

**** Unedited ****

Indexed as:

R. v. DiGiuseppe (Ont. Ct. (Prov. Div.))

Between

Her Majesty the Queen, and
Dino DiGiuseppe, Appellant

[1991] O.J. No. 2514
DRS 95-09749

**Ontario Court of Justice - Provincial Division
Thunder Bay, Ontario
Fraser Prov. Div. J.**

November 14, 1991
(2 pp.)

Motor vehicles — Regulation of vehicles and traffic — Rate of speed, evidence and proof — By radar equipment — Accuracy of device — Tuning forks.

Appeal by the accused from conviction for speeding. The appellant argued that the Crown failed to show that the tuning forks used to test the accuracy of the radar equipment were themselves accurate and suitable for that purpose.

HELD: Appeal dismissed. The Crown was only required to prove that the radar equipment was tested before and after measuring the defendant's speed and that it worked accurately.

Mary Anne Mousseau, for the Crown.
Appellant appearing in person.

FRASER PROV. DIV. J. :— The Appellant appeals a conviction for speeding on the grounds that the Crown has not made out a prima facie case because there was no evidence that the tuning forks used by the radar operator to test the accuracy of the machine were themselves accurate and suitable for the purpose *R. v. Bourque* (1985) 38 M.V.R. 110 (Alta. Q.B.). Secondly, the radar operator although he testified that "radar is an instrument which accurately measures the speed of moving vehicles" he did not say in addition to that 'across the full range of the set'. The Appellant submits omitting this additional phrase is fatal to the Crown's case *R. v. Meyer* (August 23, 1984) Zimmerman, J. (Ont. Prov. C.).

Bourque is not the law in Ontario considering the two unreported decisions of the Ontario Court of Appeal in *R. v. Sim* and *R. v. Bigioni* both of which can be found in the Ontario Judgement data base of Quick Law and are commented on at length in the second edition of Manraj/Haines *The Law on Speeding and Radar* at pp. 36-38. In Ontario it is sufficient to establish a prima facie case that the Crown adduce evidence that the radar unit was tested both before and after measuring the defendant's speed and that it was found to be working accurately, and that the radar operator was qualified in the use of the radar device. A further difficulty with Bourque is that it appears to create an impossible evidentiary treadmill. If it is necessary to prove the accuracy of the tuning forks then surely it becomes necessary to prove the accuracy of whatever devices are used to measure or test those forks and so on. I am in my view not good law and I disagree with it. The conclusion reached by the learned Judge was not justified by the caselaw or the submissions of the Appellant and is not in accord with the subsequent judgements of



DRS/DRS

FRASER PROV. DIV. J.

There will be cases in which the cross-examination of the radar operator will generate such admissions which raise a doubt as to the accuracy of the radar or the qualifications of the operator. A review of the transcript of the case at bar reveals no such admissions which could give rise to such reasonable doubts. I find no error in law and the appeal is dismissed.

The Ontario Court of Appeal referred to above.

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