Table of Contents

CHAPTER 1. GENERAL MATTERS

I. INTRODUCTION

§ 1:1 Generally

II. CONSTITUTIONAL AUTHORITY IN RELATION TO HIGHWAY TRAFFIC

- § 1:2 Division of Power
- § 1:3 Indian Reserve Lands and Special Federal Jurisdiction
- § 1:4 Indian Reserve Lands and Special Federal Jurisdiction—Indian Reserves
- § 1:5 —Federal Jurisdiction
- § 1:6 —Inter-jurisdictional Immunity
- § 1:7 —Provincial Laws and Interprovincial Traffic

III. UNDERSTANDING THE LEGISLATION: THEMES AND DEVIATIONS

- § 1:8 Introduction
- § 1:9 "Highway"
- § 1:10 "Motor Vehicles"
- § 1:11 "Vehicles"
- § 1:12 "Standing" and "Stopping"
- § 1:13 "Driver"

IV. FEDERAL LEGISLATION RESPECTING HIGHWAY TRAFFIC OFFENCES

§ 1:14 Generally

V. CLASSIFICATION OF HIGHWAY TRAFFIC OFFENCES

- § 1:15 Introduction
- § 1:16 Absolute Liability
- § 1:17 —Burden of Proof for General Defences
- § 1:18 —Constitutional Limits on Absolute Liability
- § 1:19 —Prison as a Fine Enforcement Tool

- § 1:20 Strict Liability
- § 1:21 The Process of Categorization
- § 1:22 The Classification of Various Offences—Absolute Liability Traffic Offences
- § 1:23 —Strict Liability Traffic Offences
- § 1:24 —Full Mens Rea Traffic Offences
- § 1:25 Special Mental Elements in Strict Liability Offences?

VI. COMMON ISSUES IN TRAFFIC OFFENCE CASES

- § 1:26 Corporate, Employer and Owner Liability
- § 1:27 Emergency Vehicles

VII. THE ROLE OF PARALEGALS OR AGENTS IN THE PROSECUTION AND DEFENCE OF TRAFFIC OFFENCES

§ 1:28 Generally

CHAPTER 2. PROCEDURAL ISSUES IN TRAFFIC OFFENCE TRIALS

I. INTRODUCTION

§ 2:1 Generally

II. CONSTITUTIONAL ISSUES

§ 2:2 Generally

III. THE ONTARIO PROVINCIAL OFFENCES ACT AND REFORMED PROCEDURAL STATUTES

A. THE ONTARIO PROVINCIAL OFFENCES ACT

- § 2:3 Introduction
- § 2:4 Part I: Simple Traffic Violations
- § 2:5 Part II: Parking Violations
- § 2:6 Part III: Serious Traffic Violations

B. CERTIFICATE OF OFFENCE ("TICKETED") PROSECUTIONS IN ONTARIO

- § 2:7 Generally
- § 2:8 Limits of Part I Prosecutions

Table of Contents

C. PROCEDURAL "SHORTCUTS": OFFENCE NOTICES

- § 2:9 Introduction
- § 2:10 Plead Guilty Without an Appearance
- § 2:11 Guilty with Submissions
- § 2:12 Indicate an Intention to Appear and Plead Modified Procedures
- § 2:13 Challenging the Charging Officer's Evidence
- § 2:14 Did Not Respond
- § 2:15 Failure to Attend for Trial

D. FAIL-SAFE PROVISIONS

§ 2:16 Generally

E. PART III PROSECUTIONS: CHARGES ON INFORMATION

- § 2:17 Initiating Proceedings
- § 2:18 Why Proceed under Part III?

IV. ATTACKING THE CHARGING DOCUMENT: 'GETTING OFF' ON TECHNICALITIES UNDER THE ONTARIO PROVINCIAL OFFENCES ACT

- § 2:19 Introduction
- § 2:20 Duplicitous Charging Documents
- § 2:21 The Misspelled Name
- § 2:22 Objections at Trial
- § 2:23 Short Forms in the Regulations
- § 2:24 Defects Not Affecting the Validity of a Charging Document or Which May be Amended
- § 2:25 Defects for Which Amendments Have Been Refused or Which Have Been Held to Render the Charging Document a Nullity

V. THE TRIAL

- § 2:26 Procedural Details
- § 2:27 Trial venue

VI. DISCLOSURE

§ 2:28 Generally

VII. COSTS

§ 2:29 Generally

VIII. MOTIONS PRIOR TO PLEA

- § 2:30 Introduction
- § 2:31 Adjournments
- § 2:32 Adjournment to Obtain Representation

IX. PLEAS

- § 2:33 Introduction
- § 2:34 Lesser Included Offences
- § 2:35 Special Pleas

X. THE CRIMINAL CODE AND "INCLUDED" TRAFFIC OFFENCES

§ 2:36 Generally

XI. THE PROPER ROLE OF THE JUDGE

§ 2:37 Generally

XII. REPRESENTATION

§ 2:38 Generally

XIII. ROLE OF THE PROSECUTOR

§ 2:39 Generally

XIV. PART II: PARKING INFRACTIONS

- § 2:40 Introduction
- § 2:41 The New System
- § 2:42 Abbreviated Wording That May be Used in the Charging Document
- § 2:43 —Limits on Issuing Authority
- § 2:44 —Failsafe Provisions
- § 2:45 Trial, etc.

XV. TIME LIMITATIONS ON THE PROSECUTION AND THE DEFENCE

- § 2:46 Counting Days
- § 2:47 Time Limits on the Prosecution
- § 2:48 Post Office Strikes

XVI. YOUNG TRAFFIC OFFENDERS

§ 2:49 Introduction

xii

Table of Contents

- § 2:50 Notice to Parents
- § 2:51 Lower Maximum Penalties
- § 2:52 No Ex Parte Convictions
- § 2:53 Appeals in Young Offender Cases

XVII. CONSTITUTIONAL RIGHT TO A TRIAL WITHOUT DELAY

§ 2:54 Generally

CHAPTER 3. PROCEDURAL ISSUES IN TRAFFIC OFFENCE APPEALS

- $\S~3:1$ Introduction: The Structure of "Correction" in Traffic Offences
- § 3:2 Statutory Framework for Appeals in Ontario
- § 3:3 Prerogative Relief—Introduction
- § 3:4 —Certiorari
- § 3:5 —Prohibition
- § 3:6 —Mandamus
- § 3:7 —Habeas Corpus ad Subjiciendum
- § 3:8 —Procedendo
- § 3:9 —Stays of Proceedings
- § 3:10 Release Pending Appeal—Introduction
- § 3:11 —Payment of Fines Pending Appeal
- § 3:12 Initiating an Appeal
- § 3:13 Time Limits—Common Time Limits
- § 3:14 —Power to Extend Time to Appeal or Take Other Step
- § 3:15 Transcripts
- § 3:16 Appeals by Way of New Trial Part III
- § 3:17 Extensions of Time
- § 3:18 Attending at the Appeal
- § 3:19 Subsequent Appeals
- § 3:20 Powers of Appeal Court—Appeals Under Parts I and
- § 3:21 —Powers of the Appeal Court in Appeals From Part III Prosecutions
- § 3:22 —New Trials
- § 3:23 —Sentence Appeals
- § 3:24 —Appeals Based on Defects in the Charging Document
- § 3:25 —Costs in Appeals
- § 3:26 —Reopening Appeals
- § 3:27 Chart Showing Progress of Traffic Case

CHAPTER 4. EVIDENCE AND TRAFFIC OFFENCES

I. INTRODUCTION: EVIDENCE IN CONTEXT

§ 4:1 Generally

II. THE BURDEN AND STANDARD OF PROOF

- § 4:2 The Presumption of Innocence
- § 4:3 The Standard of Reasonable Doubt
- § 4:4 Evidence Statutes

III. SOME BASIC EVIDENTIARY RULES

- § 4:5 Relevance and Materiality
- § 4:6 Probative Value vs. Prejudicial Effect
- § 4:7 Circumstantial Evidence
- § 4:8 The Rule in *Hodge's* Case
- § 4:9 Judicial Notice
- § 4:10 Facts Proved in Other Cases
- § 4:11 Refreshing Memory
- § 4:12 Statements and Admissions made by the Accused
- § 4:13 Prior Statements

IV. A PRIMER ON HEARSAY

- § 4:14 Introduction
- § 4:15 Photographic evidence from Photo Radar and Red-Light Cameras

V. VIVA VOCE EVIDENCE

- § 4:16 Introduction
- § 4:17 Preparing Witnesses
- § 4:18 Exclusion of Witnesses
- § 4:19 Other Matters Relating to Oral Evidence
- § 4:20 Examination-in-chief
- § 4:21 Leading Questions
- § 4:22 Cross-Examination
- § 4:23 Rebuttal Evidence

VI. INTERPRETERS

§ 4:24 Generally

VII. DEMONSTRATIVE EVIDENCE

§ 4:25 Photographs

r	$\Gamma_{ m ABL}$	-	- C	٧.,.	TOT	13.77	10
	LABL	н: (1) H' U	/() N	илн	: N'I	

§ 4:26 Videotapes or Films

VIII. COLLISION RECONSTRUCTIONS

§ 4:27 Generally

IX. EXPERT EVIDENCE

- § 4:28 The Normal Rule Against Opinion Evidence
- § 4:29 Matters Where Expertise is not Required
- § 4:30 The Criteria for Admissibility of Expert Evidence
- § 4:31 Qualifying the Expert
- § 4:32 Experts and Radar
- § 4:33 A Prosecution Checklist
- § 4:34 Questioning the Expert
- § 4:35 Laying the Basis
- § 4:36 Disclosure of the Radar Device or Operators Manual
- § 4:37 A Defence Checklist for Radar

CHAPTER 5. SPEEDING

I. INTRODUCTION

§ 5:1 Generally

II. THE STATUTORY PROVISIONS

§ 5:2 Generally

III. THE MENTAL ELEMENT OF THE OFFENCE

- § 5:3 Absolute Liability
- § 5:4 Strict Liability

IV. THE DEFENCE OF NECESSITY

§ 5:5 Generally

V. POSTED SPEED LIMITS

§ 5:6 Generally

VI. CONSPICUOUSLY POSTED SPEED LIMITS

- § 5:7 Introduction
- § 5:8 Maintaining Signs
- § 5:9 Proving the case
- § 5:10 Erection of Speed Limit Signs and the Presumption of Regularity

VII. LIMITS SET BY THE GEOGRAPHIC BUILD-UP OF AN AREA

- § 5:11 Introduction
- § 5:12 Proving Location Where Location Establishes the Speed Limit Applicable

VIII. DETECTING SPEED

- § 5:13 Photoradar
- § 5:14 Challenges to the Admissibility of Photoradar Evidence
- § 5:15 Chain Measurement and Aerial Surveillance
- § 5:16 Pacing

IX. RADAR: BLINDED BY SCIENCE

- § 5:17 Establishing a *Prima Facie* Case
- § 5:18 Judicial Notice of Radar
- § 5:19 Proving the Radar Device
- § 5:20 The Problems of Tuning Fork Accuracy

X. "REASONABLE AND PRUDENT SPEED" STATUTES

§ 5:21 Generally

XI. STREET RACING AND STUNT DRIVING

§ 5:22 Generally

CHAPTER 6. CARELESS DRIVING

I. OVERVIEW

- § 6:1 Introduction
- § 6:2 Conflict Between Federal and Provincial Laws

II. DOUBLE JEOPARDY

§ 6:3 Generally

III. THE MENTAL ELEMENT OF THE OFFENCE

§ 6:4 Generally

IV. "DESERVING OF PUNISHMENT"

§ 6:5 Generally

xvi

V. EXAMPLES OF CONDUCT HELD TO BE SUFFICIENT TO SUPPORT CONVICTION

- § 6:6 Introduction
- § 6:7 Cumulative Effect of Several 'Careless' Actions
- § 6:8 "Driving"
- § 6:9 On a Highway
- § 6:10 Wording of Charge
- § 6:11 Circumstantial Evidence, Accidents and the Proof of Negligence
- § 6:12 Lesser and Included Offences

VI. COMMON FACTUAL SITUATIONS

- § 6:13 Driver Swerves to Avoid Obstruction in Roadway and Causes a Collision
- § 6:14 Driver of Vehicle Travelling at an Excessive Speed
- § 6:15 Motor Vehicle Collision No Evidence Defendant Attempted to Avoid Collision, No Evidence of Fortuitous Intervening Event
- § 6:16 Motor Vehicle Collision With Evidence of Attempt to Avoid Collision or else a Fortuitous Event Prior to Impact
- § 6:17 Pedestrian Collisions

CHAPTER 7. COMMON DEFENCES

I. DUE DILIGENCE, REASONABLE MISTAKE OF FACT

- § 7:1 Generally
- § 7:2 Delegation and Due Diligence
- § 7:3 Absolute Liability Offences
- § 7:4 Mistake of Fact
- § 7:5 Mistakes as to Matters not Elements of the Offence

II. MISTAKE OF LAW AND OFFICIALLY INDUCED ERROR

- § 7:6 Introduction
- § 7:7 Officially Induced Error

III. DE MINIMIS NON CURAT LEX

§ 7:8 Applicability

IV. NECESSITY

§ 7:9 Application

V. PROCEDURAL DEFENCES

- § 7:10 Introduction
- § 7:11 Proof of By-Laws

VI. OWNER LIABILITY

- § 7:12 Introduction
- § 7:13 Constitutional Limits
- § 7:14 Defending the Owner
- § 7:15 The Corporate Owner

CHAPTER 8. COMMON OFFENCES

I. FAIL TO REPORT

- § 8:1 The Duty
- § 8:2 "On a Highway"
- § 8:3 The Mental Element of the Offence
- § 8:4 "Forthwith"
- § 8:5 Assessing the Value of the Damage
- § 8:6 What Must be Done to Satisfy the Duty?

II. FAIL TO REMAIN

- § 8:7 Introduction
- § 8:8 The Relationship Between the Provincial and Criminal Code Offences
- § 8:9 The Mental Element of the Offence
- § 8:10 Possible Defences

III. MANDATORY SEATBELT LEGISLATION

- § 8:11 Introduction
- § 8:12 Constitutional Considerations
- § 8:13 The Application of the Statute

IV. FOLLOW TOO CLOSELY

- § 8:14 Introduction
- § 8:15 Proving the Case

V. SPEED WARNING DEVICES

- § 8:16 Introduction
- § 8:17 Constitutional Considerations (1): Division of Powers
- § 8:18 Elements of the Offence

xviii

TABLE	OF CONTENTS
§ 8:19 § 8:20 § 8:21	
VI.	COMPULSORY AUTOMOBILE INSURANCE
\$ 8:22 \$ 8:23 \$ 8:24 \$ 8:25 \$ 8:26 \$ 8:27	Operating an Uninsured Vehicle What is a "Contract of Insurance"? Fail to Produce Proof of Insurance The Mental Element: Due Diligence as a Defence
VII.	DRIVE WHILE SUSPENDED
\$ 8:28 \$ 8:29 \$ 8:30 \$ 8:31 \$ 8:32 \$ 8:33 \$ 8:34 \$ 8:35 \$ 8:36 \$ 8:37 \$ 8:38	The Elements of the Offence —"On a Highway" —"Under Suspension" —Distinguishing the Offence —Proving the Suspension —The Mental Element —The Defence of Officially Induced Error —Facts Where the Defence has been Accepted —Double Jeopardy and the Criminal Code
VIII.	FAILING TO STOP WHEN SIGNALED BY POLICE OFFICER
§ 8:39 § 8:40	Introduction Constitutional Considerations (1): Division of Powers
§ 8:41	The Operation of the Section
§ 8:42	
§ 8:43 § 8:44	Multiple Convictions and The <i>Kienapple</i> Principle Constitutional Considerations (2): The <i>Charter</i>
8 0.44	Constitutional Considerations (2). The Charter
IX.	TURNS, RIGHTS OF WAY AND INTERSECTIONS
§ 8:45	Introduction
§ 8:46	
§ 8:47	—Signalling the Turn

Executing the Turn

Right of Way

§ 8:48 § 8:49

§ 8:50	Passing Vehicles
0	8
§ 8:51	Intersections without Signal Lights or Signs
§ 8:52	Failure to Obey A Signal Light or Sign
§ 8:53	Yield Signs
§ 8:54	Stop Signs
§ 8:55	Signal Lights
8 8:56	"Anti-Gridlock" Provisions

X. COMMERCIAL VEHICLES

§ 8:57	Introduction
§ 8:58	Administrative Requirements
§ 8:59	Technical Requirements

CHAPTER 9. SENTENCING IN TRAFFIC CASES

I. INTRODUCTION

§ 9:1 Generally

II. RANGE OF SENTENCE AVAILABLE

§ 9:2 Generally

III. PROCEDURE ON SENTENCING

§ 9:3 Pre-Plea Inquiry
§ 9:4 Introduction
§ 9:5 Submissions by the Parties
§ 9:6 Enquiries by the Court
§ 9:7 Pre-sentence Reports
§ 9:8 Sentencing Procedure and Ontario's Provincial Offences Act

IV. DETERMINING THE FIT SENTENCE

'Tariff")
ces

CHAPTER 10. COMMERCIAL MOTOR VEHICLES

I. COMMERCIAL VEHICLE OPERATOR REGISTRATION (CVOR)

- § 10:1 Introduction
- § 10:2 Unsafe Vehicle Provisions
- § 10:3 Speed Limiting Systems

APPENDICES

- Appendix A. Table of Key Highway Traffic Provisions
- Appendix B. Rules of the Ontario Court (Provincial
 - Division) in Provincial Offences Proceedings
- Appendix C. Ontario Regulation 722/94
- Appendix D. Appeal Rules for s. 116 Appeals
- Appendix E. Ontario Regulation 339/94

Table of Cases

Index