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Judge tosses stunt-driving charge as unconstitutional

Law doesn't allow accused 'available defence'

Shannon Kari, National Post

A second judge in Ontario has ruled that the province's stunt-driving law is unconstitutional, which could increase the pressure on police to stop laying the charge until the issue is decided by a higher court.

Justice Peter West, a provincial court judge in Newmarket, found that a potential penalty of up to six months in jail violates the Charter of Rights because the law does not permit an accused any defence.

"There is no air of reality to the Crown's submissions that a defendant charged with stunt driving has an available defence of due diligence," wrote Judge West, in a ruling released Nov. 19. He dismissed charges against Alexandra Drutz, who was 18 when she clocked at 157 km/h while driving her parents' car in March 2008 on Highway 407, just north of Toronto.

Stunt driving is defined as being more than 50 kilometres per hour over the speed limit, which is the same type of "absolute liability" offence as speeding infractions in the Highway Traffic Act, said Judge West. "Calling the conduct stunt driving does not change its characterization -- it is still a speeding offence albeit by a different name," he stated.

An absolute liability offence means someone may not argue they took precautions and did not realize how fast they were driving. More than 20 years ago the Supreme Court of Canada stated that potential jail terms for offences that do not permit a defence breaches the Charter.

The ruling by Judge West comes just weeks after a provincial court judge in Eastern Ontario came to the same conclusion and overturned the conviction of a 62-year-old grandmother charged with stunt driving.

The Ontario Provincial Police stated at the time that it would continue to lay charges under the stunt driving laws. The province also appealed that decision. It is scheduled to be heard by the Ontario Court of Appeal in about two months from now.

The two court rulings are binding on Justices of Peace in Ontario, who preside over many Highway Traffic Act trials. Until there is a ruling on the stunt driving laws from the Ontario Court of Appeal, police should take a "time out" from laying these charges, said Enzo Rondinelli, a Toronto lawyer who along with Paul Cooper represented Ms. Drutz.

"The current score in provincial court is 2-0 in favour of a finding of constitutional invalidity," noted

Mr. Rondinelli. "There are other sections under the Highway Traffic Act for police to deal with speeders," he added.

More than 10,000 people have been charged under the stunt driving provisions in Ontario since they were introduced in 2007 by then-attorney-general Michael Bryant.

Judge West noted in his ruling that the stunt driving provisions were passed unanimously by the Ontario legislature in what was billed as a law targeting street racing. The specific "regulations" however, which defined speeding as stunt driving and have now been found to be unconstitutional, were drawn up at a later date by the Ontario government.

"They were never debated in the legislature," wrote Judge West.

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