



# the Disclosure

VOLUME 4 - ISSUE 1 March 2012

NEWSLETTER



## Embassy Suites Spring Workshop

*Ethics and the enforcement officer's notes, Commercial motor vehicle prosecutions, Legislative Reform, Handling the unrepresented defendant, and How your attendance to this workshop will help you with CPD hours – Just to name a few.*



## Disclosure Newsletter

*Another change making this our first E-Newsletter!*



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## Civil Rules of Procedure

*Do they apply to proceedings under the POA?*

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# President's Message

## Winter 2012 edition

by **Jane Moffatt**  
President



It is a cold, snowy, windy Sunday morning as I write this.....and there have been so few of them this winter, I think you could probably guess which date I actually sat down to write this! Greetings from the Board of Directors and welcome to your Winter 2012 edition of the Disclosure newsletter, a bi-annual publication of the Prosecutors' Association of Ontario ("PAO"). This is our first e-newsletter, available exclusively and only electronically. The Board resolved to stop killing trees by mailing hardcopies by "snail mail", instead made the business decision to go digital and reinvest the savings into other member service initiatives - we trust members approve of this approach.

Speaking of "membership", don't forget to renew your 2012 membership with the PAO. The annual membership fee continues to be frozen at \$80 and you will find a copy of the membership form both within this newsletter and on our website: [www.prosecutors.on.ca](http://www.prosecutors.on.ca). You can also pay online through PayPal, but please do not forget to also fax us your membership application form so that we may update your particulars.

Steve Weir, our Corporate Communications Committee Chair, is about to launch a completely new and improved Prosecutors' Association of Ontario website. We have listened to your suggestions to improve functionality, ability to find new content and otherwise navigate the site. We heard what you liked about the site - the discussion board, electronic copies of presentations, sample factums and so on. Rest assured that essential and critical members-only content will remain and we have a plan in place to expand upon the content to ensure members have all the resources you may want and need. Please don't forget that you can contribute to the information on the site, by submitting your factums, presentations and articles, viewable only in the members-only section. Steve will have further information at the spring workshop in Niagara Falls, including a navigation and content demonstration. Don't miss it.

The annual spring training workshop is at Embassy Suites in Niagara Falls on April 18 and 19, 2012. Registration is now live! The draft agenda and application form are in this newsletter and are also available on our website. You can also register online on the website using PayPal, but again don't forget to fax the registration form. Rates remain unchanged from last year and members enjoy a \$100 discount to attend this two-day event, which includes lunch, coffee breaks and training précis for both days. Check out Charlene Perrotta's Education Committee update for further information on this and other upcoming educational events, all of which qualify toward your Compulsory Professional Development (CPD) hours with the Law Society.

And finally, I wish to acknowledge the passing of our dear friend and colleague Colleen Goertz (Sault Ste. Marie). Our deepest sympathy to Colleen's family, she is and will be missed.

In closing and on behalf of my fellow directors, we wish you and yours all the best of what is left of the winter season and we hope to see you at the spring workshop!



# Message from the Editor

## Spring 2012

by **Ted Allen**  
**Editor**



Always mindful of keeping costs at a minimum, our newsletter is now being distributed electronically. Please feel free to send your comments to me regarding any feedback you may have on our new change in distribution.

For your convenience and included in this issue of your Disclosure Newsletter, are the forms for the Spring Seminar and your 2012 membership.

Your board is always looking for interesting and knowledgeable speakers for our seminars. If you know of anyone interested, or perhaps you may be interested in speaking or contributing to our seminars, please feel free to contact anyone on our board or education committee. Members of our association who have spoken in the past have always been well received. The general consensus is that our members are more “on point”, and share information that is well received by the audience.

Please feel free to send us your items of interest. Items of interest include articles sent to us to be reproduced in our newsletter for information purposes. In some cases an interesting piece of information may be contained in an email created at your place of work and sent to your staff for their benefit. Please feel free to copy me on any email example that you feel will benefit the readers of our newsletter. I will ensure that we receive permission from the author of any email we receive before it is included with our material.

Once again your directors of our association have worked hard managing the Prosecutors' Association, organizing the spring conference, and gathering information to reproduce here in your Disclosure Newsletter. Please feel free to submit suggestions, comments, and any information you feel is relevant to our members.



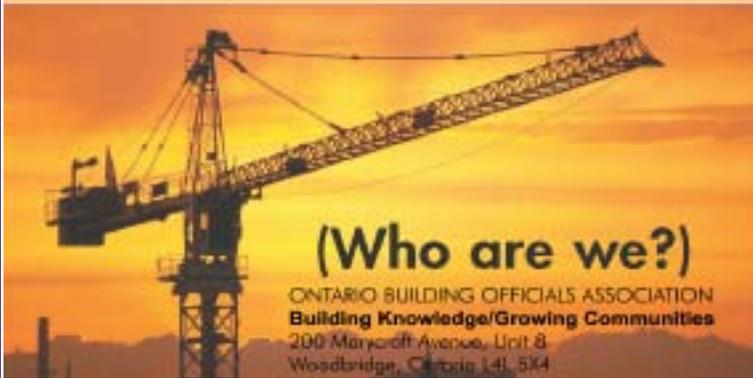
The Prosecutors' Association of Ontario (the “PAO”) is a dynamic non-profit organization with over 350 members from across Ontario.

If you have any professional interest in the enforcement and prosecution of regulatory offences, membership with the PAO provides excellent support and training at a nominal cost.

- Case law/legislative updates
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**For more information or to apply for membership online, go to: [www.prosecutors.on.ca](http://www.prosecutors.on.ca)**

Like Architects, Engineers and others, our members are dedicated and trained professionals ensuring public safety for the people who live and work in Ontario.



### 2012 Municipal Licensing & Law Enforcement Forum

Don't miss out on this Premier Event for Municipal Licensing and Law Enforcement Professionals: **When: May 9 -10, 2012, Where: Brae Ben Golf Course in Mississauga, Ontario.**

This is an insightful and dynamic event featuring expert offerings for current and upcoming trends in **Municipal Licensing and Law Enforcement; Case Law and Legislative Updates; Emerging and Challenging Issues**, including discussions on Hoarding; the Freeman on Land and Sovereign Citizen Movement; Performance Measurement for Licensing and Law Enforcement, and important updates from partner associations – OAPSO, MLEOA, PAO, and AMCTO. This event will help you stay ahead of the curve on new developments in a dynamic interactive forum led by issues experts.

For more information and to register, please go to

[http://www.amcto.com/imis15/content/Education\\_Events\\_Pages/Workshops\\_Landing\\_Page/2012\\_Workshops/2012\\_Municipal\\_Licensing\\_and\\_Enforcement\\_Forum.aspx](http://www.amcto.com/imis15/content/Education_Events_Pages/Workshops_Landing_Page/2012_Workshops/2012_Municipal_Licensing_and_Enforcement_Forum.aspx)



The Municipal Law Enforcement Officers' Association is a non-profit professional Association representing Municipal Law Enforcement Officers throughout the Province of Ontario. It was first established in 1979 and in 1985 it was incorporated as a non-profit organization. Currently, the Association represents approximately 1,600 Municipal Law Enforcement Officers. Our membership ranges from the small rural communities to the large urban centres. We also enjoy associate memberships with individuals throughout North America. Municipal Law Enforcement Officers are appointed by Council under the provisions of the Police Services Act or other Provincial Statute to enforce local municipal by-laws and other applicable Provincial Statutes. Municipal Law Enforcement Officers may also be responsible for prosecutions and other legal actions undertaken by their municipality.

The Municipal Law Enforcement Officers' Association also provides training to both members and non-members of the Association. Currently the Association offers the following training programs.

- ✓ Part I – Municipal Law Enforcement Foundations
- ✓ Part II – Courtroom Preparation for Enforcement Officers'
- ✓ Part III – Continuing Education (variety of workshop topics available)
- ✓ Part IIII – Environmental Noise Enforcement
- ✓ MLEOA Annual Training Seminar

For more information on becoming a member and our training programs please visit our website at [www.mleoa.ca](http://www.mleoa.ca).

Jon Popple, Vice President  
Municipal Law Enforcement Officers' Association (Ontario)  
[jpopple@e-aurora.ca](mailto:jpopple@e-aurora.ca)



# Legislation Committee Update

by Jane Moffatt  
Chair

There remain a number of amendments to the POA enacted by the Good Government Act, 2009 not yet proclaimed in force, but pending. These include the new early resolution regime for Part I offences, the use of certificate evidence and e-filing among a few others. The electronic appearance provisions have been in force since June, 2010 however until the advent of remote interpretation services in the context of early resolution meetings, have yet be used.

The rapid pace of legislative change now and coming soon can be almost overwhelming. At the spring workshop, I'll be providing an update on these issues, as well as the continued appetite for POA reform as contained in the OAPSB White Paper regarding unpaid POA fines and particularly the Law Commission's report "Modernizing the POA" - both released in November, 2011. There will also be a panel convened specifically to discuss the issues surrounding implementing the new early resolution provisions under Part I.

For those of you who are a licensed paralegal, you will know that this is the first year of the introduction by the Law Society of a Paralegal Award. Submissions for nomination closed at the end of January and I understand there were 18 nominations. This award demonstrates the Law Society's continued interest in acknowledging excellence in the paralegal profession. Keep a look out for further announcements coming soon and don't hesitate to consider nominating a deserving licensed paralegal in the years to come - which includes the category of paralegal prosecutors, of course!



## POA Info Bulletin 187 dated March 5, 2012

The ministry has been advised that the Federal Department of Justice will be asking the Ontario Court of Justice Rules Committee to revise the Notice of Constitutional Question (NCQ) form to show the correct fax number for its Toronto office (i.e., changing the fax number on the form from (416) 973-3004 to (416) 952-0298). This "new" number i.e., (416) 952-0298) has been in use for several years.

Please forward this POA bulletin to all POA prosecutors in your area to ensure that they are aware that (416) 952-0298 is the correct fax number for sending NCQ forms to the DOJ Toronto office and that the NCQ form is expected to be updated to reflect this number later this year.



## Preparing for Future Success

As Chair of the Awards Committee, I am honoured to represent the Prosecutors' Association and its members when presenting awards to students who excel in Paralegal programs across the province. On March 1, 2012, I had the pleasure of attending Durham College and presenting James Heahnel with the Prosecutors' Association Award and honorarium. This award is given to a second year student who best exemplifies the ethics and ideals of justice while demonstrating excellence in advocacy. Members of the Association should be proud that they are helping students prepare for success in their chosen field.



April Patterson  
Awards Chair

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# Education Committee Update

“As we reflected on the past year, it suddenly became apparent to us that our educational endeavours provide the cornerstone to the strength of this Association and the professionalism of its members. Sometimes as we become caught up in the minutiae of planning our seminars, we lose sight of this fact and are reminded when we receive feedback, and most especially when we receive phone calls and e-mails inquiring as to the dates/times/content of the next course, well in advance of any date being posted. This is when we realize we are surrounded by a strong and committed membership who are just as concerned with education as we are. We thank you for your constant interest.

In the Fall of 2011, we hosted our second “Municipal Back to Basics” program, this time for an entire day. We are happy to report that attendance was high, and from the feedback that we did receive, it was a highly successful day! Many thanks to our able presenters for taking the time to compile and deliver such an informative and significant session. We are already turning our minds to the fall and our next instalment. It promises to be another exciting and information packed educational workshop.

Included in this newsletter is an Invitation to the Spring Workshop in Niagara Falls on April 18th and 19th. Registration details and a Registration Form is included, and also available on-line. We are very pleased to report that we were able to continue to offer this program with no change in conference rate. Please refer to the registration form for information and payment instructions. Should you be travelling from a distance and wish to take advantage of the superior accommodations offered by the Embassy Suites, please ensure that you book your room by MARCH 27th to avoid disappointment. We are currently working on a networking activity for Wednesday April 18th. Check the website frequently for more details as they become available.

You will also find an Agenda for the conference in your newsletter. There are still some presenters who are yet to be confirmed, but the Agenda will be updated as confirmation is received. We are currently waiting to receive confirmation from the Law Society on accredited CPD hours, as well as new member hours. This information will also be posted on the website once we have been approved.

As always, your Education Committee wishes to thank you for your on-going support of our efforts, and we hope to see you in the Spring, and in the Fall!”

Charlene Perrotta – Chair - Education Committee  
Marcia Stoltz – Co-Chair – Agenda Committee  
Christine Smythe – Co-Chair – Conference Committee



## Awards Update

In 2011, the Prosecutors’ Association of Ontario (PAO) awarded Charlene Perrotta the Individual Award of Merit for a decade of service to the Prosecutor’s Association and to the administration of Justice. Charlene epitomizes all of the leadership qualities you expect of a director of the PAO. She has the drive, energy, commitment and integrity necessary to get things done and build relationships to advance the objectives of the Association.



This year prior to the fall conference, we would like to consider YOUR suggestions for the following four awards:

Award of Merit/Recognition of Achievement Individual which is presented to someone who provides outstanding service to the Association;

Corporate Recognition is granted by the board to a corporation the contributes to the furtherance of justice while demonstrating exemplary commitment to assisting and supporting the aims and objectives of the Association;

A life time membership is given to a member of the Association who has rendered outstanding service to the Association;

Honorary Membership is given to an individual in appreciation for outstanding service to the Association.

Please send all suggestions me at [april.patterson@caledon.ca](mailto:april.patterson@caledon.ca)  
April Patterson  
Awards Chair



# Case Law Update

By: Jane Moffatt,  
Chair, Legislative Committee

Please note that nothing contained in this newsletter constitutes legal advice. The case summaries are intended only to be the starting point for your own research – we hope you find them useful.

## Charter rights – 11(b) delay

*R. v. Tran* [2012] O.J. No. 83 (C.A.)

This case is a useful summary for the current law on stay for delay under s. 11(b) of the Charter:

### a) Analytical Framework

[20] The framework for analyzing an application for a stay under s. 11(b) of the Charter is well-established. The court must consider: i) the overall length of the delay between the laying of the charges and the end of the trial; ii) whether the accused has waived any of the delay; iii) the reasons for the delay; and iv) prejudice to the accused.

[21] The first factor, overall length of the delay, is a screening mechanism to determine whether an inquiry into the reasonableness of the delay is warranted. If the overall length of the delay, when considered in the context of all the circumstances (such as whether the accused is in custody), is unexceptional, no inquiry is required. Where an inquiry is warranted, time periods waived by the accused should be deducted from the overall length of the delay before considering the reasons for any remaining delay.

[22] Five considerations come into play when considering the reasons for the delay: a) the inherent time requirements of the case; b) actions of the accused; c) actions of the Crown; d) limits on institutional resources; and e) other reasons for the delay.

[23] One of the two main purposes of s. 11(b) of the Charter is the protection of an accused's rights under the Charter to security of the person, liberty and a fair trial. An accused will suffer actual prejudice where the accused can demonstrate that the delay in bringing a case to trial has impaired one of those rights. Prejudice may be inferred where the delay between arrest and trial is simply too long.

[24] Once the four factors have been assessed, the court must determine whether the length of the delay is unreasonable having regard to the interests of the accused and the societal interests s. 11(b) seeks to protect, the explanation for the delay and the prejudice to the accused. See *Morin* at pp. 786-803.

## Appeal against acquittal, inadequate reasons

*R. v. Felts* [2011] O.J. No. 6204 (C.J.)

5 I begin by indicating that I fully appreciate that those individuals who are appointed to sit as justices of the peace are frequently citizens who have a wealth of experience in the community, in the business world, in the education field, in all aspects of employment who often come to this position later in life. They rarely have any training in legal matters and it is exceptionally rare that an individual would be appointed with some working knowledge of the laws of evidence and criminal process. They are trained on a very steep learning curve. That training falls far less than that received by even a first-year law student. They are asked to draw upon their experience, common sense and general knowledge and their somewhat limited training to preside over matters in the Provincial Offences Court. They acquire a great deal of experience on the job.

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12 There is a lack of analysis, there is a lack of conclusions, there is a lack of weighing and assessing of evidence. If I'm asked to decide or to review how the Justice of the Peace made this decision, what was important and what was not important, the reasons are absolutely lacking and those alone would indicate that the reasons are insufficient, constituting a palpable and overriding error.

The court refers to *R. v. Shephard* "It would be wrong to expect them (Judges and Justices of the Peace) to explain in detail the process they followed to reach a verdict. They need only give reasons that the parties can understand and that permit appellate review."

Justice Pokele concludes that he does not understand the reasons, making appellate review difficult and therefore struck the acquittal and ordered a new trial.

### **Amend wrong set fine when defendant attorns?**

*R. v. Siguencia-Vargas*, [2011] O.J. No. 6080(C.J.).

The defendant requested that the court quash the Certificate of Offence on the basis that the set fine indicated on the Certificate was incorrect. The issue was whether or not the certificate could be quashed or was the court obliged to amend the defective certificate because the Defendant had attorned to the jurisdiction of the court. The trial court held that as a proper request to amend the certificate in court for both the court and the Defendant to consider was not done by the prosecution, the certificate was quashed as it was not proper and regular on its face. The failure to make the amendment request caused prejudice to the Defendant. The court held that cases (such as *R. v. Sivagaru*, *Regional Municipality of York v. Talabe*, *R. v. Singh*, and *London (City) v. Young*) applied and that the set fine is a component of the Certificate of Offence that is required for the certificate to be considered 'complete and regular on its face'. "The set fine should not be considered mere surplus but rather its importance lies in the fact that it is the penalty component of the charge which can impact a defendant if it is incorrect and moreover this error needs to be addressed by a justice at some stage of the proceeding be it either on a fail to respond docket, in court if a defendant does not attend where the court must address whether or not to find the defendant guilty in his/her absence, or if the defendant either in person or through his agent attends court and draws the deficiency to the attention of the court." In this case, the prosecution did not seek the amendment in court but in written submissions to the court. The court found this to be prejudicial to the defendant.

\*Summary prepared by Sheilagh Stewart, Counsel, Ministry of the Attorney General, reproduced with permission and our sincere thanks

### **Original Part III Information lost**

*R. v. Protech Roofing Waterproofing Ltd.* [2011] O.J. No. 5360 (Ont. S.C.)

The portion of an information that contained the charges was lost, however a copy of the whole information was available in the courtroom. The Justice of the peace ruled that the matter was a nullity, saying the court lost jurisdiction. The Superior Court upon review subsequently states that nowhere does the POA provide that the original information must still be in existence for the court to have jurisdiction to deal with a charge and was not persuaded that the continuing existence of the original information served any purpose [even though court endorsements were not on the copy]. There was no evidence of prejudice in making full answer in defence.

Since *R. v. Sault Ste. Marie*, [1978] S.C.J. No. 59 (S.C.C.), Canadian law has been moving towards substantive decisions on the merits as opposed to decisions based on empty procedural formalism. *R. v. Veltri*, [1986] O.J. No. 894 (Ont. C.A.) said it is an error in law to rule that court's jurisdiction depended on the presence of the information in the courtroom. The administration of justice would be brought into disrepute if the court sanctioned the termination of a proceeding due to a procedural irregularity that has caused no prejudice to a defendant. Mandamus application was granted directing the court to proceed with the charge contained in the information as originally sworn.

## **Officer amendment to certificate following service of PON**

*R. v. Tizzard* [2011] O.J. No. 6156 (C.J.)

Officer amended a certificate of offence to add the rate of speed after serving defendant with an offence notice. The defendant was convicted under s.9 “fail to respond” and appealed. Justice Bellefontaine followed *R. v. McGonigal*, [1990] O.J. No. 3400 (C.J.) and *R. v. Koza*, [1995] O.J. No. 4278 (C.J.). The court says that in order to make an informed decision to enter a plea, a defendant needs to know what they are pleading to or what they will be convicted of if they refuse to act and need to assess the administrative consequences of their plea also. Allowing a post service amendment to the certificate of offence where that amendment is substantive, deprives the defendant of that ability to make an informed decision whether to plead guilty, to have a trial or to ignore the matter.

Rule 15(1) of Reg. 200 reads “The following matter shall be dealt with only in court; ... 2. Amending --- a certificate of offence”. This prohibits an amendment made outside the court process. The absence of a specific rate of speed on the certificate of offence is an omission that is fatal to it being complete and regular on its face, such that the examining justice would be required to quash the information under s. 9(2) of the POA. In the absence a specific rate of speed on the certificate, the justice would not be able to determine if the set fine was correct, which is an essential component to determining whether the certificate is regular.

## **Speeding**

*R. v. Meli* [2011] O.J. No. 5314 (Ont. C.J.)

At trial, the court held that the officer testified that he was a trained and qualified laser operator, that he had annual training on the device, he tested the equipment at the beginning of his shift, continued to use it the rest of the day and had no evidence that it was not working properly. Defendant was convicted and appealed, arguing that officer should have tested it, perhaps, at the end of his shift and noted specific times as to the testing of this device. In dismissing the appeal, the court said that the officer followed the manufacturer’s instructions and the trial justice made no error in arriving in convicting the defendant.

\*Summary prepared by Sheilagh Stewart, Counsel, Ministry of the Attorney General, reproduced with permission and our sincere thanks

## **Information sworn but process not confirmed**

*R. v. Ladouceur* [2011] O.J. No. 6138 (Ont. S.C.)

The trial judge quashed the information because process was not confirmed. The Superior Court of Justice on review states the defect in the information could not be remedied by the appearance of the accused and reliance on *Markovic*, [2005] O.J. No. 4286 (Ont. C.A.) was not appropriate because it dealt with non-compliance with s. 505 Criminal Code and not s. 508 Criminal Code. The trial judge was correct to follow *Gougeon* (1980), 55 C.C.C. (2d) 218 (Ont. C.A.) in quashing the information.

## **Sentence**

*R. v. Hagen* [2011] O.J. No. 5365 (Ont. C.A.)

The Ontario Court of Appeal reaffirms the principle that where a trial judge intends to impose a higher sentence than the Crown’s position, particularly by a significant amount, counsel should be advised of this and given an opportunity to make further submissions.

## **Notes of critical observations – HTA charge**

*R. v. Vandemunt* [2011] O.J. No. 5783 (C.J.)

The issue on this appeal is the extent to which the failure by an officer to make written notes that reflect critical observations is a factor in assessing the reliability of that evidence from the

officer. The appellant was charged under S.107(11) of the HTA with driving a commercial motor vehicle with a major defect. The MTO officer testified that he made notes at the time of his investigation and that he had an independent recollection of events. The Regulations set out a specific testing protocol and under cross-examination the officer acknowledged that he didn't make a note regarding one aspect of the testing procedure and proceeded to testify about his normal practice.

Counsel for the defendant argued that the failure to note a significant observation went to the officer's credibility and the court should therefore reject that evidence.

The Justice of the Peace rejected that argument. She found that the officer had an independent recollection, he gave consistent evidence and it was his evidence, presumably the viva voce evidence, which the court had to consider as to reliability. The Justice of the Peace erred, however, by saying:

"I will say that there is a much higher standard dealing with criminal matters and that the Rules of Evidence are stricter and for these reasons this court reaches a finding that the criminal case law not apply to Regulatory matters."

The law with respect to deficiencies in notes is succinctly discussed by Justice Fournier in *R. v. Odgers* [2009] O.J. No. 2952 as follows:

"It can be of particular concern in instances, when events or observations of obvious relevance and importance, are omitted or not adequately documented in the notebooks of officers. In such instances, the courts have demonstrated a heightened awareness of the evidentiary dangers such deficient notes present to a trier of fact. When serious inadequacies are demonstrated, the credibility of police officers can in fact be discounted. It goes without saying that the absence of notes on an important factor is relevant to an officer's credibility. As a result the courts have on occasion been reluctant to attribute much weight to evidence adduced viva voce by an officer in the absence of corroborating written references in that officer's notebook. Ultimately however, this is a matter of common sense and as usual each case must be determined on its merits."

When the Justice of the Peace indicated that there is a much higher standard dealing with criminal matters as opposed to Regulatory matters, she was in error. The standards are identical: proof beyond a reasonable doubt with respect to each element of the offence. Except to the extent which the Ontario Evidence Act may provide otherwise, the Rules of Evidence are as strict for Regulatory matters as they are for Criminal Code matters. To the extent that the Justice of the Peace held otherwise, she was in error.

At paragraph 11:

"...I am unable to conclude that her finding of credibility would have been the same had she understood that the absence of a written note on that important piece of evidence was a factor relevant to assessing credibility. It may well be that in assessing credibility, the Justice of the Peace would have concluded that the absence of a note was of no particular consequence in light of all the other evidence she heard. However, given the errors, the conviction cannot stand."



## Is there something strange happening in your courtroom, who you gonna call? The Mentors!

From time to time, and it seems to be more frequent these days, something unexpected is thrown at you with little or no time to respond. When this happens, remember that you always have the mentors to call on in your time of need. If you do not know who the mentors are or you would like more information please visit the website at [http://www.prosecutors.on.ca/en/mentor\\_program](http://www.prosecutors.on.ca/en/mentor_program) and check out the Mentors section.

# The Prosecutors Association 2011 Fall Seminar at The Clevelands House in Minnett





# Civil Rules Of Procedure Do They Apply To Proceedings Under The Provincial Offences Act?

By Mark McDonnell, prosecutor for The Regional Municipality of York

I had a matter in our POA court in which the defendant had filed a Motion to Strike his speeding case from the trial list as it did not demonstrate a Cause of Action. He relied on the Rules of Civil Procedure, R.R.O. 1990, Regulation 194, made pursuant to the Courts of Justice Act, R.S.O. 1990, c. C 43.



In order to refute this and submit that the Justice of the Peace did not have any jurisdiction to hear this application under the Civil Rules, I was able to find the case of *R. v. Parmar et al.* (1978), 61 O.R. (2nd) 132, which dealt with the issue of the applicability of the Civil Rules to a criminal matter. It's from the Ontario High Court of Justice (now the Superior Court of Justice) so it is binding authority. Since s. 2 of the POA clearly states that we should look to the Code for direction and this case dealt with the Code, it should be equally applicable to the POA.

To put it succinctly, pages 17 - 20 have the important stuff on this point.

The Civil Rules do NOT apply unless they are specifically referred to in the Code (or POA).

In addition, one must look at the Civil Rules as well as the POA to determine their applicability.

First, under rule 1.02 of the Rules of Civil Procedure (R.R.O. 1990, Regulation 194) the Civil Rules apply to civil proceedings in the Court of Appeal and the Superior Court. POA proceedings are in the Ontario Court of Justice. As such, the Civil Rules DO NOT apply to POA proceedings by virtue of this rule. Rule 1.02 reads as follows:

## APPLICATION OF RULES

### Court of Appeal and Superior Court of Justice

1.02 (1) These rules apply to all civil proceedings in the Court of Appeal and in the Superior Court of Justice, subject to the following exceptions:

1. They do not apply to proceedings in the Small Claims Court, which are governed by Ontario Regulation 258/98 (Rules of the Small Claims Court).
2. They do not apply to proceedings governed by Ontario Regulation 114/99 (Family Law Rules), except as provided in those rules.
3. They do not apply if a statute provides for a different procedure. R.R.O. 1990, Reg. 194, r. 1.02 (1); O. Reg. 484/94, s. 1; O. Reg. 288/99, s. 1 (1, 2); O. Reg. 292/99, s. 1 (1, 2); O. Reg. 131/04, s. 1 (1, 2); O. Reg. 394/09, s. 1.

Second, the only section contained in the POA which makes any portion of the Civil Rules applicable involves the practice and procedure for taking Commission evidence under s. 43 of the POA. Section 43(4) of the POA states:

### Application of rules in civil cases

(4) Except as otherwise provided by this section or by the rules of court, the practice and procedure in connection with the appointment of commissioners under this section, the taking of evidence by commissioners, the certifying and return thereof, and the use of the evidence in the proceeding shall, as far as possible, be the same as those that govern like matters in civil proceedings in the Superior Court of Justice.

I've heard that this type of thing has happened a little bit more often than in the past so, rather than re-inventing the wheel, I thought that this case might be of use.

Note – Please feel free to contact Ted Allen or Mark McDonnell if you would like a copy of *R. v. Parmar*. This article does not constitute legal advice, is the opinion of the author, and does not reflect those of the Region of York.

Thanks to Hans Saamen for his invaluable input



# Amazing!!

Looking for something to do and not wanting to lose your shirt at the casino?

For one day only: April 18th, the AMAZING KRESKIN will be at the Greg Frewin theatre, coinciding just perfectly with our seminar!! You may contact the theatre directly to reserve your tickets in advance at [www.gregfrewintheatre.com](http://www.gregfrewintheatre.com). The Embassy Suites will also provide shuttle service to and from the theatre.

Other activities that are available are: Dave and Busters – a 40,000 square foot entertainment complex; Ripley's Believe It or Not; Ripley's Moving Theatre; Rock Legends Wax Museum; Bird Kingdom – 4x Winner of "Niagara's Attraction of the Year"; to name a few. Visit the Concierge Desk at Embassy Suites for more information and directions.

Don't forget we will once again be hosting friends old and new in our hospitality suite the evening of the 17th and before and after dinner on the 18th. Come on up and re-connect with former acquaintances and say "hello" to someone new. Details will be provided at check-in.

Christine Smythe  
Co-Chair – Education Committee



## Q & A - Transit Bylaw

### Question

Regarding proof of payment on the topic of a transit bylaw, once the passenger is off the bus, can the enforcement officer make a demand to see the proof of payment? In other words, does the right of an enforcement officer to ask for proof of payment end, once the passenger is no longer on the bus?

### Answer

R v. Frankel ([2011] O.J. No. 1569 (C.J.), reversing trial decision: [2010] O.J. No.6006) "the requirement to show proof of payment doesn't end the minute the person steps off the bus, particularly if the demand is made when the person is still on the bus".

The case law compares the similarity with section 33.1 of the Highway Traffic Act in that when the driver of a motor vehicle is asked for his licence, the demand is not "frustrated" should the driver exit his vehicle.



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**PROSECUTORS' ASSOCIATION OF ONTARIO  
SPRING 2012 WORKSHOP**

EMBASSY SUITES HOTEL - FALLSVIEW  
6700 FALLSVIEW BLVD., NIAGARA FALLS, ONTARIO

**AGENDA**

This 2 day course will qualify for up to 11 hours of your annual Compulsory Professional Development (CPD) hours with the Law Society. We are in the process of obtaining accreditation for 3 of the 11 hours as mandatory professionalism content/hours. Watch the PAO website for updates.

**April 18th, 2012**

- 9:00 – 9:45 a.m. Registration, refreshments and networking
- 9:45 – 10:00 a.m. Welcome from Prosecutors' Association of Ontario  
Jane Moffatt, President
- 10:00 – 10:15 a.m. Greetings from MCMA – Barry Randell, President / Director of  
Court Services, City of Toronto
- 10:15 – 10:30 a.m. Introduction to New Website  
Steve Weir, Manager Transit Safety, Metrolinx
- 10:30 – 12:00pm New Early Resolution Program Under Part 1  
Barry Randell, Director of Court Services, City of Toronto  
Jane Moffatt, Prosecutor, Region of Durham  
others to be confirmed

Recently proclaimed in force and being rolled out across the province as we speak. What is "ER", why is it important, what are the issues surrounding implementation and what lessons were learned through the Audio Remote Interpretation Project. Don't miss this informative session - and bring your questions!

12:00– 1:00 p.m. LUNCH BREAK (included & provided on-site)

- 1:00 – 2:15p.m. Ethics and the Enforcement Officers Notes  
Sheilagh Stewart, Counsel,  
Ministry of the Attorney General  
Ted Allen, Supervising Prosecutor, Region of York

The Law Society of Upper Canada Paralegal Rules of Conduct, stressing the duty as a prosecutor, the duty to clients, the duty to tribunals, and the prosecutor's professional responsibilities. Case law on the subject of the enforcement officer's notes which point out the ethical obligations the prosecutor should follow, including ethical disclosure practices and the paralegal agent's ethical responsibilities as it relates to why they do what they do. The ethical responsibilities that the justice of the peace must follow during their courtroom involvement, as it pertains to their concerns over notes and disclosure.  
\*\*will be applying for CPD\*\*

2:15 – 2:30 p.m. AFTERNOON BREAK

- 2:30 – 3:30 p.m. Commercial Motor Vehicle Prosecutions  
John Petrosniak – Counsel / Prosecutor,  
Ministry of Transportation

Prosecuting charges laid by local or provincial police services, other than the MTO. While we have had presentations by OPP in the past and the information was very welcomed and well received, we would like to have a presenter specifically from a prosecutor's perspective. We envision a

discussion on the common charges, common defences, CVOR point system, and leading handful of cases which govern these types of prosecutions.

3:30 – 4:15p.m.

Pressing Issues of the Day  
Sheilagh Stewart, Counsel, Ministry of the Attorney General  
Hans Saamen, Senior Counsel, Prosecutions, Region of York

Our expert panel will discuss recent developments in prosecuting use of hand held communication devices while driving and how Charter delay applications are being considered in relation to minor regulatory offences. The Court of Appeal is busy! Bring your pressing issues to the table and have your questions answered.

### April 19th, 2012

8:00 – 8:45 a.m.

Breakfast

9:00 – 9:15 a.m.

Demonstration of reported case law consolidated summary  
Stacy Stanley, Prosecutor, City of Hamilton

9:15 – 10:30 a.m.

Case Law Update  
Emma Luca, Solicitor, Prosecution Section, Legal Services,  
City of Toronto

10:30 – 10:45 a.m.

MORNING BREAK

10:45 – 11:30a.m.

Legislative Reform  
Jane Moffatt, Prosecutor, Region of Durham

There have been significant changes to the POA made by the Good Government Act, 2009 and still other amendments soon to be proclaimed in force. The Law Commission of Ontario recommends further changes which could significantly impact the enforcement and prosecution of provincial offences. This session will be a high-level overview of the most recent legislative changes, the status of those still pending proclamation and the continued appetite for legislative reform.

11:30 – 12:15p.m.

Appeals – Unrepresented Defendant  
The Honourable Justice Sheila Ray

12:15 - 1:15 p.m.

LUNCH (included & provided on-site)

1:15 – 3:00p.m.

Handling the Challenging (Unrepresented) Defendant – Panel Discussion  
The Honourable Justice Sheila Ray  
Sheilagh Stewart, Counsel, Ministry of the Attorney General  
others to be confirmed

This session will discuss common issues which may interfere with a defendant's ability to manoeuvre through the justice system on their own and how the prosecutor has a role in ensuring access and procedural fairness. The prosecutor's response to the unprofessional defendant, the confused, angry, aggressive or scared defendant has a profound impact not only for that person, but on the public's confidence in the administration of justice. Specific attention will be given to unprofessional communications, ensuring procedural fairness when seeking to amending "up" a speeding charge, Charter applications, abuse of process allegations and application of the SCC McNeil case to POA matters.

\*\*will be applying for CPD\*\*

3:00 – 3:30 p.m.

Seminar Wrap-up and Closing Remarks



# Membership Committee Winter

On behalf of the membership committee I wish to thank you for your continued support of our association. We hope to continue meeting your needs in the coming year in providing informative timely and pertinent education. The annual membership fee continues to be \$80 and you can find a copy of the membership form both with this newsletter and on our website: [www.prosecutors.on.ca](http://www.prosecutors.on.ca). Just a friendly reminder to include your membership number on all of your correspondence, in order to help us with our seminar registration and membership data base.

We are trying to go paperless as much as possible so if you are not going to be attending our spring seminar, which is to occur on April 18-19 2012, or the fall seminar in September, and wish a 2012 sticker for your certificate please e-mail me with your current address and I will be happy to mail one out.



Thank you, and looking forward to seeing you at our seminars.

Christine Smythe  
Director, Prosecutors' Association of Ontario  
c/o The City of Toronto  
Corporate Services, Legal Division  
60 Queen St West  
Toronto, Ontario M5H 2M4  
Phone: 416-338-6958 Fax: 416-338-6986  
E-Mail [csmythe@toronto.ca](mailto:csmythe@toronto.ca)  
PAO website: [www.prosecutors.on.ca](http://www.prosecutors.on.ca)



## Embassy Suites Directions

For those of you new to the Embassy Suites, this map is your guide to ensure you're on time for a morning coffee and a snack.

### DRIVING DIRECTIONS

From Toronto/Pearson International Airport:

When exiting the airport, follow signs to the 401 west.

Follow the 401 to the 427 South.

Follow the QEW into Niagara Falls and exit at HWY 420 Bridge to USA.

Follow the 420 to Stanley Ave (1st stoplight) and turn right.

Follow Stanley Avenue to Dunn Street (approx 5 stop lights).

Turn left onto Dunn street and the Embassy Suites By Hilton Niagara Falls - Fallsview Hotel is straight ahead at 6700 Fallsview Boulevard.



Embassy Suites By Hilton  
Niagara Falls - Fallsview Hotel  
6700 Fallsview Boulevard  
Niagara Falls, Ontario Canada  
L2G 3W6  
1-800-420-6980  
[www.embassysuitesniagara.com](http://www.embassysuitesniagara.com)

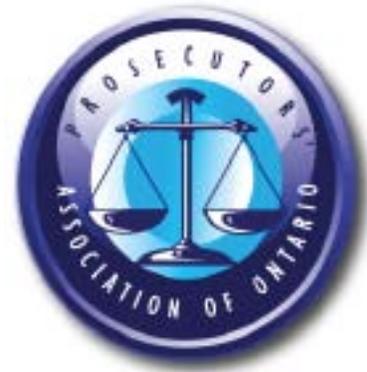
# Prosecutors' Association of Ontario

*Our Mission: To promote integrity, professional standards & independence through education*

C/O Prosecutors Office – Attention Deb Salvo  
City of Mississauga  
Mississauga, ON  
L5C 3B4  
Phone 905-615-3200 x4088  
Fax 905-615-4504

**YOU ARE INVITED!**

**SPRING TRAINING WORKSHOP**



Wednesday and Thursday, April 18 and 19, 2012  
EMBASSY SUITES by Hilton  
FALLSVIEW – NIAGARA FALLS, ONTARIO

You are cordially invited to attend the Prosecutors' Association of Ontario annual spring training workshop in Niagara Falls.

Back by popular demand, we are again hosting a two-day spring workshop event, Wednesday, April 18th and Thursday, April 19th 2012. Registration will begin at 9:00 am on the first day, with sessions starting at 10:00 am in order to minimize the need for more than one night in a hotel for many delegates.

The organizing committee is pleased to advise that the registration fee continues to be nominal - \$129/person (+HST) members and \$229/person (+HST) non-members. The fee includes both days' sessions, as well as lunch each day and refreshments at registration.

The agenda is now posted on our website at [www.prosecutors.on.ca](http://www.prosecutors.on.ca). For those of you who live close by or are staying overnight, please be advised that there is a small networking event on-site planned for the Wednesday evening. We are also trying to arrange a group of tickets for a show with transportation to the venue for those interested. We will inform you when those details are put in place. Stay tuned!

Registration and fee to be returned to the address indicated no later than March 31, 2012. Online registration and payment also available through [www.prosecutors.on.ca](http://www.prosecutors.on.ca).

Receipt (if required) will be available at registration upon request. (Please advise Deb Salvo in advance if you require a receipt.)

If you require overnight accommodation, a block of rooms have been put aside Tuesday and Wednesday at the Embassy Suites by Hilton Fallsview, Niagara Falls under the name of the "Prosecutors' Association" at a rate of \$135.00. This rate includes parking, buffet breakfast and a \$40.00 voucher for The Keg Restaurant or T.G.I. Friday's per room for one night only.

These rooms will be held on reserve until March 27th, 2012 and will then be released to the general public.

See the website for more details.



# 2012 Spring Workshop Registration

## April 18th to April 19th, 2012

**REGISTRATION IS TIME SENSITIVE - SPACE IS LIMITED**

Rate includes two full days of professional development  
Lunch provided both days - refreshments at registration.  
A full agenda is available online on your website  
[www.prosecutors.on.ca](http://www.prosecutors.on.ca)

### **How to book Accommodations - [www.embassysuitesniagara.com](http://www.embassysuitesniagara.com)**

If you require overnight accommodation, a block of rooms have been put aside for Tuesday Apr 17th and Wednesday Apr 18th at the Embassy Suites by Hilton Fallsview, Niagara Falls under the name of the "Prosecutors' Association" at a rate of \$135.00. This rate includes parking, buffet breakfast and a \$40.00 voucher for The Keg Restaurant or T.G.I. Friday's per room for one night only. These rooms will be held on reserve until March 27th, 2012 and will then be released to the general public.

<b>Applicant Name:</b>	
<b>Job Title:</b>	
<b>Employer:</b>	
<b>Address:</b>	
<b>City (Municipality)</b>	
<b>Postal Code</b>	
<b>Phone/Fax #s</b>	
<b>Email Address</b>	
<b>Membership No.</b>	

**Member rate (\$129.00 +HST)**  
Cost with HST: \$145.77

**Non-Member rate (\$229.00 +HST)**  
Cost with HST : \$258.77

Make payment payable to:

Forward Registration & Cheque to:

REGISTER EARLY TO AVOID  
DISAPPOINTMENT

Check our Website: [www.prosecutors.on.ca](http://www.prosecutors.on.ca)

Prosecutors' Association of Ontario  
Attention: Deb Salvo

Prosecutors' Association of Ontario  
c/o City of Mississauga  
Provincial Offences - Prosecutions  
950 Burhamthorpe Rd. West  
Mississauga, ON L5C 3B4

P-(905) 615-3200 x 4088 F-(905) 615-4504  
[Deborah.Salvo@mississauga.ca](mailto:Deborah.Salvo@mississauga.ca)

**Refunds - No refunds within 15 days of the event. Refund requests received prior to that will be subject to an administrative fee of \$50.00 +HST**



# PROSECUTORS' ASSOCIATION

O F O N T A R I O

## 2012 MEMBERSHIP APPLICATION

RENEWAL (\$80.00)

NEW MEMBER (\$80.00)

Applicant Name:	
Job Title:	
Employer:	
Address:	
City (Municipality)	
Postal Code	
Phone/Fax #s	
Email Address	
Application Date:	

Membership List: I do *not* wish to be listed on the Association's web site:  
(Information to include: name, corporation, workphone, email address)

Make payment payable to:

Prosecutors' Association of Ontario

Forward Application & Cheque to:

Prosecutors' Association of Ontario  
c/o City of Mississauga  
Provincial Offences - Prosecutions  
950 Burhamthorpe Rd. West  
Mississauga, ON L5C 3B4  
Attention: Deb Salvo  
Deborah.Salvo@mississauga.ca

Check our Website: [www.prosecutors.on.ca](http://www.prosecutors.on.ca)

Date Received		Received By:	
Payment Received		Sticker Sent:	Date Sent:

# PAO Board Members



The Prosecutors' Association of Ontario (PAO) is pleased to announce its new executive and Board of Directors for the year 2011-2012.

Jane Moffatt, President  
Region of Durham  
[jane.moffatt@durham.ca](mailto:jane.moffatt@durham.ca)

Charlene Perrotta, Vice President  
City of Mississauga  
[charlene.perrotta@mississauga.ca](mailto:charlene.perrotta@mississauga.ca)

Doug Meehan, Past President  
City of Mississauga  
[douglas.meehan@mississauga.ca](mailto:douglas.meehan@mississauga.ca)

Kevin Wiedekowsky, Treasurer  
City of Brampton  
[kevin.wiedekowsky@brampton.ca](mailto:kevin.wiedekowsky@brampton.ca)

Ted Allen, Director  
Region of York  
[ted.allen@york.ca](mailto:ted.allen@york.ca)

Marcia Stoltz, Director  
City of Toronto  
[mstoltz@toronto.ca](mailto:mstoltz@toronto.ca)

Christine Smythe, Secretary  
City of Toronto  
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Steve Weir, Director  
MetroLinx - Go Transit  
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April Patterson, Director  
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Michael Schulthess, Director  
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Rhonda Vanderlinde, Director  
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Steve Dunford, Director  
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Nancy MacDonald-Duncan, Director  
City of St. Catharines  
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Deborah Salvo  
Executive Assistant to the Board; and  
Official membership/course registrar  
[deborah.salvo@mississauga.ca](mailto:deborah.salvo@mississauga.ca)

Sheilagh Stewart  
Counsel, Criminal Law Division  
Ministry of the Attorney General (MAG)  
MAG liaison to the PAO  
[sheilagh.stewart@ontario.ca](mailto:sheilagh.stewart@ontario.ca)

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Mississauga, Ontario L5C 3B4

Visit our website: [www.prosecutors.on.ca](http://www.prosecutors.on.ca)