



## The Hammer Comes Down: Traffic tickets

### Description

## A few quick tips on fighting certain traffic tickets

By **Linda Hammerschmid**

By and large, most drivers have “earned” some traffic tickets in their driving careers. Be they for parking or moving violations take the time to review in detail your ticket **before** simply paying it.

The ticket you find on your windshield, or that is occasionally served by Bailiff at the address listed on your Driver’s License, is **not** the entire ticket. It is simply the first piece of documentary evidence that starts the process rolling.

Assuming you don’t run to the bank to pay it, or mail off a cheque, the only reaction you should have is to send in your “not guilty” plea. Keep a copy for your file of whatever you write and send in.

‘Be they for parking or moving violations, take the time to review in detail your ticket before simply paying it.’

Either next or at the same time, write a letter (quote the ticket number) asking for **all** the proof that will be used by the Crown Prosecutor in court.

This step can take months, and if you do not receive the municipality’s reply within two to four months, follow up your letter with another, and another, until you receive the “proof”.

This is the additional documentary evidence that forms part of the evidence supporting the original ticket and details. In theory, it is the police officer’s reasoning and observations of whatever infraction you are being charged with. It can be a few pages – usually in a format similar to the original ticket but set out in sections for the officer to complete. It also should be accompanied by photos **if** any were taken... it is mandatory for this “proof” to be disclosed to you.

This whole process is the entire case against you and it is obligatory, upon a request by a Defendant, to be remitted



to you. Moreover, the police officer who wrote the ticket does **not** need to be present as the “proof” is filed by the Crown and is accepted as the Officer’s testimony. If you have not requested this proof it will nevertheless form part of the Court record that the prosecutor can use to question you at a trial and that the Judge will see. So why shouldn’t you take advantage of having it too, in order to properly prepare your defence?

By the way, I do not recommend you plead your own case if the offence is serious, such as driving under the influence, for example. But for parking tickets, red lights, impeding intersections and the like, you are capable of defending against your ticket if you properly prepare. To do that you need to arm yourself first and foremost with the information and you can always hire a lawyer for the hearing/trial if you feel you must.

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So now that you have the Crown’s secondary proof (there can’t be more but the Prosecutor, in preparing the case, can do basic research such as finding out if you have any similar infractions – which only necessitates a few clicks on the Court computer). But by and large, there are so many cases on any given day that Prosecutors rarely have enough time to read through all the files beforehand, let alone do research. And every day there is a new pile awaiting each Prosecutor.

The additional proof you requested lists what the Police Officer witnessed and allows you to verify that version of the events against your own.

Oh, and by the way, in the immediate aftermath of the incident for which you received the ticket, take note of the area, take your own photos, jot down what you noticed around you at the time, and even the weather (as that could have a bearing particularly in Winter or if there was fog [impact of visibility], etc.), and note if there was only one officer in the Police car since one on one is easier to defend against.

**Do not** say anything to the officer who stops you, save to say hello – and hand over your license and registration – and then wait. Don’t blurt out any justifications as they can be written down by the Officer on the additional form and it then becomes part of the “additional” proof against you. If you say, “I’m sorry I didn’t see the...” that may be construed as an admission on your part of guilt that will be used against you at trial.

‘... write a letter (quote the ticket number) asking for all the proof that will be used by the Crown Prosecutor in court... This is the additional documentary evidence that forms part of the evidence supporting the original ticket and details.’

And remember, more often than not the Police Officer is **not** in attendance at Court for these types of tickets, so it’s your testimony against the paper ticket, which is the case offered by the Crown aside from Cross-Examination.

You, on the other hand, are **not** obliged to send in any explanations, or photos you may take, to the Crown **prior** to testifying at trial. I have read of instances where people write their explanations on the Not Guilty form only to still receive a summons for the trial date. Save your own proof for Trial, but make sure to bring three (3) copies of all documents/photos you intend to use (your copy plus one (1) each for the Crown and the Judge). FYI: The photos you want to use **must** have been taken by you. If someone else took them, that person will need to come to authenticate the photos.



Sometimes you can prepare a great deal only to arrive at Trial and hear the Prosecutor say, “Pas de preuve à offrir” (No proof to offer). That is good news and means you are acquitted without having to testify.

If in reviewing the additional proof (or the original ticket) you notice glaring errors or have proof that contradicts the ticket, you should point this out to the Prosecutor before your case is called, if possible, before Court commences, and the ticket may be withdrawn and again, you won't have to testify.

‘The additional proof you requested lists what the Police Officer witnessed and allows you to verify that version of the events against your own’

Such errors can be the address stated where the infraction took place. Once I received a ticket and the street name cited did not even exist in the area where the ticket was written. Or you have an airline ticket or proof of attendance at a Conference for the exact date and/or time you supposedly committed the infraction. As no one can be in two (2) places at once, the Prosecutor should withdraw the ticket, or the Judge will most likely acquit you.

Prepare maps and take measurements if necessary for your case. The more proof you present the better your chances of a Judge saying “benefit of the doubt” which equals Acquittal, as the Defendant benefits from **any** doubt the Judge may have in regards to the proof presented by the Crown.

For example, in a ticket issued for not properly stopping at a stop sign, where the Police Officer's car was parked too far back on the cross street, photos taken from where one had to stop before proceeding proved that the officer could **not** have seen the driver **not** stop. Submit photos/diagram = Benefit of doubt = Acquitted.

If your requests for the Crown's proof are not answered but a trial date is nonetheless set, write for a postponement of the trial until the proof is presented.

‘If, in reviewing the additional proof... you notice glaring errors or have proof that contradicts the ticket, you should point this out to the Prosecutor before your case is called... and the ticket may be withdrawn...’

But never assume such a request is accepted. Unless you receive a Notice of the postponement accepted by the Court, you must go on the trial date and plead for the postponement on the basis of non-disclosure by the Crown. Otherwise, if you don't go Judgment by fault will be rendered against you.

## Postponements by the crown

Occasionally, for reasons we don't always know, a Notice is received that the trial date has been postponed by the Crown. Another Notice, sometime later, will be set with a new trial date. The importance here is the issue of delay between the date of the original ticket and the new trial date. The Crown, in simple Municipal Automobile Infractions, must have the case **heard** within 18 months, pursuant to the Supreme Court of Canada Case – Jordan: Supreme Court of Canada dossier cb/2019/28292.



And if the delay has not been caused by the Defendant (asking for repeated postponements) or is mostly due to the Crown, when postponements are being asked by both sides, the case against you can be dismissed. If it has not been done automatically by the Court Registrar (Greffé), you should make this a preliminary argument at trial **before** presenting your proof, since the judge may throw out the case if the eighteen (18) month delay has been exceeded, due entirely or mostly to the Crown.

Yes, pleading not guilty and having a trial hearing does mean additional costs will be added to the original amount of the ticket. But if you are not guilty and/or can prove you aren't – you will not need to pay anything.

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Evening Court Available: LaSalle (Montreal South); Point Claire (West Island); St Laurent (Montreal North); Montreal West and Montreal Courthouse (Old Montreal)

Visit [montreal.ca/en/topics/montreal-municipal-court](http://montreal.ca/en/topics/montreal-municipal-court) for more information

So if you do not want to miss work, ask for an evening date, where possible, on the Not Guilty form or in an attached letter.

## Demerit points

The only real cost to you, win or lose, is your time, and whether or not this greatly impacts your paycheque. **But** if the ticket has demerit points attached you may need to contest depending on how many you have already accumulated. And the number of points has a bearing as well on your car Insurance and Driver's License costs. So you need to weigh the pros and cons of contesting the ticket.

Keep in mind that parking (stationary) tickets usually do not come with demerits, but if you are really not guilty why pay the fine? You decide.

But also keep in mind that a ticket with two or three demerits may not seem a big deal at the time if you have none or hardly any, but they could have a significant impact in regards to your next ticket.

'... if the ticket has demerit points attached you may need to contest depending on how many you have already accumulated. And the number of points has a bearing as well on your car Insurance and Driver's License costs.'

Not only are there demerit points, but there are also "brackets" of demerit points, and depending on which bracket you are in, your license **will** be revoked once you exceed the threshold of points for your bracket. You can obtain a copy of your Driving Record, which indicates your bracket and accumulated demerit points, as can your insurer, employer or any investigator (and of course the prosecutor). Visit [saaq.gouv.qc.ca/en/drivers-licences/demerit-points/](http://saaq.gouv.qc.ca/en/drivers-licences/demerit-points/) to apply for your record. It takes five to ten business days to obtain so you may want to request your record as soon as you get a ticket so you have it before the delay to plead Not Guilty expires in order to decide how to proceed.

Interesting Fact: License holders can incur points even if they are NOT driving: not wearing a seat belt, holding onto



a vehicle in motion, are examples of how.

In conclusion: The key ingredient to any decision is knowledge. So arm yourself accordingly, and safe driving out there.

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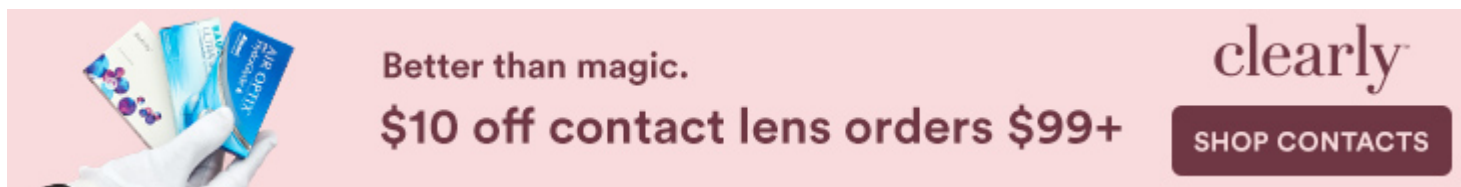
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