



Criminal Law News

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The Need for Speed, Stunt Driving and R. v. Raham

At the time I'm writing this, we're just a few days into the New Year and the new decade. When deciding on a topic I first thought of writing one of those "decade in review" type articles that looked back on several of the most important decisions of the last ten years, or a review of where the criminal law has come in the past ten years and where it may be going in the next ten. But then I realized something that quickly changed my mind: articles like that are a lot of work. You have to research dozens of cases and then list at least ten and explain why they are the most important and if you think I was going to do something like that over my Christmas holidays, you don't know me very well.

But then a funny thing happened on the road to the easy way out, I decided to write about *R. v. Raham*, 2009 ONCJ 403, a decision of Justice G. J. Griffin of the Ontario Court of Justice that was released September 4, 2009. In a nutshell, this case found a portion of the "stunt driving" provisions of the *Highway Traffic Act* to be unconstitutional. And as I was reading the case and thinking about it, it dawned on me that this case is particularly illustrative of a disturbing trend in criminal justice arena in the past decade or so.

But before we get to that, let's look at the case itself for a bit, shall we? First off, Ms. Raham isn't the type of person that would immediately spring to mind when one considers who might be a "stunt driver." At the time she was charged on April 29, 2008, Ms. Raham was a 62 year-old grandmother. At the time, she was returning to her home in Oakville after visiting her daughter in Kanata, who had recently given birth to twins. She was travelling on Highway 7 as opposed to a 400 series highway because there are fewer trucks which tend to make her nervous. There was a line of traffic of at least three vehicles, with Ms. Raham being the first vehicle and an OPP officer being the third vehicle, that was travelling westbound on Highway 7 at about 90 kph. This line of vehicles eventually came upon a slower moving truck. At a straight section of roadway, Ms. Raham pulled out to pass the truck. The officer pulled into the eastbound lane in order to get a radar reading of Ms. Raham's vehicle. While passing the truck, Ms. Raham's vehicle hit 131 kph, or 51 kph over the posted 80 kph speed limit. After completing the pass, Ms. Raham slowed to approximately 110 kph.

Eventually, the officer pulled her over in the town of Kaladar, wherever that is, and charged her with stunt driving. In addition, her licence was automatically suspended for 7 days there at

the roadside and her vehicle was impounded for 7 days too, and towed to the local Ford dealership, where it cost her \$75.00 per day storage fees.

At this point one may ask themselves, what "stunt" did Ms. Raham do to get herself in such a bind that fine April day in Kaladar? Well, the "stunt" she performed, unbeknownst to her, was nothing more than exceeding the speed limit, albeit briefly, by 50 kph. You see, s. 172 of the *Highway Traffic Act* makes it an offence to race or perform a stunt while driving. If found guilty of racing or performing a stunt, the penalties prescribed by the Act are a minimum \$2000.00 fine up to a maximum of \$10,000.00 or six months imprisonment, or both and, of course your licence may be suspended. The impounding of the vehicle at the roadside and the roadside licence suspension are just little pre-conviction penalties that don't count here. The definition of what constitutes a "stunt" isn't found in the Act. For that you have to go to the regulations, specifically s.3 of Ontario Reg. 455/07, for those of you who make a habit out of reading regs. There, "stunt" is defined as follows:

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 of 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 light 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.

Wow. Did you actually read all that? If those rules had been in effect when

I was young, I likely still wouldn't have my licence. Let's just look at a few of them, shall we? Like 3(1), which prohibits popping wheelies on motorcycles. I got a motorcycle when I was 19 and I don't want to incriminate myself, but I may have done that. Then there's 3(2), intending to cause your tires to lose traction. Oh, I get it, you mean squealing your tires. My first car that I got when I was 16 was a fire engine red 1967 Mustang. Although it only had a six cylinder engine, I must admit there were times I did my damndest to spin its tires. Then there's 3(3), doing doughnuts, well I'm not going there, but all you need to do is refer back to the '67 Mustang. Remember, I was 16 years old, driving a cool car, trying my best to impress the ladies. (No doubt that paints a picture of me none of you really wanted to envision, didn't it?)

In any event, enough nostalgia. Ms. Raham got caught by s. 3(7), exceeding the speed limit by 50 kph (another part of the section I may have been guilty of at some point during my driving career). At her trial on the matter, her paralegal counsel argued that s. 3(7) of the definition was unconstitutional as it created an absolute liability offence which could result in a jail sentence, which, as Justice Lamer succinctly put in the Supreme Court of Canada case, *Reference re s. 94(2) of the Motor Vehicle Act (British Columbia)*, [1985] 2 S.C.R. 486 (S.C.C.) "absolute liability and imprisonment cannot be combined." Wouldn't all our jobs be a lot easier if all decisions were that clear and that short?

The Justice of the Peace at trial found that the section was constitutional as it created a strict liability offence that allowed for a due diligence defence and not an absolute liability offence. At her trial Ms. Raham testified that

as she passed the truck, it seemed to speed up and was longer than she thought, so she kind of panicked and sped up to get past it. In finding her guilty, the Justice of the Peace stated she was found by radar to be going more than 50 kph over the limit and didn't even avert his mind to her explanation.

On appeal to the Ontario Court of Justice, Justice Griffin found that this in fact was an absolute liability offence in that a person was deemed guilty on being shown to be exceeding the speed limit by 50 kph. One only had to look at the decision of the Justice of the Peace to see this, as he found Ms. Raham guilty simply because she was 50 kph over the limit and didn't even turn his mind to whether her explanation offered a defence. In the end he found s. 3(7) to be unconstitutional.

That would be all and good and just be another interesting little case to be tucked away in the corner of my mind, if I hadn't been thinking of all those decade in review type things mentioned earlier. This case is just illustrative of how, in my opinion, governments, both provincial and especially federal, have passed more, and increasingly more punitive, criminal or quasi criminal laws, as the case may be, in order to score easy political points. Laws like this stunt driving stuff aren't really needed. There are, and have been for a long time, plenty of laws already on the books to cover this type of behaviour. Ms. Raham could have been charged with speeding. At 50 kph over the limit, she would have received a hefty fine and several points on her licence. A penalty most, in the circumstances, would think fit. Any of those activities covered by the stunt definition just as easily could fall under the umbrella of careless driving under the

HTA or even dangerous driving under the *Criminal Code* if the facts were egregious enough.

Similarly with the spate of criminal laws being passed seemingly weekly, most seem to be aimed at scoring political points and are aimed at dealing with perceived problems as opposed to actual ones. We live in one of the safest societies in the world. The chances of you being the victim of a violent crime by a stranger in this country are slim. Crime is not rampant, but to hear politicians you'd think we were living under siege.

The U.S. tried this experiment and we can see how well it is working there. Hopefully at home, the pendulum in this regard has swung as far as it can, and the next decade will see a return to a more level headed approach to criminal justice. ■

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