

# Charges for Stunts or Racing

s. 172(1), *Highway Traffic Act*

## Stunts or Racing or Excessive Speeding



The offence of stunt driving or racing or engaging in excessive speeds, among other things, may result in significant affects upon the driving record of the accused motorist including, as shown below, penalties ranging from a fine between \$2,000 and \$10,000 as well as the possibility of six months imprisonment in addition to an on the spot seven day license suspension and seven day vehicle impoundment with potential for license suspension of up to two (2) years.

Additionally, whereas such a charge falls within the 'serious' category used by insurers, upon a conviction insurance pricing may be, and likely will be, significantly increased especially where access to the 'regular' marketplace becomes lost and the obtaining of insurance coverage must be made through an alternate 'high risk' insurer or the Facility Association.

### The Law, statutory

Stunt driving or racing or excessive driving is an offence per [s. 172\(1\)](#) of the *Highway Traffic Act*, [R.S.O. 1990, c. H.8](#) ("*HTA*") which states:

#### Racing, Stunts, etc., Prohibited

[172 \(1\)](#) No person shall drive a motor vehicle on a highway in a race or contest, while performing a stunt or on a bet or wager.

#### Offence

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not less than \$2,000 and not more than \$10,000 or to imprisonment for a term of not more than six months, or to both, and in addition his or her driver's licence may be suspended,

(a) on a first conviction under this section, for not more than two years; or

(b) on a subsequent conviction under this section, for not more than 10 years.

Furthermore, while the *HTA* may prescribe that an offence occurs when stunt driving or racing or excessive speed, among other things, occurs, it is the Regulation to the *HTA* that defines what conduct will constitute as stunt driving or racing or excessive speed, among other things. The regulation, being [O. Reg. 455/07](#), provides a broad range of defined conduct including what constitutes as a "race" or "contest", and more, being:

### Definition, "race" and "contest"

2. (1) For the purposes of section 172 of the Act, "race" and "contest" include any activity where one or more persons engage in any of the following driving behaviours:

1. Driving two or more motor vehicles at a rate of speed that is a marked departure from the lawful rate of speed and in a manner that indicates the drivers of the motor vehicles are engaged in a competition.

2. Driving a motor vehicle in a manner that indicates an intention to chase another motor vehicle.

3. Driving a motor vehicle without due care and attention, without reasonable consideration for other persons using the highway or in a manner that may endanger any person by,

i. driving a motor vehicle at a rate of speed that is a marked departure from the lawful rate of speed,

ii. outdistancing or attempting to outdistance one or more other motor vehicles while driving at a rate of speed that is a marked departure from the lawful rate of speed, or

iii. repeatedly changing lanes in close proximity to other vehicles so as to advance through the ordinary flow of traffic while driving at a rate of speed that is a marked departure from the lawful rate of speed.

(2) In this section,

“marked departure from the lawful rate of speed” means a rate of speed that may limit the ability of a driver of a motor vehicle to prudently adjust to changing circumstances on the highway.

What is defined as a "stunt" is also prescribed by the Regulation and is stated as:

### **Definition, “stunt”**

3. For the purposes of section 172 of the Act, “stunt” includes any activity where one or more persons engage in any of the following driving behaviours:

1. Driving a motor vehicle in a manner that indicates an intention to lift some or all of its tires from the surface of the highway, including driving a motorcycle with only one wheel in contact with the ground, but not including the use of lift axles on commercial motor vehicles.

2. Driving a motor vehicle in a manner that indicates an intention to cause some or all of its tires to lose traction with the surface of the highway while turning.

3. Driving a motor vehicle in a manner that indicates an intention to spin it or cause it to circle, without maintaining control over it.

4. Driving two or more motor vehicles side by side or in proximity to each other, where one of the motor vehicles occupies a lane of traffic or other portion of the highway intended for use by oncoming traffic for a period of time that is longer than is reasonably required to pass another motor vehicle.

5. Driving a motor vehicle with a person in the trunk of the motor vehicle.

6. Driving a motor vehicle while the driver is not sitting in the driver's seat.

7. Driving a motor vehicle at a rate of speed that is 50 kilometres per hour or more over the speed limit.

8. Driving a motor vehicle without due care and attention, without reasonable consideration for other persons using the highway or in a manner that may endanger any person by,

i. driving a motor vehicle in a manner that indicates an intention to prevent another vehicle from passing,

ii. stopping or slowing down a motor vehicle in a manner that indicates the driver's sole intention in stopping or slowing down is to interfere with the movement of another vehicle by cutting off its passage on the highway or to cause another vehicle to stop or slow down in circumstances where the other vehicle would not ordinarily do so,

iii. driving a motor vehicle in a manner that indicates an intention to drive, without justification, as close as possible to another vehicle, pedestrian or fixed object on or near the highway, or

iv. making a left turn where,

(A) the driver is stopped at an intersection controlled by a traffic control signal system in response to a circular red indication;

(B) at least one vehicle facing the opposite direction is similarly stopped in response to a circular red indication; and

(C) the driver executes the left turn immediately before or after the system shows only a circular green indication in both directions and in a manner that indicates an intention to complete or attempt to complete the left turn before the vehicle facing the opposite direction is able to proceed straight through the intersection in response to the circular green indication facing that vehicle.

## The Law, jurisprudence

The common law as to defending against a "stunt" charge, meaning of the speeding 50 kms per hour over the limit type, was originally viewed as being an absolute liability offence; meaning that only the conduct of such excess rate of speed needed proving in Court; however, in 2010, this perspective of the 'stunt by speed' charge was reviewed by the Court of Appeal in *R. v. Raham*, [2010 ONCA 206](#) and it was decided that the offence is one of strict liability where an accused person does not have the right to put forth a due diligence defence as a means to defeat the charge. Of course, this is without saying that the only defence strategy is a 'due diligence' defence; in fact quite the contrary, defending against the charge may involve tactics intended to impair the ability of the Prosecutor in the effort to prove beyond a reasonable doubt that the offence occurred; however, the 'due diligence' defence relates to the availability of an available defence even if the conduct of 'stunt by speed' is proven.

In the *Raham* case, the concern was that as a conviction under s. 172 of the *HTA* carried the potential for imprisonment as a punishment, holding the charge as an absolute liability offence would be unconstitutional contrary to [s. 7](#) of the [Charter of Rights and Freedoms](#) whereas there may be circumstances that arise that require driving in excess of 50 km per hour over the speed limit and therefore the offence should be a strict liability offence. Specifically, the Court of Appeal said:

[49] I do not think that it can be said that driving over the speed limit, regardless of how much over the speed limit, will necessarily preclude a finding that an individual took all reasonable steps to avoid driving at 50 kph or more over the reasonable limit. For example, a driver, acting reasonably, may be proceeding somewhat over the speed limit in the passing lane of a multi-lane highway. That driver may find that he has no reasonable choice but to accelerate in order to avoid being hit by a vehicle that is approaching from behind. If that driver were to go more than 50 kph over the speed limit for the two or three seconds needed to get around traffic so that he could pull out of the passing lane and out of the way of the oncoming vehicle, I think a trier of fact could conclude that the driver was exercising all reasonable care to avoid driving at 50 kph or more over the speed limit. Similarly, a driver who testified that he or she relied on a speedometer, which indicated a rate of speed well below 50 kph over the speed limit, might succeed on a due diligence defence if there was evidence that the speedometer, unknown to the driver, was malfunctioning.

[50] In outlining the above scenarios, I do not suggest that the due diligence defence is limited to those or similar scenarios. I also do not imply that the due diligence defence will be readily [page257] available to this charge. As MacPherson J.A. observed in *Kanda*, at para. 31, the use of strict liability is "a serious commitment to the enforcement of the law". I would add that even where a due diligence defence is available to a charge of stunt driving contrary to s. 3, para. 7 of the Regulation, a conviction for speeding will often be imposed. Section 55 of the Provincial Offences Act, R.S.O. 1990, c. P.33 would permit, in most situations, a conviction on the lesser but included offence of speeding contrary to s. 128 of the Highway Traffic Act: see *R. v. Benson*, [2009] O.J. No. 4956, 2009 ONCJ 566 (CanLII), at paras. 29-34.

[51] In summary, I would interpret the offence of stunt driving by speeding as defined in s. 3, para 7 of the Regulation as creating a strict liability offence. It is true that the prohibited conduct is identical to the conduct prohibited by the offence of speeding created by s. 128. I see nothing illogical in treating one as a strict liability offence and the other as an absolute liability offence. The stunt driving provision provides for the potential of incarceration, the speeding provision does not. This distinction is constitutionally significant. The legislature cannot, absent reliance on s. 1 of the Charter, imprison without fault. Strict liability sets the lowest standard of fault available. The legislature has chosen, through s. 172, to up the penal stakes for speeding at 50 kph or more over the speed limit by including the risk of incarceration. In doing so, the legislature must be taken, in the absence of clear language excluding the defence, to have accepted the availability of the due diligence defence. Neither the language of s. 172 nor that of s. 3, para. 7 of the Regulation has that effect.

### Summary Comment

It is the "stunt" definition of, "*Driving a motor vehicle at a rate of speed that is 50 kilometres per hour or more over the speed limit*", that commonly brings about some confusion whereas a common misperception is that a "stunt" charge must involve conduct that involves more than driving at excessive speed; however, in law, "stunt" driving can, and often does, relate merely to excess speed; and accordingly, an attempt to perform some grandiose feat as a common dictionary definition of 'stunt' is unnecessary in proving "stunt" driving contrary to the *HTA*.

Furthermore, in addition to tactics focused on impairing the prosecution from proving that a driver was driving beyond 50 kms per hour over the speed limit, a defence against a charge of 'stunt by speed' may also be successfully defended by proving that doing so occurred as a necessity involving due diligence of the driver.