond a reasonable doubt that you made the statement and that the statement was given voluntarily. These issues will be determined during a procedure called a "voir dire".

vi) Hearsay: Second-hand information is called hearsay evidence and is generally not allowed. The prosecutor and you generally may ask witnesses only about things the witnesses have personal knowledge about (for example, what they saw). There are some exceptions to this rule. One important exception is that the prosecutor may ask witnesses about statements they say you made. You, however, may not ask witnesses what you said unless the prosecutor has asked them about it first (because doing so is considered self-serving). There are also special rules to follow when the statement was made to an investigating officer or person in authority (see above).

- **Close of prosecutor's case**

After the prosecutor has finished calling all of his or her evidence and has "closed" the case for the prosecution, you will have the following options:

(i) You may ask the justice of the peace to dismiss some or all of the charges at this stage because there is no evidence in relation to at least one of the essential elements of the offence that the prosecutor must prove. If you move for a directed verdict and the justice of the peace rules against you, you will then be allowed to decide whether or not to call a defence. If the justice of the peace rules for you, you will be found not guilty. OR

(ii) You may decide not to call evidence in defence and not to testify in your own defence. If you choose not to testify and not to call any witnesses, the justice of the peace will decide the case based only on the evidence presented during the prosecution's case. At this point, you will be found guilty only if the justice of the peace finds that every essential element of the offence has been proven beyond a reasonable doubt. OR

(iii) You may decide to call evidence in defence. (See below)

- **Calling a defence**

You have the right to remain silent: You do not have to testify or call defence witnesses. If you do choose to call a defence, your defence evidence may be your testimony or testimony from your witnesses or both. As well, you may wish to file evidence such as documents, diagrams, or photographs.

If you do call defence witnesses, the examination-in-chief, cross-examination and re-examination processes described above also apply to your defence witnesses. The prosecutor will be allowed to cross-examine your witnesses, including in certain circumstances cross-examining about whether they have a criminal or provincial

offence record. These rules apply to you as well if you choose to testify.

- **Prosecution reply (also known as "rebuttal")**

If you call defence evidence, the prosecutor might be allowed to call reply evidence if your evidence has raised some new matter or defence that the prosecutor has had no opportunity to deal with earlier in the trial and that the prosecutor could not reasonably have anticipated.

- **Closing submissions**

After all the evidence is presented, the justice of the peace will give you and the prosecutor an opportunity to make closing submissions about why you should be found not guilty or guilty. You will not be permitted to tell the justice of the peace your version of the events as part of your closing submissions unless you or a prosecution or defence witness has testified about that version of events.

- **Judgment**

The justice of the peace will find you not guilty or guilty. He or she will either immediately give his or her judgment and reasons for judgment or will adjourn the case to a later time or day.

- **Sentencing**

If you are found guilty, the justice of the peace may either sentence you immediately or adjourn sentencing to another date. The sentence for a provincial offence may include a fine, probation, jail or other orders.

Before you are sentenced, the justice of the peace will hold a sentence hearing at which you and the prosecutor will have the opportunity to tell the justice of the peace what you think the appropriate sentence should be and why. You may also tell the justice of the peace about any circumstances relating to you or your offence, or about the penalty, your ability to pay a fine or whether you require time to pay a fine.

(i) **Aboriginal defendants:** A justice of the peace must pay particular attention to the circumstances of aboriginal offenders when considering a jail sentence.

(ii) **Court costs:** Court costs will be added to any fine and a victim fine surcharge will also be added to any non-parking fine. The justice of the peace has no power to waive or reduce these amounts.

(iii) **Demerit points:** Driving-related demerit points are automatically imposed by law if you are found guilty of certain driving offences. The justice of the peace has no power to waive or reduce demerit points. For more information about demerit points, visit the Ministry of Transportation's website:
http://www.mto.gov.on.ca/english/dandv/driver/demerit.shtml.

APPEALS

You have the right to appeal any provincial offence conviction or sentence or both within the time fixed by law. The *Provincial Offences Act* and Ontario Regulations 722/94 and 723/94 set out the rules regarding appeals, including the time you have to start your appeal. You can view the *Provincial Offences Act* and the regulations online at: **http://www.e-laws.gov.on.ca.**

RE-OPENING A PROCEEDING

If you are convicted in respect of a ticket without a hearing, you can apply to have your conviction struck out and a new trial scheduled. A justice of the peace can strike out your conviction if he or she is satisfied by your sworn affidavit that you were unable to attend the hearing or a meeting with the prosecutor, where applicable, through no fault of your own or that a notice or document relating to the offence was not delivered. You must make your application within fifteen days of becoming aware of the conviction. Contact the court office shown on the back of your ticket to obtain information about how to apply.